

MOHAMMED GAZI
v.
STATE OF M.P. AND ORS.

MARCH 31, 2000

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Constitution of India, 1950—Article 226—Equity clause—Application of—Tenders invited for purchase of Tendu leaves—Highest bid of respondent No. 4 cancelled on account of complaints made by other bidders and alleged manipulations on the part of the official-respondents—Fresh notice for tenders in which the appellant was declared the highest bidder—Appellant called upon to execute purchase agreement in pursuance of which he deposited Rs. 2,68,217.72 as security amount—On account of litigation initiated by respondent No. 4 without impleading the appellant as party and stay order in that case, the appellant was prevented from collecting the Tendu leaves—Request of the appellant to refund his security as leaves had already perished and rotten, rejected and direction issued to him to execute the agreement—Consequently the appellant filing a writ petition for refund of earnest money which was allowed—However, in appeal, the Division Bench of High Court directing that a sum of Rs 30,000 be deducted from the earnest money of the appellant on the basis of equities by holding that State was also not responsible for the fault—Tenability of—Held, such a direction of the High Court cannot be sustained in view of the findings of fact returned in favour of the appellant—The appellant had not committed breach of any condition of the tender as he was prepared to accept the Tendu leaves which he could not lift on account of stay order—Appellant held entitled to refund of the whole amount of the earnest money deposited by him.

Maxims—Actus curia neminem gravabit—An act of the Court shall prejudice no man—Lex non cogit ad impossibilia—Law does not compel a man to do which he cannot possibly perform—Applicability of.

Tender notice inviting tenders for disposal of Tendu leaves was issued by the respondent-State. Respondent No. 4 was declared the highest bidder in respect of one of the lots of Tendu leaves. However, the highest bid of respondent No. 4 was not accepted and his tender was cancelled on account of complaints made by other bidders and alleged manipulations on the part of the official-respondent. Fresh notice for tenders for the

A aforesaid lot was issued in which the appellant was declared the highest bidder. He was called upon by the official-respondent 1 to 3 to execute purchase agreement as per the tender notice, with the Conservator of Forests after depositing the balance security. Consequently, the appellant deposited a sum of Rs. 2,68,217.72 as security amount.

B In the meantime, respondent No. 4 filed writ petition in the High Court challenging the order of cancellation of tender and the re-tender notice. The appellant was not impleaded in the said writ petition. The application filed by the appellant for intervention in the writ petition was rejected. The High Court passed an interim order restraining the official-respondents from taking any step pursuant to the fresh tender notice. C Ultimately, the writ petition filed by respondent No. 4 was disposed of by a Single Judge of the High Court by quashing the order of cancellation of tender to the extent by which the earnest money deposited by respondent No. 4 had been directed to the forfeited and a direction was issued to refund the earnest money to respondent No. 4. D

After disposal of the aforesaid writ petition, the appellant requested respondents 2 and 3 to refund his security amount of Rs. 2,68,217.72. It was pleaded that since Tendu leaves, which was a perishable item, had already perished and rotten with the result that its value had become useless by lapse of time. However, respondent No. 2 sent an ante dated E letter directing the appellant to execute the agreement and deposit the remaining tender price. The appellant, then, filed writ petition in the High Court praying for quashing of the order of the High Court rejecting his application for intervention in the writ petition filed by respondent No. 4 and refund of earnest money along with an amount of Rs. 10 lakhs claimed F as damages. He also prayed that he should not be compelled to enter into an agreement by respondents. The said writ petition was allowed by a Single Judge of the High Court with a direction to respondents 1 to 3 to refund the security amount to the appellant forthwith. Thereafter a Letters Patent Appeal was filed by respondents 1 to 3 before the Division G Bench of the High Court which was partly allowed on the basis of equities thereby directing that a sum of Rs. 30,000 be deducted from the earnest money of the appellant. Hence the present appeal.

Allowing the appeal, this Court

H Held : 1.1. The appellant is entitled to refund of the whole amount of

the earnest money deposited by him. On account of litigation initiated by respondent No. 4 without impleading the appellant as party in his litigation, the appellant was prevented from taking the benefit of the acceptance of his tender notice by the official-respondents. It also cannot be denied that Tendu leaves are a perishable item. For no fault of his the appellant was prevented from collecting the Tendu leaves for which he had deposited him security amount. The appellant could not be held responsible for not lifting the Tendu leaves and thereby had not committed breach of any condition of the tender. There was no fault on his part because he had offered bid and was prepared to accept the Tendu leaves which he could not lift on account of stay order. The direction of the Division Bench of the High Court that a sum of Rs. 30,000 be deducted from the earnest money of the appellant, on the ground that the State also could not be held responsible for the fault, cannot be sustained in view of the findings on fact returned in favour of the appellant. [875-F; 876-E]

1.2. In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases.

[876-F-G]

Raj Kumar Dey & Ors. v. Tarapada Dev & Ors., [1987] 4 SCC 398 and *Gursharan Singh & Ors. v. NDMC & Ors.*, [1996] 2 SCC 459, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2332 of 2000.

From the Judgment and Order dated 1.12.98 of the Madhya Pradesh High Court in L.P.A. No. 270 of 1998.

Dinesh Kumar Garg for the Appellant.

Sakesh Kumar and Satish K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

A **SETHI, J.** Leave granted.

B Whether a person can be penalised for no fault of his merely by resorting to equity clause in favour of the respondent-State particularly when such person is found to have not been benefitted or the State deprived of the benefits on account of the stay order issued by the Court? is the question of law to be decided in this appeal. Another related question requiring determination is as to whether on account of the pendency of the writ petition filed by another party without impleading the affected person as a party in which the stay order granted by the Court, such person can be directed to forfeit a part of the security amount deposited by him particularly when the court itself found that even the equities were equally balanced between the State and such person.

D The facts of the case giving rise to the determination of the questions of law formulated hereinabove are that a tender notice inviting tenders for disposal of Tendu leaves for 1995 session was issued by the respondent-State on 20th November, 1995. Respondent No.4 offered his tender in respect of different lots including Lot No.597 and was declared the highest bidder for the said lot on 20th December, 1995. On account of some complaints made by other bidders and on account of alleged manipulations on the part of the official-respondents the highest bid of the respondent No.4 was not accepted and his tender cancelled by order dated 27th January, 1996. Fresh notice for tenders for the aforesaid lot were issued on 20th May, 1996 in which the appellant herein was declared the highest bidder. In the meantime, the respondent No.4 filed writ petition No.2147/96 in the High Court challenging the order of cancellation of tender dated 27th January, 1996 and re-tender notice dated 23rd May, 1996. He also prayed for interim relief to the extent that pursuant to the fresh tender notice dated 20th May, 1996 the official-respondents be restrained from executing any fresh agreement. The High Court vide order dated 18.6.1996 issued an interim direction restraining the official-respondents from taking any step pursuant to the fresh tender notice. It is pertinent to note that the appellant herein was not impleaded as a party-respondent in the aforesaid writ petition. He received a letter from official-respondents 1 to 3 calling upon him to execute purchase agreement as per Clause 7(2) of the tender notice with the Conservative of Forests after depositing the balance security as shown in the letter dated 1.9.1996. Consequently, the appellant deposited a sum of Rs.2,68,217.72 as security amount.

H The appellant also filed an application for intervention in the writ petition

filed by respondent No.4 which was rejected on 1.4.1997. The writ petition filed by the respondent No.4 was disposed of by a learned Single Judge of the High Court by quashing order dated 27.1.1996 to the extent by which the earnest money deposited by respondent No.4 had been directed to be forfeited and a direction was issued to refund the earnest money to respondent No.4. After disposal of the aforesaid writ petition the appellant requested the respondents 2 and 3 to refund his security amount of Rs.2,68,217.72 vide his letter dated 24.4.1997. He pleaded that since Tendu leaves, which was a perishable item, had already perished and rotten with the result that its value had become useless by lapse of time. He also prayed for 18% interest on the security amount which was alleged to have illegally been detained by official-respondents for no fault of the appellant. It is contended by the appellant that after his letter dated 24.4.1997 the respondent No.2 sent an ante letter dated 10.4.1997 directing the appellant to execute the agreement by 10.5.1997 and deposit the remaining tender price in four instalments as detailed therein. Apprehending that the authorities might proceed to forfeit his earnest money and blacklist him, the appellant was constrained to file writ petition No.1934/97 in the High Court praying for quashing of order dated 1.4.1997 and refund of earnest money along with an amount of Rs.10 lakhs claimed as damages. He further prayed that he should not be compelled to enter into an agreement in pursuance to letter dated 19.6.1996. The writ petition was allowed by a learned Single Judge of the High Court on 10.12.1997 with a direction to the respondents 1 to 3 to refund the security amount to the appellant forthwith. Not satisfied with the order of the learned Single Judge, the respondents 1 to 3 filed a Letters Patent Appeal before the Division Bench of the High Court which was partly allowed vide the order impugned in this appeal.

It is not disputed that on account of litigation initiated by respondent No.4 without impleading the appellants as party in his litigation, he was prevented from taking the benefit of the acceptance of his tender notice by the official-respondents. It also cannot be denied that Tendu leaves are a perishable item. For no fault of his the appellant was prevented from collecting the Tendu leaves for which he had deposited his security amount. It is worth noticing that when the writ petition filed by respondent No.4 was partly allowed by a learned Single Judge of the High Court, the official-respondents had not filed a Letters Patent Appeal.

In the writ petition No.1934/97 filed by the appellant, the learned Single Judge of the High Court held on facts:

- A "In view of these circumstances, this Court has no hesitation in holding that the contract between the parties has frustrated. The respondents are not entitled to compel the petitioner to purchase or lift the Tendu leaves at the price quoted by him. The respondents are duty bound to return the money received from the petitioner at the time of submission of the tender. If the respondents suffer any losses because of the acts of the respondent No.4 they are free to take proper legal proceedings before the competent court of law for recovery of damages if the laws permit them. The petition is allowed. No costs."
- B

- C The Division Bench, while disposing of the LPA, also found that the appellant could not be held responsible for not lifting the Tendu leaves and thereby had not committed breach of any condition of the tender. Finding that the State was also not responsible for any breach, the Division Bench decided to pass the order impugned on the basis of equities. The arguments advanced on behalf of the appellant before the Division Bench that there was no fault on his part because he had offered bid and was prepared to accept the Tendu leaves which he could not lift on account of stay order were found by the Division Bench to be not erroneous. The Division Bench held that "the submission of the learned counsel does not appear to be erroneous. As the State also could not be held responsible for the fault, the Division Bench directed that a sum of Rs.30,000/- be deducted from the earnest money of the appellant. Such a direction of the High Court cannot be sustained in view of the findings on fact returned in favour of the appellant.
- D
- E

- F In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey & Ors. v. Tarapada Dey & Ors.*, [1987] (4) SCC 398 and *Gursharan Singh & Ors. v. NDMC & Ors.*, [1996] 2 SCC 459.
- G

- H Keeping in view the facts and circumstances of the case we are of the opinion that the Division Bench of the High Court was not justified in

directing the deduction of the sum of Rs.30,000/- from the security amount deposited by the appellant. We find that the learned Single Judge had assigned cogent reasons for return of the earnest money to the appellant and those findings could not be disturbed by the Division Bench allegedly on the ground of equities. The appeal is allowed by setting aside the impugned order dated 1.12.1998 passed by the Division Bench of the High Court of M.P. in LPA No.270/98. The order of the learned Single Judge is restored and the appellant held entitled to refund of the whole amount of the earnest money deposited by him. No costs.

M.P.

Appeal allowed.