

M/S. KALYANJI VITHALDAS AND SONS

v.

THE STATE OF M.P. AND ORS.

SEPTEMBER 17, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Agreement with Government for purchase of Tendu leaves in certain area for 3 years—One of the terms was that the lease was renewable every year—Appellant to opt for renewal within 15 days prior to the end of the year—Leases to be renewed within 15 days of the issue and to be accepted by the Department—Appellant's offer for renewal accepted by the Government and communication sent—Appellant refused to accept the communication and sent telegram withdrawing from the offer—Loss to the Government on account of non-execution of the renewal deed and due to non-collection of Tendu leaves for the period since it was not sold to any other agency—Government calling upon the appellant to make good the loss—High Court dismissing the writ petition and holding that the appellant was liable to pay the damages—On appeal held, acceptance of the offer communicated to the appellant by the Government within time—Appellant appears to have taken undue advantage of some typographical error in the name of the appellant-company and sought to resile from the offer accepted by the Government—Having allowed the contract to lapse resulting in loss caused to the State due to non-execution of the contract, the resultant loss has to be recovered from the appellant—Government is empowered to recover the arrears of the dues as land revenue from the appellant-contractor towards loss caused to the Government in not collecting the Tendu leaves under the contract—Land Revenue Code, S.155—Revenue Recovery Act, 1890, Ss.3 and 4(2).*

*Shiv Saran Lal v. State of M.P. & Ors., AIR (1980) M.P. 93, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 675 of 1980.

From the Judgment and Order dated 24.1.79 of the Madhya Pradesh High Court in M.P. No. 370 of 1971.

S.V. Deshpande for the Appellant.

A S.K. Agnihotri and Ashok Kr. Singh for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Division Bench of the M.P. High Court at Jabalpur made on January 24, 1979 in  
B Miscellaneous Petition No. 370/71.

The admitted facts are that the appellant-firm had entered into an agreement with the Government for purchase of Tendu leaves in Unit No. 14, Chowki in South Division for three years ending on December 31, 1970 on the terms and conditions mentioned in the agreement dated November 30, 1968. One of the terms was that the lease is renewable every year. The lease commences from February 1 of the year and end on January 31 of the next year. In this case, the agreement of the appellant commenced from March 2, 1968 and it was to end on January 31, 1968. As per the terms of the agreement, the appellant had to opt for renewal within 15 days prior to December 31 and the leases were to be renewed within 15 days from the date of the issue and was to be accepted by the Department. The admitted position is that the appellant had offered for renewal on December 7, 1968. It is seen from the record that the Government had accepted the offer on January 31, 1969 and communication was sent to the appellant on February 7, 1969; but he refused to receive the same. On February 9, 1969, the appellant had sent a telegram withdrawing from the offer of the renewal. Since the appellant had refused to accept the communication, it was sent by the Divisional Officer on February 12, 1969 and was received by the appellant on February 17, 1969. Consequently, a letter was sent on May 20, 1979 calling upon the appellant for payment of Rs. 93,821.23 towards the loss caused by the appellant due to non-execution of the renewal deed and also for non-collection of the Tendu leaves for the period since it was not sold to any other agency. The appellant challenged it by filing a writ petition in the High Court. The High Court in the impugned order dismissed the same holding that before the appellant had withdrawn the offer, the Government had already accepted the offer of the appellant and, therefore, he was liable to pay the damages.

Shri S.V. Deshpande, learned counsel for the appellant raised two-fold contentions. Firstly, since the communication was not sent to the appellant before 31st January, the deadline, the appellant was entitled to  
H withdraw from the offer. He had duly withdrawn it on February 9, 1969 by

issuing a telegram to all concerned. Therefore, the appellant cannot be saddled with the liability for the resultant loss. We find no force in the contention. A

Clause (2) of the contract provides as under :

"This agreement shall commence from 2.3.1968 and shall remain in force upto 31.12.1968 unless earlier determined under the terms hereinafter appearing; B

Provided that :

(1) Unless earlier determined under the terms of the Agreement there will be yearly renewal of Agreement by 31st January each year by issue of an order by Government in writing provided. Government are satisfied that purchaser has fulfilled the following conditions each year : C

