

PETITIONER:
PODDAR STEEL CORPORATION

Vs.

RESPONDENT:
GANESH ENGINEERING WORKS AND OTHERS.

DATE OF JUDGMENT 06/05/1991

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
PUNCHHI, M.M.

CITATION:
1991 AIR 1579 1991 SCR (2) 696
1991 SCC (3) 273 JT 1991 (2) 577
1991 SCALE (1) 928

ACT:

Constitution of India: Articles 226 and 136.

Railway contract-Tender notice-Conditions-Payment of earnest money stipulated by cash or demand draft drawn on a specified bank-Acceptance of banker's cheque drawn on a bank other than the stipulated bank-Validity of-Essential and ancilliary conditions-Distinction between.

HEADNOTE:

The Diesel Locomotive Works, Indian Railway, invited tenders for disposal of one lot of Ferrous scrap. One of the conditions mentioned in the tender notice was that the earnest money should be deposited by cash or by demand draft drawn of the State Bank of India. The appellant, one of the intending purchasers, submitted his tender accompanied by a cheque of Union Bank of India drawn on its own branch. The tender of the appellant, being the highest, was accepted and tenders of respondent no. 1 and some others were rejected. The Tender Committee had verified from Union Bank of India the bona fide of appellant's cheque and then only decided to accept its tender.

Respondent no. 1 filed writ petition in the High Court challenging the rejection of its tender, and acceptance of appellant's tender on the ground that the latter did not comply with the necessary condition for payment of earnest money with the tender. The appellant contended that it had substantially complied with the requirement by sending with its tender a banker's cheque marked and certified by the Union Bank of India as good for payment. The High Court opined that respondent's tender was rightly for failure to deposit the earnest money, but allowed the writ petition holding that the appellant also did not satisfy the condition regarding payment of the earnest money since the cheque sent was from a bank other than the State Bank of India as stipulated, and as such the authorities had no power to accept appellant's tender. Aggrieved, the appellant preferred the appeal by special leave to this Court.

Allowing the appeal, this Court

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HELD: 1. As a matter of general proposition it cannot

be laid down that an authority inviting tenders in bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirement in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility, and the other which are merely ancilliary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate case. [699E-G]

2. In the instant case, in submitting the cheque drawn on the Union Bank of India and not on the State Bank of India, the relevant condition of the tender notice was not obeyed literally; but the said cheque must be treated as sufficient for the purpose of achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In the situation it could not be said that the Diesel Locomotive Works had no authority to waive the technical literal compliance of the clause, regarding manner of payment of earnest money especially when it was in its interest not to reject the said bid which was the highest. [699D-E; 700F-G]

GJ Fernandez v. State of Karnataka & Ors., [1990] 2 SCC 488 and Sita Ram Jhunjhunwala v. Bombay bullion Association Ltd. & Anr., [1965] 35 Company Cases 526, relied on.

Ramana Dayaram Shetty v. International Airport Authority of India & Ors., [1979] 3 SCC 489; Spargo's Case, 1873 LR 8 Ch. App. 407; M/s B.D Yadav and M.R. Meshram v. Administrator of the City of Nagpur, AIR 1984 Bombay 351 and T.V. Subharda Amma v. Kerala Board of Revenue and Others, AIR 1982 Kerala, 81, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2272 of 1991.

From the Judgment and Order dated 12.11.1990 of the Allahabad High Court in C.M.W.P. No. 11192 of 1990.

Sunil Gupta and S.Sukumaran for the Appellant.

Dr. Anand Prakash, B.K. Prasad and S.N. Sikka for the Respondents.

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The Judgment of the Court was delivered by SHARMA, J. Special Leave is granted.

