PETITIONER:
M/S. KALYANJI VITHALDAS & SONS

Vs.

RESPONDENT:
THE STATE OF M.P. & ORS.

DATE OF JUDGMENT: 17/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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 Miscellaneous Petition N. 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 received 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, 1970 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 The High Court in the impugned order dismissed the same holding that before the appellant had withdrawn the offer, the Government had already accepted the offer of the appellant and, therefore, he was liable to pay the damages.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. Despande, 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 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.

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.

Provided that :-

(1) Unless earlier determined 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 :-

(a) the quantity 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.

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

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

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

i) Purchase rate payable to grower,

ii) remuneration payable to Agent,

iii) handing charges payable to agent.

(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 and all consequences of termination given in the Agreement shall be binding and applicable. Loss to Government if any in subsequent

sale of leaves if any in subsequent sale of leaves in the unit shall be recoverable from the previous purchaser."

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 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. 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 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 continuity unless and step was taken by the Government in the interregnum 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 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 the acceptance was communicated to him on February 7, 1969. No doubt, there was a defect in communication of the order to the appellant had withdrawn his offer only after the acceptance was communicated to him on February 7, 1969. No doubt, there was a defect in communication of the order to the appellant but as regards the address furnished by the appellant and sent to the Government, there was no defect. There may be some typographical error in the name of the appellant-company. The appellant appears to have taken undue advantage of it 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.

Shri S.V. Despande, learned counsel, has placed reliance on the judgment of the same Bench in another case in Shiv Saran Lal vs. State of M.P. & Ors. [AIR 1980 M.P. 93]. Therein, learned Judges have held that since the communication of acceptance was not made before the expiry of January 31 of the succeeding year, the contractor was not liable for the payment thereof. On the principle of the communication, as stated earlier, there is no quarrel but the learned Judges have not considered the further aspect, viz., whether in a case of continuing contract, is he absolved of the liability ? In the view as we have stated earlier, the same Branch appears to have taken inconsistent

view without reference to the judgment under appeal. Therefore, the later view expressed by the High Court on the liability is not correct in law.

The question then is : whether the arrears due from the lessee-contractor would be recovered as arrears of land revenue ? Section 155 of the Land Revenue Code and Section 3 and 4(2) of the Revenue Recovery Act of 1890 reads as under :

"155. The following monies, may be recovered, as far as may be under the provisions of this chapter in the same manner as arrears of land revenue ;

(a)XXXXX XXXX XXXXX

(b) all monies falling due to the State Government under any grant, least or contract which provides that they shall be recoverable in the same manner as an arrears of land revenue."

Section 3 of the Revenue Recovery Act.

"3. Recovery of public demands by enforcement of process in other districts than those in which they become payable (1) where an 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 -

(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 .

(2) The certificate shall be signed by the Collector making it (or by any officer 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.

(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)

"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 libility to pay amount or any part thereof and pays the same under part thereof and pays the same under protest made in writing at the time of protest made in writing at the same time of 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."

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 the contract.

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 short fall of the amount already given under the bank guarantee, the Government is at liberty to recover the same.

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