(a) the quality of leaves collected during the year has exceeded by 10 per cent or more over the quantity notified and also 10 per cent or more over the quantity collected in the unit during the preceding year. D

(b) There was no serious breach of the Act and Rules made thereunder and the Agreement. E

(c) The purchaser had paid all dues including penalty, fine, etc. promptly and in accordance with the provisions of the Agreement. F

(2) Purchase rate per standard bag applicable for every renewed year shall be the rate calculated by increasing the purchase rate applicable to the preceding year by 5 per cent and adding to it the total increase in rates of all the following terms during the renewed year as compared to rates fixed for the same items in the preceding year : G

(i) Purchase rate payable to grower,

(ii) remuneration payable to Agent,

(iii) handing charges payable to agent. H

- A (3) The purchaser shall, execute the fresh Agreement within 15  
 days from the date of the issue of the order granting renewal,  
 after completing all formalities required under conditions of  
 Tender Notice for executing Agreement failing which the  
 Agreement shall be liable to be terminated by Government  
 B and all consequences of termination given in the Agreement  
 shall be binding and applicable. Loss to Government if any  
 in subsequent sale of leaves in the unit shall be recoverable  
 from the previous purchaser."

C It is seen that the appellant had a contract for three years ending on  
 December 31, 1970. He worked out the contract in the year 1968 ending  
 on January 31, 1969. Under Clause (1) of the proviso, unless earlier  
 determined under the terms of the agreement, there will be yearly renewal  
 of agreement by 31st January each year by issue of an order by Government  
 D in writing provided Government is satisfied that purchaser had fulfilled the  
 conditions enumerated subsequently. It is true, as contended by Shri S.V.  
 Deshpande, that the word 'issue' implies service of notice. Unless the  
 contractor receives acceptance by the Government he will not be in a  
 position to know whether or not his offer has been accepted by the  
 Government. Therefore, the date of the receipt would be the date of issue.  
 E For this proposition, there would not be any controversy. The question is  
 : whether on expiry of 31st January of the year, the previous contractor is  
 absolved of his liability for non-execution of the renewal date? It is seen  
 that originally, the contract was for three years. Therefore, he is entitled  
 for renewal unless it was either determined earlier and offer of renewal  
 was rejected by the Government. Admittedly, the appellant had given his  
 F offer for renewal before the expiry of the period and the Government also  
 had accepted the offer before 31st January, 1969. Obviously, it would take  
 time for communication thereof. It being a continuing contract which the  
 appellant otherwise would have for three years, there is no hiatus in the  
 continuity unless any step was taken by the Government in the interregnum  
 G to have his lease terminated in terms of the contract. In this case, the  
 contract has not been terminated. Resultantly, the acceptance of the offer  
 communicated to the appellant by the Government having been made  
 within time, namely, on January 31, 1969, what remained to be done was  
 only execution of the renewal lease deed for a further period of one year  
 in terms of the contract. The appellant had withdrawn his offer only after  
 H the acceptance was communicated to him on February 7, 1969. No doubt,



A arrear of land revenue, or a sum recoverable as an arrear of land-revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of the other district a certificate in the form as nearly as may be of the Schedule, stating -

B (a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

C (2) The certificate shall be signed by the Collector making it (or by any officer to whom such Collector may, by order in writing, delegate this duty) and, save as otherwise provided by this act, shall be conclusive proof of the matters therein stated.

D (3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district."

*Section 4(1)*

E "4. Remedy available to person denying liability to pay amount recovered under last foregoing section (1) when proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate that person may if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of paying and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid."

G A reading of these provisions would clearly indicate that the recovery of public demands by enforcement of process is recoverable as arrears of land revenue, since all moneys fall due to the State Government, under any grant, lease or contract shall be recoverable in the same manner as arrears of land revenue. Therefore, the Government is clearly empowered to recover the arrears of the dues as land revenue from the appellant-contractor towards loss caused to the Government in not collecting the Tendu leaves under the contract.

H

We are informed that the appellant has already furnished the bank guarantee. The Government is at liberty to enforce the bank guarantee and recover the same. In case of any shortfall of the amount already given under the bank guarantee, the Government is at liberty to recover the same. A

The appeal is accordingly dismissed with the above directions but, in the circumstances, without costs. B

G.N.

Appeal dismissed.