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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: January 22, 2024
Decided on: February 27, 2024

\+ **W.P.(C) 5505/2013**

A TO Z PRODUCTIONS .... **Petitioner**

Through: Ms. Radhika Arora, Advocate.

V

PRASAR BHARTI AND ANOTHER ..... **Respondents**

Through: Mr. Rajeev Sharma, Senior Advocate with Mr. Uddyam Mukherjee, Mr. Swapnil Pattanayak and Mr. Agnibha Chatterjee, Advocates for R-1.

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The petitioner filed the present writ petition under Article 226 of the Constitution of India for issuance of appropriate writ thereby directing the respondents to process the proposal of the petitioner.

2. The factual background of the case as stated by the petitioner is that the petitioner submitted a proposal for 26 episodes of half an hour programme, namely, *Gosha-e-Tiflan* vide letter dated

27.12.2007 under the acquisition category vide Key no. 318090712110 dated 28.12.2007 in pursuance of proposal invited by the respondent no. 1 from television producers/right holders for short term acquisition of fresh and repeat programmes in Urdu in the year 2007 with last date for submitting the proposal as 28.12.2007. The petitioner also submitted further details and documents including balance sheets for last three years vide letter dated 19.09.2008 in pursuance of letter dated 15.09.2008 issued by the respondent no. 1. The petitioner vide letter dated 25.03.2009 again submitted the documents in compliance of the respondent's letter dated 20.03.2009. The respondent no. 1 vide letter dated 24.04.2009 issued approval for off-the-shelf Short Term Acquisition of the programme of petitioner for the satellite Channel (DD Urdu) for a total sum of Rs.6.50 lacs i.e. 13 episodes @ Rs.50,000/- per episode and the petitioner was to deposit the programme within 45 days from the date of the letter. The approval also indicated release of full and final payment after review of each episode and approval thereof.

2.1 The petitioner vide letter dated 08.06.2009 submitted 13 episodes of half hour programme *Gosha-e-Tiflan* under the acquisition category in the format desired by the respondent no.1 but the petitioner did not receive further communication from the respondent no 1. The petitioner followed the matter with the office of the respondent no.1 and had written various communications including letters dated 07.07.2010, 20.07.2010, 21.07.2010, 26.7.2010, 11.08.2011 and 23.08.2011 but the respondent no.1 did not respond to any of the communications. The petitioner in August, 2011 met the Director General of the respondent no.1 to present its case and was assured by the Director General that the case of the petitioner would be processed soon. The petitioner on 16.09.2011 received a vague reply from office of the respondent no. 1 whereby the respondent no. 1 without giving any details and assigning any reason refused to accede to the request of the petitioner. The petitioner came to know from a reliable source about approval of the proposal submitted by the petitioner and passing the technical preview but still the payments were withheld. The petitioner sent letters dated 30.01.2012 and 16.03.2012 to the office of the respondent no.1 for processing of the file of the petitioner but without any reply. The petitioner had invested huge amount and submitted documents in compliance of the communications received from the office of the respondent no. l but the respondent no. 1 despite receipt of the documents and due approval of the programmes submitted by petitioner did not remit Rs.6.50 lacs to the petitioner. The software/DVC Pro-50 Tapes of the petitioner are still in possession of the respondent no. l.

2.2 The petitioner sent a legal notice dated 16.04.2013 which was replied by the respondent no.1 vide reply dated 24.05.2013 wherein it was informed that the further processing of the proposal has been stalled vide letter dated 25.05.2010 as the petitioner had failed to furnish the audited balance sheet for the assessment year 2006-2007 and 2008-2009 despite the request made vide letter dated 16.03.2010 which was stated to be returned by postal authority with the remark "No such person". The petitioner sent another reply dated 01.07.2013 and again sent another set of balance sheets for three years i.e. 2006-2007, 2007-2008 and 2008-2009 to the respondent no.1 with request to process the proposal. The petitioner in reply also stated that the petitioner never received any communication seeking ITR returns for the assessment year 2006-2007 and 2008-2009. The respondents without giving a fair opportunity have stalled the proposal of the petitioner. The petitioner as per guidelines of acquisition submitted various documents such as three years balance sheet, ITRs, Pan Number etc., to the respondents along with the proposal and stated that the proposal could not have been submitted without these documents. The petitioner to avoid any further delay again sent the ITRs for the assessment years 2006-2007, 2007-2008 and 2008-2009 with request to process the proposal of the petitioner expeditiously. The respondent no. 1 vide letter dated 19.07.2013 replied to the request of the petitioner wherein stated that the proposal of the petitioner was carefully examined but the competent authority did not find feasible to accede to the request of the petitioner. The petitioner being aggrieved filed the present petition with following prayer:-

> **(A) issue a writ of mandamus or any other appropriate writ or direction thereby directing the respondents to process the proposal of the petitioner;**
> **(B) direct the respondents to give the petitioner an opportunity to fulfill any other requirement of the respondents as may be found deficient;**
> **(C) direct the respondent to release the payment of Rs.6.50 lacs (Rupees Six Lacs Fifty Thousand only) along with interest as approved vide letter dated 24.04.2009 to the petitioner; and**

(D) any further order or direction as this Hon'ble Court may deem fit and proper may kindly also be passed in the facts and circumstances of the case.

3. The respondent no. 1 filed reply in response to the present petition wherein in the preliminary submissions stated that the petition is barred by principles of delay and latches as the writ petition is filed in the year 2013 to agitate an issue concerning acquisition of programmes in the year 2007. The petitioner had applied in response to an advertisement issued by the respondent no.1 in the year 2007 for short term acquisition of existing shelf programmes but the initial application submitted by the petitioner was found to be deficient by the respondent no.1 and accordingly, certain documents were called for. The petitioner was asked to submit its audited balance sheet for the assessment years 2006-2007 and 2008-2009 vide letter dated 16.03.2010 but said letter was returned by the postal authorities with the remarks "No such person". The respondent no. 1 again sent another letter dated 25.05.2010 to inform the petitioner about return of previous letter dated 16.03.2010 and installing of process of the proposal. The respondent no. 1 did not receive any response from the petitioner and hence the proposal was not processed further. The respondent no.1 as such addressed two communications to the petitioner out of which one communication came back and the second communication was not answered by the petitioner. The execution of a formal contract was required for acquisition of a programme but no contract was executed between the petitioner and respondent no. 1 and the petitioner cannot claim any right to receive consideration in the absence of a contract. The programme offered by the petitioner with the passage of time has lost its relevance and it would not be expedient to consider that programme today. The respondent no. 1 on merit also denied other allegations of the petitioner. The petitioner did not submit affidavit and documents such as the audited balance sheets, profit and loss account reports, etc. in pursuance of letter dated 15.09.2008 issued by the respondent along with letter dated 19.09.2008. The approval dated 24.04.2009 was one of the steps in the processing of the proposal and did not give final approval to cause a binding contract between the petitioner and the respondent no. 1 and the further processing was stalled due to non-submission of important documents and not due to any *mala fide* intention. The respondent prayed that the present petition be dismissed.

4. The petitioner filed a rejoinder wherein stated that the petition is not barred due to delay and latches. The respondent no. 1 as per standard practice used to take inordinately long time in processing the proposals. The application submitted by the petitioner was not deficient as the petitioner had already provided balance sheets for the assessment year 2006-2007 and 2008-2009 along with the proposal. The petitioner in pursuance of letter dated 15.09.2008 issued by the respondent no. 1 for furnishing few details duly submitted the details to the respondent no. l vide letter dated 19.09.2008. The issuance of letter dated 16.03.2010 by the respondent no. 1 to the petitioner seeking balance-sheets is false. The letter dated 25.05.2010 was not sent to the petitioner. The respondent no. 1 stalled the proposal submitted by the petitioner was absolutely illegal and unjustified. The petitioner was asked by the respondent no. 1 to submit 13 episodes of programmes which was duly complied on 08.06.2009. The respondent no. 1 vide letter dated 15.09.2008 has demanded documents and affidavits, income-tax clearance certificate and the audited balance-sheets, etc. for the last 3 years from the petitioner and the petitioner vide letter dated 19.09.2008 had submitted the required documents including the audited balance-sheets. The respondent no. 1 after submission of these documents on 20.03.2009 only objected regarding notarized affidavit not being in prescribed format and did not raise any objection regarding the alleged non-furnishing of the balance-sheets. The formal execution of the contract was also not required for acquisition of a programme. The petitioner also denied other allegations as mentioned in reply and reaffirmed and reasserted its pleas as stated in the petition.

5. It is reflecting that the petitioner submitted proposal for 26 episodes of half an hour programme namely *Gosha-e-Tiflan* vide letter dated 27.12.2007 in pursuance of proposal invited by the respondent no. 1 for short term acquisition of fresh and repeat programmes in Urdu in the year 2007. The petitioner also submitted further details and documents vide letters dated 19.09.2008 and 25.03.2009. The respondent no. 1 vide letter dated 24.04.2009 issued approval for off-the-shelf Short Term Acquisition of the programme of petitioner for a total sum of Rs.6.50 lacs i.e. 13 episodes @ Rs.50,000/- per episode. The petitioner vide letter dated 08.06.2009 submitted 13 episodes of half hour programme *Gosha-e-Tiflan* under the acquisition category in the desired format. The petitioner vide letter dated 16.03.2010 was asked to submit its audited balance sheet for the assessment years 2006-2007 and 2008-2009 but said letter was returned with the remarks "No such person". The respondent no.1 sent another letter dated 25.05.2010 to inform the petitioner about return of previous letter dated 16.03.2010 and stalling of process of the proposal. The petitioner had written various communications to the respondent no 1. The petitioner on 16.09.2011 received a reply from the respondent no. 1 whereby the respondent no. 1 refused to accede to the request of the petitioner. The petitioner sent a legal notice dated 16.04.2013 which was replied by the respondent no.1 vide reply dated 24.05.2013. The respondent no. 1 vide letter dated 19.07.2013 informed the petitioner that the proposal of the petitioner was examined but the competent authority did not find feasible to accede to the request of the petitioner.

6. The counsel for the petitioner besides referring events in chronological order argued that the petitioner submitted the necessary documents as required by the respondent no.1 and the respondent no.1 after being satisfied issued approval letter dated 24.04.2009 and sought tapes of the 13 episodes from the petitioner on 24.04.2009. The petitioner and the respondent no.1 as such entered into a contractual relationship and a purchase order/approval letter was issued by the respondent no.1 in favour of the petitioner. The counsel for the petitioner further argued that when the petitioner demanded its dues in terms of the approval letter, then the respondent no.1 raised objections and sought for balance sheets of the petitioner which were already previously submitted. The respondent no. 1 never raised any objection as to quality of the programme or tapes submitted by the petitioner. The counsel for the petitioner also argued that the approval letter is in the nature of purchase order which was duly accepted by the petitioner resulting into legally binding contract between the petitioner and the respondent no 1. The counsel for the petitioner argued that the present petition be allowed and relief as prayed for be granted in favour of the petitioner.

7. The counsel for the respondent no. 1 argued that the present petition is barred by delay and latches as the programme was proposed in the year 2007 while present petition was filed in the year 2013. The proposal submitted by the petitioner was found to be deficient and accordingly the respondent no.1 vide letter dated 16.03.2010 asked the petitioner to submit audited balance sheets for the assessment years 2006-2007 and 2008-2009 but said letter was returned with the remarks 'No such person'. The respondent no. 1 also sent another letter dated 25.05.2010 sent to the petitioner to inform about the earlier letter dated 16.03.2010 and stalling of processing of proposal of the petitioner but the petitioner did not respond to letter dated 25.05.2010. The petitioner has not annexed Income Tax documents at the first instance and perusal of letter dated 19.09.2008 reflected that the petitioner has not filed any of the documents purportedly to have been submitted by it to the respondent no 1. The petitioner admitted that the petitioner due to renovation of office had missed correspondence from the respondent no 1.

7.1 The counsel for the respondent no. 1 further argued that final formal contract completing the process of acquisition was never executed between the petitioner and the respondent no. 1. The letter dated 24.04.2009 was not indicative of any concluded contract as the tapes were called only for processing and as such it cannot be construed as a concluded contract. There was no absolute offer and acceptance in terms of letter dated 24.04.2009. The counsel for the respondent no. 1 relied on **PSA Mumbai Investments Pte. Limited V Board of Trustees of the Jawaharlal Nehru Port Trust and another**, (2018) 10 SCC 525 and **Padia Timber Company Private Limited V Board of Trustees of Visakhapatnam Port Trust**, (2021) 3 SCC 24.

7.2 The present petition involves several disputed questions of facts as such the petitioner is not entitled to any relief as sought for. The counsel for the respondent no. 1 relied on **South Indian Bank Ltd. & others V Naveen Mathew Philip and another**, 2023 SCC OnLine SC 435 and **Shubhas Jain V Rajeshwari Shivam & others**, Civil Appeal No. 2848 of 2021.

8. It is not disputed that the petitioner submitted a proposal for 26 episodes of half an hour programme namely *Gosha-e-Tiflan* vide letter dated 27.12.2007 in pursuance of proposal invited by the respondent no. 1 in the year 2007 and the respondent no. 1 issued approval letter dated 24.04.2009 for off-the-shelf Short Term Acquisition of the programme. The petitioner vide letter dated 08.06.2009 had submitted 13 episodes of half hour programme

Gosha-e-Tiflan. The respondent no. 1 vide letter 16.09.2011 refused to accede to the request of the petitioner. The petitioner also sent a legal notice dated 16.04.2013 which was replied by the respondent no.1 vide reply dated 24.05.2013. The issue which needs judicial consideration is that whether the letter dated 24.04.2009 is sufficient to constitute binding contract between the petitioner and the respondent no. 1.

8.1 The letter dated 24.04.2009 is perused. The letter dated 24.04.2009 is approval of programme under Short Term Acquisition Category for the satellite Channel (DD Urdu) as per details mentioned in the letter dated 24.04.2009 itself. It was also mentioned in letter dated 24.04.2009 that the programme shall be accepted and full and final payment shall be released only after preview of each episode and approval thereof. The relevant portion of the letter dated 24.04.2009 is verbatim reproduced as under:-

> **For the above sanctioned programme an amount of RsFifty Thousand only per episode will be payable for acquiring multiple telecast rights on DD (Urdu) for a period of 3 years. In addition, Doordarshan will reserve the right to telecast the programme on any/all of its National/Regional Language Terrestrial/Satellite Channels without any extra payment.**

The tapes containing the full details of the programme should be in fresh DVC-Pro-50 format and all telecast masters of the programme and all telecast masters of the programme may be deposited within 45 days from the date of issue of this letter in Room No. 924 (Tower-B), Doordarshan Bhawan, New Delhi during working hours upto 5:30 pm on working days.

Programmes should meet ITU-R specification for video and chrominance levels Typically Maximum luminance 1 volt PP 07 volts of video and 03 volts of sync pulse Maximum Chrominance saturation=100% (colour difference signal=07 volts) Audio level of the programme should be within the range of -5 db to + 4 db.

The per episode duration of the final programme should not be less than 28 ½ minutes for one episode. The credit line should not exceed 30 seconds and should confine to the creative team. You will submit bills and vouchers duly vetted by Chartered Accountant/Auditor. However, Doordarshan/Prasar Bharti's commitment would be limited to the cost estimate/budget estimates sanctioned. The programme shall be accepted and full & final payment released only after preview of eachepisode and approval thereof.

8.2 As detailed hereinabove, the counsel for the petitioner argued that the approval letter dated 24.04.2009 constituted a contractual relationship by the respondent no.1 in favour of the petitioner. The approval letter dated 24.04.2009, which was in the nature of purchase order, was duly accepted by the petitioner resulting into a legally binding contract between the petitioner and the respondent no. 1.

The counsel for the respondent no. 1 argued that the final formal contract completing the process of acquisition was never executed between the petitioner and the respondent no. 1 and the letter dated 24.04.2009 was not indicative of any concluded contract and cannot be construed as a concluded contract. There was no absolute offer and acceptance in terms of the letter dated 24.04.2009.

8.3 The Supreme Court in **PSA Mumbai Investments Pte. Limited V Board of Trustees of the Jawaharlal Nehru Port Trust and another**, 2018 10 SCC 525 as referred by the counsel for the respondent no. 1 observed that the acceptance must be absolute and unqualified in order to convert a proposal into a promise. The Supreme Court in this case also referred **Dresser Rand S.A V Bindal Agro Chem Ltd,** 2006 (1) SCC 751 wherein it was held as under:-

> **32. Parties agreeing upon the terms subject to which a contract will be governed, when made, is not the same as entering into the contract itself. Similarly, agreeing upon the terms which will govern a purchase when a purchase order is placed, is not the same as placing a purchase order. A prelude to a contract should not be confused with the contract itself.**

8.3.1 The counsel for the respondent no. 1 also cited **Padia Timber Company Private Limited V Board of Trustees of**

Visakhapatnam Port Trust, 2021 3 SCC 24wherein it was held as under:-

> **56. It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. It can give no room for doubt. The offer and acceptance must be based or founded on three components, that is, certainty, commitment and communication. However, when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition, as held by this Court in Haridwar Singh v. BagunSumbrui and Ors., AIR 1972 SC 1242. An acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer, before a contract is made.**

8.4 The respondent no. 1 vide letter dated 24.04.2009 only conveyed approval for off the shelf Short Term Acquisition of the programme for the satellite Channel (DD Urdu) with further stipulation that Rs. 50,000/- shall be payable per episode for said sanctioned programme for acquiring multiple telecast rights on DD (Urdu) for a period of 3 years. The respondent no. 1 also reserved right to telecast the programme on any/all National/Regional Language Terrestrial/Satellite Channels without any extra payment. The respondent no. 1 also conveyed to the petitioner that the programme shall be accepted and full and final payment shall be released only after preview of each episode and approval thereof. The letter dated 24.04.2009 does not convey that the respondent no. 1 has finally accepted the proposal of the petitioner vide letter dated 27.12.2007. The respondent no. 1 in letter dated 24.04.2009 only set out terms and conditions for acceptance of proposal of the petitioner submitted vide letter dated 27.12.2007. The petitioner never conveyed acceptance of terms and conditions as set out in letter dated 24.04.2009. There was no absolute and unqualified acceptance on part of the respondent no. 1 in order to convert a proposal into a promise as per letter dated 24.04.2009.The letter dated 24.04.2009 cannot be accepted as binding contract between the petitioner and the respondent no. 1. The binding contract was never executed between the petitioner and the respondent no. 1 regarding proposal submitted by the petitioner vide letter dated 27.12.2007. There is no force in argument advanced by the counsel for the petitioner that a contractual relationship was constituted by the respondent no. 1 in favour of the petitioner in pursuance of letter dated 24.04.2009 and the approval letter dated 24.04.2009 was in the nature of purchase order resulting into legally binding contract between the petitioner and the respondent no. 1. Even submission of 13 episodes of half hour programme *Gosha-e-Tiflan* by the petitioner vide letter dated 08.06.2009 is not good enough to presume contractual obligations between the petitioner and the respondent no. 1. The counsel for the petitioner was legally justified in arguments that the final formal contract completing the process of acquisition was never executed between the petitioner and the respondent no. 1 and the letter dated 24.04.2009 was not indicative of any concluded contract and cannot be construed as a concluded contract.

9. The counsel for the petitioner also stated and argued that the petitioner has submitted necessary documents as required by the respondent no. 1 and also submitted further details and documents including balance sheets for last three years vide letters dated 19.09.2008 in pursuance of letter dated 15.09.2008and 25.03.2009 in compliance of the letter of dated 20.03.2009.

The counsel for the respondent no. 1 argued that the proposal submitted by the petitioner was found to be deficient and accordingly the respondent no. 1 vide letter dated 16.03.2010 asked the petitioner to submit audited balance sheets for the assessment years 2006-2007 and 2008-2009 but the said letter was returned with the remarks 'No such person' and thereafter the respondent no. 1 also sent another letter dated 25.05.2010 to inform the petitioner about the earlier letter dated 16.03.2010 and stalling of processing of proposal of the petitioner but the petitioner did not respond to letter dated 25.05.2010. It is stated that the petitioner also admitted that the petitioner due to renovation of office had missed correspondence from the respondent no. 1.

9.1 The respondent no. 1 issued letter dated 16.03.2010 whereby informed the petitioner that the petitioner has not furnished audited balance sheets for the assessment years 2006-2007 and 2008-2009 and asked the petitioner to furnish these balance sheets within a week. It was also communicated to the petitioner that further processing on the proposal will be stalled in case balance sheets are not furnished to the respondent no. 1. The respondent no. 1 also filed the returned envelope of letter dated 16.03.2010 with remarks "No such person". There is no reason to disbelieve the plea of the respondent no. 1 that letter dated 16.03.2010 was sent to the petitioner. The petitioner in letter dated 19.09.2008 submitted documents and affidavit regarding genuineness of the Right holder, audited balance sheets, profit and loss account reports for the last three years and affidavit on non-judicial stamp papers. The letter dated 19.09.2008 does not reflect that audited balance sheet for assessment year 2008-2009 was also sent as said letter was issued on 19.09.2008. The petitioner in letter dated 20.07.2010 which was referred by the counsel for the respondent no. 1 also admitted that at relevant time of issuance of letter dated 16.03.2008, the office of the petitioner, which is stated to be part of residential converted commercial property and is having other offices in same building, was under renovation.

9.2 The respondent no. 1 also issued another letter dated 25.05.2010 whereby the petitioner was informed about stalling of processing of proposal of the petitioner due to failure on part of the petitioner to submit audited balance sheets for assessment years 2007-2008 and 2008-2009. The petitioner did not dispute issuance and receipt of said letter and also did not plead that letter dated 25.05.2010 was responded by the petitioner. It is appearing that the petitioner did not supply requisite documents to the respondent no. 1 in pursuance of letter dated 16.03.2010 and due to this reason, the respondent no. 1 was justified in stalling the processing of the proposal of the petitioner as reflected from letter dated 25.05.2010. The said action of the respondent cannot be equated as arbitrary and unreasonable.

10. The counsel for the respondent no. 1 argued that the present petition is not maintainable as it involves disputed facts and is also barred by delay and latches. The pleas as raised on behalf the respondent no. 1 are without any legal basis under given facts and circumstances of case, hence rejected.

11. The present petition along with pending application, if any, is accordingly dismissed and the petitioner is not entitled to any relief as claimed in the present petition.

DR. SUDHIR KUMAR JAIN
(JUDGE)

FEBRUARY 27, 2024
J/AK