

CWP No. 8279 of 2021

AMIT KUMAR
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 8279 of 2021
Date of decision: 31.8.2021**

**A-Square Media, sole proprietorship concern, through authorized
representative Shri Amit Madaan ... Petitioner**

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Prateek Sodhi, Advocate, for the petitioner.

Mr. Shireesh Gupta, Sr. Deputy Advocate General, Punjab.

Mr. Vipul Sharma, Advocate, for respondents No. 2 to 6.

Mr. Umesh Aggarwal, Advocate, for respondent No.7.

**(The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual Court).**

ARUN PALLI, J.

The petitioner (A-Square Media), prays for a Certiorari to quash the bid submitted by respondent No.7 (Vishal Steels), who happened to be the highest bidder and was adjudged H1, owing to its admitted failure to comply with the tender conditions, and for a direction to the authorities to consider the claim of the petitioner being H2, and award the tender in its favour.

In brief, the case set out in the petition is that tenders were invited by the Market Committee, Amritsar, for recovery of user charges from the fruits-vegetables and carts-vendors of eatable items, for usage of infrastructure of the mandi (Mandi Vallah and Bhagtanwala) falling in

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Municipal Corporation, Amritsar. As many as seven bidders, including the petitioner and respondent No.7, participated in the tender process. The price bids were opened on 23.3.2021 and respondent No.7 was declared the highest bidder (H1). Whereas, the petitioner being the second highest, was adjudged H2. In terms of clause 23 of the tender documents, on receipt of the letter of acceptance, the successful bidder was required to submit the performance security, (20% of the contract amount) along with 12 (twelve) post dated cheques for an amount equal to the price bid, within two working days. However, respondent No.7 failed to comply with the said clause within the stipulated period. Thus, the petitioner being H2 ought to have been awarded the tender. The petitioner approached the authorities personally and even submitted representations to consider its claim, but to no avail. Rather, to the contrary, the authorities were contemplating to grant extension to respondent No.7 to comply with clause 23 (*ibid*) and meet the requirements. Something that was impermissible and violative of the tender conditions. Thus, the petition.

However, response submitted by respondent No.7 reveals that post declaration of its being declared the highest bidder, vide letter of acceptance dated 24.3.2021, it was informed to submit the performance security and comply with the other formalities within two working days from receipt of the said letter. Respondent No.7 received the said letter on 26.3.2021, the day nationwide shutdown was being observed by the farmers. Further, 27.3.2021 and 28.3.2021 being Saturday and Sunday, and for 29.3.2021 was a gazetted holiday on account of Holi, vide letter dated 26.3.2021 (Annexure R-7/B), received in the office of Chairman, Market Committee, Amritsar, the same day, respondent No.7 sought permission from the authorities to submit the requisites and comply with clause 23

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(*ibid*) by 30.3.2021. Accordingly, Rs.61,90,000/- were deposited by respondent No.7 on 30.3.2021 by way of 8 FDRs as also the 12 post dated cheques, for Rs.3,34,11,480/-. Whereafter, vide letter dated 31.3.2021, respondent No.7 was issued the work order.

We have heard learned counsel for the parties and perused the records.

The short but a significant question that arises for consideration is: could the tendering authority, contrary to the tender conditions, accept the necessary deposits and documents on 30.3.2021, albeit having received the letter of acceptance on 26.3.2021, respondent No.7 was obligated to comply with the requirements of clause 23 (*ibid*) maximum by 28.3.2021?

Undoubtedly, in terms of clause 23 (*ibid*), the successful bidder, upon receipt of the letter of acceptance, was required to furnish the performance security as also 12 post dated cheques equivalent to the bid amount within 2 working days: ***“Successful bidder after receipt of acceptance letter within 2 (Two) working days shall deposit performance security along with 12 (Twelve) Post dated Bank Cheques of amount of said bid and upon the Stamp paper of Rs.100/- purchased by him, an agreement shall be executed with the Chairman/Manager, Market Committee, under section 22 of “The Punjab State Agriculture Produce Markets Act 1961”. All the documents submitted by the bidder along with his bid shall be part and parcel of the Agreement.”*** It is not in dispute either that letter of acceptance dated 24.3.2021 (Annexure R-7/A) was received by respondent No.7 on 26.3.2021. As indicated earlier, on 26.3.2021, owing to farmers' agitation, nationwide shutdown was being observed. The next two days: 27.3.2021 and 28.3.2021 were holidays being Saturday and Sunday, and 29.3.2021 was a gazetted holiday on account of

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Holi. Therefore, 30.3.2021 was the only next working day. Concededly, respondent No.7 complied with all the necessary formalities, in terms of clause 23 (*ibid*), on 30.3.2021. Significantly, this is not the case of the petitioner either that it was possible, by any conceivable mode or method, for respondent No.7 to furnish/submit the requisites before 30.3.2021. And, if that was so, then none, leave alone respondent No.7, could be expected to perform the impossible. We are reminded, at this stage, of the maxim, “*lex non cogit ad impossibilia*’ (Broom’s Legal Maxims, Twelfth Edition, page 177): **the law does not compel a man to do that which he cannot possibly perform.**

It would be expedient even to refer to Section 10 of the General Clauses Act, 1897 (‘the Act’, for short), and in particular, the underlying principle upon which the said provision is centered on:-

“10. Computation of time.-(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.”

