

CASE NO.:

Appeal (civil) 1962 of 1998

Appeal (civil) 1963 of 1998

PETITIONER:

State of Madhya Pradesh & Others

RESPONDENT:

Ramswaroop Vaishya , Vinod Kumar Jain

DATE OF JUDGMENT: 28/01/2003

BENCH:

S.N. Variava & B.N. Agrawal.

JUDGMENT:

J U D G M E N T

Variava, J.

These appeals are against the Order dated 12th August, 1997. Briefly stated the facts are as follows:

The Appellants invited tenders for collection and purchase of Salai/Cheed gum. The Respondents in both these Appeals submitted their tenders. The tender of the Respondent in Civil Appeal No. 1962 of 1998 was accepted in respect of the lot lying at Karahal and Khadi. The estimated quantity being 500 and 1000 quintals respectively. The tender of the Respondent in Civil Appeal No. 1963 of 1998 was accepted in respect of the lot lying at Sheopur. The estimated quantity being 1000 quintal. The relevant terms and conditions viz. Clauses 12, 15 and 22 of the Contract read as follows:

"12. 'Lot' means the quantity of Salai Gum/Cheed Gum mentioned in the list 1 in a particular godown.

15. The bidder whose tender has been accepted shall be appointed purchaser of a particular lot who shall purchase the entire quantity of Salai Gum/Cheed Gum class 2 collected by the Prathmik Samitis in that lot or which is likely to be collected, and the entire quantity of Salai Gum/Cheed Gum, Class-2 in such lot purchased by the Sangh or its Prathmik Samitis from the local producer for the purpose of such supply or likely to be supplied on such terms and conditions applicable to the purchaser in the agreement referred to above.

22. (1) Commercial Tax, Forest Development Tax, Income Tax and other taxes shall be separately payable alongwith payable sale-price.

(2) If the purchaser fails to make a payment of the due amount by the Scheduled date, he shall be liable to a penalty @ 0.075% per day for the period of delay.

(3) If the production of salai gum/cheed gum exceeds the notified quantity, the purchaser shall be bound to take the same on the agreed price. If, however, the supply of Salai Gum/Cheed Gum, Class-2 is less than

the notified quantity due to natural or other reasons, no claim/dispute of any kind, shall be maintainable against the Sangh."

During the period of the contract gum in excess of the estimated quantity became available in the godowns at Karahal, Khadi and Sheopur. The Respondent claimed that they were entitled, under the contract, to lift the additional quantity of gum at the contracted price. The Appellants did not allow the respondents to lift the additional quantities. Therefore both the Respondents filed Writ Petitions in the High Court. Those two Writ Petitions have been disposed of by the common impugned judgment. In the judgment it has been held that the Respondents are entitled, as per the terms of the contract, to lift the additional quantities (which have become available during the relevant period) at the contract price.

We have heard the parties. In our view the High Court is right in concluding that during the contracted period the Respondents could lift at the contracted price all the gum which became available in the godown allotted to them. The definition of the term 'Lot' shows that a lot means the quantity of Salai/Cheed gum in a particular godown. In List-I only estimated quantities are given. The purpose of mentioning that the quantity is estimated is because there could be more or less. Clause 15 shows that the purchaser has to purchase the entire quantity collected by the Samity in that lot. Further Clause 22(3) also shows that if the purchase of Salai/Cheed gum exceeds the notified quantity the purchaser is bound to purchase the same at the agreed price. We, therefore, see no infirmity in the impugned judgment and see no reason to interfere.

The question then arises as to what relief is now to be granted. The High Court had directed the Appellants to allow the Respondents to purchase the excess gum. This Court by an interim order allowed the Appellants to sell off excess quantity. It is admitted that the Appellants have sold off the excess gum, pursuant to the liberty given by this Court. The direction of the High Court to allow Respondents to lift the excess gum can only be implemented if the Appellants give to the Respondents, from the fresh lot available for the current year, the quantity to which they were entitled to under the impugned Order. Mr. Satish K. Agnihotri counsel for the Appellants, on taking instructions states that the Appellant shall give to the Respondents, by June, 2003, the same quantity of fresh Salai/Cheed gum that they were entitled to as per the order of the High Court. On the other hand, Mr. Niraj Sharma, counsel for the Respondents submits that the Respondents are now not interested in taking the excess quantity and that they desire that the amount collected by sale of the gum be paid over to them alongwith interest thereon. The relief prayed for by the Respondents was that the excess quantity be given to them. This was the relief which was granted to them by the High Court. The Respondents have not come in Appeal to this Court. As the Appellants are willing to supply the excess quantity, this is the only relief that the Respondents can get.

We, therefore, dismiss these appeals with the direction that the Appellants shall supply to the Respondents, by the end of June 2003, fresh Salai/Cheed gum in the quantity which they were entitled to lift as per the impugned Order. The same will be supplied at the price that was agreed to under their contract. With this direction, the Appeals stand disposed of. There shall be no order as to costs.