2. In response to a notice inviting tenders by the Diesel Locomotive Works. Indian Railways, in connection with disposal of one lot of Ferrous Scrap, a number of tenders were submitted by the appellant, the respondent no. 1 and other intending purchasers. The tenders of the respondent no. 1 and some other bidders were rejected as defective and the appellant's offer being the highest was accepted, and accordingly the appellant deposited a sum of about Rs.15 lacs. The respondent no. 1 challenged the decision by a writ petition before the Allahabad High Court contending that there was no defect in its tender and that the tender of the appellant could not have been validly accepted as the necessary condition of payment of Rs. 50,000 as earnest money with the tender had not been complied with. The application was resisted on the grounds (i) that the respondent no. 1 having not deposited the earnest money at

all was not entitled to a consideration of its tender and has no locus standi in the present matter; and (ii) that the appellant had substantially complied with the requirement by sending with its tender a Banker's Cheque marked and certified by the Union Bank of India as good for payment. The High Court accepted the appellant's first ground, holding that the tender of the respondent had been rightly rejected for failure to deposit the earnest money, but allowed the writ petition on the finding that the appellant also did not satisfy the condition no.6 of the tender notice as the earnest money was offered by the Banker's Cheque of a bank other than the State Bank of India mentioned in the said clause. The High Court directed the authorities to consider the other valid tenders and further observed that should the other tenders be found to be unacceptable it would be open to the authorities to invite fresh tenders. the present appeal is directed against this judgment.

3. The case of the appellant has been that its tender mentioned the highest amount of one and a half crores rupees for the 2000 M.T. of Ferrous Scrap which was a very fair price, and the authorities were absolutely right in accepting the same. With respect to the alleged deficiency in the matter of deposit of the earnest amount, the stand is that a Banker's Cheque is as good as cash and especially so when a verification from the bank in question about its authenticity was made and the Bank's assurance to honour the same was obtained. Admittedly, the Tender Committee had taken the precaution of getting the matter confirmed from the appellant's bank before deciding to accept his tender.

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4. The relevant clause 6 of the notice required the tender to be accompanied by earnest money calculated at 5% of the offer under the tender subject to a maximum of Rs 50,000 and in terms permitted the deposit by cash or by demand draft drawn on the State Bank of India. the defect pointed out by the respondent no. 1 and accepted by the High Court is in the appellant sending the cheque of the Union Bank of India drawn on its own branch and not on the State Bank. By the impugned judgment it has been held that in view of this defect the authorities had no power to accept the appellant's tender.

5. the learned counsel for the appellant has contended that having regard to the circumstances in the case it must be held that the Tender Committee had the power to accept the appellant's tender. Referring to the books "Bills of Exchange" by Byles, and "Cheques in Law and Practice" by M.S. Parthasarathy, it has been argued that certified cheques are as good as cash and the irregularity relied upon in the appellant's submitting his tender could be validly waived by the Diesel Locomotive Works. Reliance was also placed on M/s B.D. Yadav and M.R. Meshram v. Administrator of the City of Nagpur, AIR 1984 Bombay 351 and T.V. Subhadra Amma v. Kerala Board of Revenue and Others, AIR 1982 Kerala 81.

6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank the clause no. 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be

classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in *GJ Fernandez v. State of Karnataka* 7 Ors., [1990] 2 SCC 488 a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon *Ramana Dayaram Shetty v. International Airport Authority of India &*

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Ors., [1979] 3 SCC 489 but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs.

7. The nature of payment by a certified cheque was considered by this Court in *Sita Ram Jhunjhunwala v. Bombay Bullion Association Ltd. & Anr.*, [1965] 35 Company Cases 526. Several objections were taken there in support of the plea that the necessary condition in regard to payment was not satisfied and in that context this Court quoted the observations from the judgment in an English decision (*vide Spargo's case*: 1873 L.R. & Ch. App. 407) that it is a general rule of law that in every case where a transaction resolves itself into paying money by A to B and then handing it back again by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the money backwards and forwards. This Court applied that the observations to a transaction requiring payment by one to another. The High Court's decisions in *B.D. Yadav's case* and *T.V. Subhadra Amma's case* are also illustrations where literal compliance of every term of the tender notice was not insisted upon.

8. In the instant case the certified cheque of the Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In this situation it is not correct to hold that the Diesel Locomotive Works had no authority to waive the technical literal compliance of clause 6, specially when it was in its interest of not to reject the said bid which was the highest. We, therefore, set aside the impugned judgment and dismiss the writ petition of the respondent no. 1 filed before the High Court. The appeal is accordingly allowed with costs through out.

R.P.

Appeal allowed.

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JUDIS