The purport and import of Section 10 (*ibid*) was examined by the Supreme Court in **Mohd Ayub Versus State of U.P. and others 2009 (17) SCC 70**, the decision that shall have a decisive bearing on the matter in

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issue. In the said case, information was circulated by the Commandant, II Battalion, on 10.4.2003, that applications of the prospective candidates for appointment to the post of Armourer be submitted to the Head Office by 14.4.2003, and no application sent thereafter will be considered. Along with their applications, the candidates were also required to submit the medical certificate from the Chief Medical Officer as per category A. Although, the appellant submitted his application, along with educational qualification on 14.4.2003, but the medical certificate could not be appended therewith. The case of the appellant was that 11th April was a gazetted holiday on account of Ram Navami, 12th and 13th April happened to be second Saturday and Sunday, whereas, 14th April was a holiday on account of Ambedkar Jayanti. Thus, from 11.4.2003 to 14.4.2003, it was not possible for him to have procured the said certificate, and which he could obtain and furnish on 15.4.2003. But, his claim was rejected, as he failed to furnish the required document, along with the application, on 14.4.2003. The writ petition filed by the petitioner was dismissed and in the appeal filed against the said decision, the Division Bench affirmed the view of the learned Single Judge. It was in this context, the Supreme Court, in reference to its earlier decisions, concluded:

11. Section 10 of the General Clauses Act has come up for consideration in various cases before this Court and also different High Courts. In the case of (H.H. Raja) Harinder Singh v. S. Karnail Singh and others, AIR 1957 SC 271, a four-Judge Bench of this Court explained the object of Section 10 very lucidly. The learned Judges have held as under:-

"...Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that

period expires on a holiday, then according to the section the Act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed and that period should expire on a holiday." (Page 273 of the report)

12. The decision in the case of Harinder Singh (supra) was rendered in the context of an election dispute but the general principles explained therein apply to all cases.

13. Even while construing the provisions of Section 167 of Criminal Procedure Code, 1961, this Court accepted the same interpretation in respect of Section 10 of the General Clauses Act. [See Ghaganti Satyanarayana and others v. State of Andhra Pradesh, (1986) 3 SCC 141. (para 30 page 154 of the report)].

14. The learned Judges in Chaganti (supra) accepted the interpretation of Section 10 in the case of N. Sureya Reddy v. State of Orissa, 1985 Cri LJ 939 (Ori), and held that the principle enunciated in Section 10 of General Clauses Act should be invoked on consideration of justice and expediency.

15. Rather recently in the case of Huda and another v. Dr. Babeswar Kanhar and another, 2005(3) RCR (Civil)170: (2005)1 SCC 191, this Court held that there is a general principle that a party, prevented from doing an act for some reasons beyond his control, can do so at the first subsequent opportunity. The learned Judges further elaborated by saying that the underlying object of Section 10 is to enable a person to do what he should have done in a holiday, on the next working day. The learned Judges held that the said principle is based on doctrine that law does not compel the performance of an impossibility. In saying so, the learned Judges relied on an old decision of Calcutta High Court in the case of Hossein

Ally v. Donzelle, ILR (1880) 5 Cal 906. This Court is in respectful agreement with the aforesaid principles.

16. xx xx xx xx

17. The application filed by the appellant on the post of Constable Amorer Course is valid and should be considered as valid and the respondents are directed to take steps on the same in accordance with law and within a period of six weeks from the date of service of this order upon them.”

Thus, what emerges from the analysis of the position, as sketched out above, is that law does not compel a man to do that which he cannot possibly perform. Every consideration of justice and expediency would require that the accepted principle which underlies Section 10 of the Act should be invoked and applied in cases where it does unless it does not otherwise in terms apply. And the explicit and underlying principle of Section 10 of the Act is: if any act or proceedings are required to be executed or initiated in any court or office on a certain day or within a specified time, and if the court or office is closed on the said day or the last day of the specified period, then the act or proceedings shall be deemed to have been executed or initiated in due time if done or initiated on the immediately following day, when the court or office reopens.

As demonstrated above, respondent No.7 received the letter of acceptance on 26.3.2021 and in terms of clause 23 (*ibid*), it was required, at best, to comply with all the requisite formalities by 28.3.2021. Concededly, 27.3.2021 and 28.3.2021 were public holidays being Saturday and Sunday, and 29.3.2021 was a gazetted holiday on account of Holi. Thus, the next working day was 30.3.2021. And, it is the common case of the parties that respondent No.7, in compliance to clause 23 (*ibid*), deposited Rs.61,90,000/- vide 8 FDRs as also the 12 post dated cheques for Rs.3,34,11,480/- on

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30.3.2021. Further, upon acceptance of the requisite deposits by the authorities, a formal agreement, in terms of Section 22 of the Punjab State Agriculture Produce Markets Act, 1961, was executed between the parties. Accordingly, the contract is being worked by respondent No.7 since 1.4.2021.

Thus, the only and the inevitable conclusion that could be reached: neither did respondent No.7 default in compliance of the terms of the tender, nor the authorities could be accused of having accepted the deposits in breach/violation of clause 23 (*ibid*).

The petition being devoid of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

August 31, 2021
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: