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Editorial Team

Editor-in-Chief

Mr. Nikhil Kumar Chawla
Partner - LawPublicus LLP
Principal Associate Advocate - DKC & Co.
Contact: +91-9654441680
+91-9654030411
Email ID: Nikhilchawla29@gmail.com
Lawpublicusportal@gmail.com

Senior Editor

Ms. Yantakshikaa Sharma
Partner - LawPublicus LLP
Career Counsellor
Email ID: Yantakshika@gmail.com

Senior Editor (Honorary)

Mr. KS Rana
Practising Advocate
Contact: +91-9810326424
Email ID: Jyotideeprana@gmail.com

Senior Editor (Honorary)

Mr. Sandeep Sharma
Practising Advocate
Legal Consultant - Ministry of Law and Justice
Contact: +91-9899009517
Email ID: Sandeepjanmat@gmail.com

Senior Editor (Honorary)

Ms. Khushboo Malik
Research Scholar - Faculty of Law (DU)
Email ID: Malikkhushilaw@gmail.com

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HARIDWAR SINGH

VS

BAGUN SUMBRUI:

BEYOND THE

VERDICT

A CASE STUDY

Authored By:

Esha Rathi

Designation: Student (2019-24) BBA LL.B.

Jindal Global Law School

E-mail ID: 19jgls-asha.r@jgu.edu.in

Mob No.: +91-77180999**

Haridwar Singh vs. Bagun Sumbrui: Beyond the Verdict **A CASE STUDY**

By: ESHA RATHI

ABSTRACT:

Haridwar Singh v. Bagun Sumbrui¹ was heard in the Supreme Court of India by Hon'ble Judges, Justice K.K. Matthew, and Justice K.S. Hedge. The central paradigm of the affair in concern is underpinned by the fundamental issue that questions whether the Government in any way was contractually bound to the appellant, which stationed them to have breached a promise that they were obliged to maintain. The case comment aims at going beyond the ultimate verdict pronounced, using supplementary inferences that engage with the provisions of The Indian Contract Act, 1872. The judgement of the case by the Supreme Court of India was peripheral and lacked engagement with the wide spectrum of the provisions under The Indian Contract Act, 1872. While the inception of the case was due to the provisional nature of the acceptance alone, the facts that followed graduated the issue to a multifaceted stratum that could be explored using various approaches and provisions. While the verdict answers the primary question of the case, the episodes and particulars of the proceedings surrounding the case were of paramount importance and required further engagement with the provisions of The Indian Contract Act, making the verdict coherently justified.

¹ AIR 1972 SC 1242

The case stems from a provisional settlement that was made at a public auction held on July 22, 1970, for settlement of the right to exploit a bamboo coup, which was advertised by the Forest Department of the Government of Bihar. The reserve price in the tender notice had been fixed at Rs. 95,000. However, the appellant's bid, which was Rs. 92,001, being the highest, was accepted by the Forest Divisional Officer. An agreement was executed when the petitioner deposited the security amount of Rs. 23, 800. However, the settlement of the coup was made on a provisional basis, subject to confirmation by the Government. While the matter remained pending before the Government with regard to its confirmation of the acceptance, the appellant, through his communication on October 26, 1970, expressed his willingness to take the coup at the reserve price of Rs. 95,000. This communication was followed by another one by the appellant on November 3, 1970, where he requested that the coup be settled on the basis of the highest bid, which was the settlement based on his bid in the auction. On November 27, 1970, The Minister of Forest directed that the coup be settled with the highest bidder, that being the appellant, at the reserve price. The next day, the Government sent out a telegram to the Conservator of Forests, Hazaribagh Circle, with a copy of the same to Conservator of Forest, Bihar, confirming the sale to the appellant at the reserve price of Rs. 95,000. However, the proceedings of the Minister remained uncommunicated to the appellant as the Forest Divisional Minister had not received an intimation about the same. Following the acceptance that remained uncommunicated to the appellant, a petition was filed before the Government of Bihar by respondent No. 6 in this case, offering to take the settlement of the coup at a much higher price, Rs. 1,01,125. His offer was accepted by the Government, and the settlement of the coup was made with him.

Provisional acceptance is a conditional acceptance, which is an accepted offer subject to verification or confirmation under operational conditions and does not ordinarily bind either party to the contract until the final approval is given to the provisional acceptance made by the offeree². A contract that is based upon a future event may also be called a contingent contract. A contingent contract is based on an occurrence of something in the future. Under s. 31 *The Indian Contract Act, 1872*, "a contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen"³. There exists a perpetrated

² Ramanbhai M. Nilkanth v. Ghashiram Ladliprasad, (1918) 20 BOMLR 692

³ s. 31 *The Indian Contract Act, 1872*

acceptance by which the offeree becomes bound to all terms of the contract only once the contingency is fulfilled. The acceptance is made by the offeree unequivocally, and the acceptance will not be effective until the contingency occurs⁴. While revocations may not take place, there are no binding obligations until the occurrence of the contingency. A contingent contract and a provisional acceptance stem from the same ground that is a 'conditional precedent'. This case can be viewed in terms of a contingent contract or a conditional acceptance as neither converts the proposal into a promise until the occurrence of a predetermined precedent. Since the acceptance was subject to confirmation by the Government, the contract depended upon the occurrence of a future event that is the confirmation of the Government.

The provisional acceptance made was based on a 'conditional precedent' as it was subjected to confirmation by the Government. While the doctrine of acceptance under the common law leaves no scope for conditional acceptance, demanding full, unqualified, and absolute acceptance, the Indian Contract Act does allow conditional or provisional acceptance. However, acceptance is not deemed as complete until the required conditions are fulfilled. In a case of conditional acceptance, there is no binding contract until the conditions are fulfilled. There was never a binding contract made even when the offer made by the appellant was accepted due to its provisional nature. Under s. 2(b) *The Indian Contract Act, 1872*, "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise"⁵. However, acceptance has to be absolute and unqualified for the proposal to become a promise⁶; if an acceptance is only a provisional arrangement subject to other conditions, there is an absence of a valid acceptance. If an acceptance is conditional or qualified, it does not create a contract until the acceptance becomes absolute⁷. In this case, the acceptance being of provisional nature did not convert the proposal into a promise because of s. 7(1) *The Indian Contract Act, 1872*, which states that "in order to convert a proposal into a promise, the acceptance must be absolute and unqualified"⁸. Since the proposal had never been converted into a promise due to the nature of acceptance, the proposal stands revoked due to the failure of fulfilling the conditional precedent. According

⁴ s. 32 *The Indian Contract Act, 1872*

⁵ s. 2(b) *The Indian Contract Act, 1872*

⁶ *B. Rajamani v. Azhar Sultana*, AIR 2005 AP 260

⁷ *The Municipal Council v. Pasupathi Muthuraja*, (1969) 1 MLJ 394

⁸ s. 7(1) *The Indian Contract Act, 1872*

to s. 6(3) *The Indian Contract Act, 1872*, "a proposal is revoked by the failure of the acceptor to fulfil a condition precedent to acceptance"⁹. In this case, the acceptance was never completed due to the provisional nature of the acceptance. Due to the failure of completion of conditional precedent, that is the government confirmation, there was no contract or promise binding any obligations on either party. Additionally, s. 3 *The Indian Contract Act, 1872*, states that "the communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it"¹⁰. The acceptance of the proposal stood revoked due to the Government's omission of confirming the provisional acceptance, which had the effect of communicating the revocation of the acceptance to the appellant.

As held by the court with regard to the provisional settlement made at the auction on the basis of the highest bid, there was no concluded contract between the appellant and the Government as the contract was of a provisional nature and was subjected to confirmation by the Government for the acceptance to be completed.

A contract cannot be contended as concluded unless the acceptance of the offer is put in the course of transmission. Under s. 5 *The Indian Contract Act, 1872*, "an acceptance can be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards"¹¹. In this case, the appellant's offer that was accepted by the Government remained uncommunicated and did not come to the knowledge of the appellant, which implied revocation under s. 3 *The Indian Contract Act, 1872*. The omission of putting the acceptance in a course of transmission, thereby the acceptance not coming to the knowledge of the appellant, had the effect of communicating a revocation of the offer, which is permitted under s. 5 *The Indian Contract Act, 1872*.

Although the 'counteroffer' made by the appellant was accepted by the Government, the Forest Divisional Officer was unable to communicate the contents of it to the appellant. Under s. 4 *The Indian Contract Act, 1872*, "The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him so as to be out of the power of

⁹ s. 6(3) *The Indian Contract Act, 1872*

¹⁰ s. 3 *The Indian Contract Act, 1872*

¹¹ s. 5 *The Indian Contract Act, 1872*

the acceptor; as against the acceptor, when it comes to the knowledge of the proposer"¹². The appellant could not possibly contend that there was a concluded contract based on his offer contained in his communication on October 26, 1970, as the acceptance had not been put in the course of transmission to begin with, making it implausible for it to have come to the knowledge of the proposer, the appellant. Acceptance can be revoked at any time before the communication of the acceptance is completed. Neither had the acceptance come to the knowledge of the offeree nor had the acceptance been put in the course of transmission. Since the acceptance was not completed, there was no binding contract, allowing the acceptance to be revoked under s. 5 *The Indian Contract Act, 1872*.

The contention of the appellant was that there existed a concluded contract when the Government confirmed the acceptance by its proceedings dated November 27, 1970, and so it was no longer within the power of the Government to make the settlement of the coup with else person, i.e., Respondent 6, by its proceedings dated December 13, 1970. Although the Government had accepted the appellant's offer, the acceptance was never put in the course of transmission. Due to the acceptance being incomplete, there was no binding obligation imposed on the Government, which restrained the Government from making the settlement with Respondent 6.

The court reflected on the proceedings of the Minister, dated November 27, 1970, which made it evident that the Minister did not confirm the acceptance made by the Forest Divisional Officer at the auction. The Minister had accepted the offer that was communicated by the appellant post the auction settlement on October 27, 1970, wherein he expressed his willingness to take the coup at the reserve price of Rs. 95,000. The provisional acceptance of the bid to take the coup at Rs 92,001, which was subject to confirmation by the Government had not been acknowledged by the Minister. Therefore, there was no confirmation from the Government with regard to the provisional settlement made at the auction on the basis of the highest bid. The telegram sent by the Government to Conservator of Forest, Hazaribagh, could not be considered as communication of acceptance of the appellant's counteroffer. The Government was therefore not bound by a concluded contract as contended by the appellant on the basis of his offer contained in his communication, dated October 26, 1970, as the acceptance had not been put in the course of transmission to the appellant.

¹² s. 4 *The Indian Contract Act, 1872*

The facts of the case, as scrutinized and interpreted by the court, coherently illustrate how the Government under no circumstances, was bound by any contractual obligations, be it due to the proceedings carried out by the Forest Divisional Officer or by the Minister. The proceedings carried out by the Minister did not confirm the acceptance of the provisional settlement made by the Forest Divisional Officer at the auction, which was followed by the Minister's acceptance of the appellant's counteroffer going uncommunicated. In both the episodes, that is the original settlement, which was provisional and the acceptance of the counteroffer where the acceptance remained uncommunicated, the step of acceptance remained incomplete whereby a contractual obligation does not come into place that may make the Government liable for any promises with relation to the appellant.

An offer that varies the terms of the original offer and therefore rejects the original offer is called a counteroffer¹³. A counteroffer stands in revocation of the original offer. The contention of the appellant was that there was a concluded contract when the bid of the appellant accepted by the Forest Divisional Officer was confirmed by the Government by its proceedings dated November 27, 1970, thus completing the acceptance and creating a binding contract. However, the offer that was provisionally accepted by the Forest Divisional Officer had been revoked due to the appellant's counter offer made on October 26, 1970. Since the offer had been provisionally accepted and the acceptance was not absolute and unqualified, the acceptance was not completed, which did not form any binding promise or contract. Since there was no contract in place, there was room for revocation which took place by the appellant's communications made, which proposed varying terms of the offer, serving as a counteroffer. A counteroffer extinguishes the original offer, and so the appellant's claims of his proposals being accepted stand void as all his offers stood revoked due to the counteroffers he proposed. These offers being made by the appellant were redundant, and so any acceptance of them would anyway not hold in the Court of Law due to the invalid existence of the contract. Since a counteroffer stands in revocation of the original offer, the subsequent offers made by the appellant, which were put forth by varying the terms of the original offer, stood as a counteroffer, thus rejecting the offer, which was by the appellant's claim "accepted". Since that offer stood revoked in the first place, there is no room for arguing over the acceptance, which forms a binding contract.

¹³ Haji Jiva v. E. Spinner, (1900) 24 Bom 510.

It is important to note that the acceptance which was made by the Government was with regard to the communication made by the appellant on October 26, 1970. This communication made by the appellant revoked the previously accepted offer because a counteroffer stands in revocation of the original offer. The Government, therefore, cannot be held liable for breach of obligation with regard to the acceptance made at the auction due to its conditional nature as well the counteroffer made by the appellant, which revoked the original offer. The counteroffer made by the appellant, although accepted, was never put in the course of transmission due to which acceptance was not completed. There was, therefore, no binding contract. Additionally, the counteroffer made by the appellant in the communication on October 26, 1970, also stood revoked by another communication by the appellant on November 3, 1970, establishing the offer accepted by the Government, invalid.

There could not have existed a concluded contract between the appellant and the Government due to the revocation of the offer by the appellant himself. The offer made by the appellant on October 26, 1970, which was accepted but not communicated by the Government, stood extinguished due to the appellant's communication on November 3, 1970, which stated that he would rather the coup be settled upon him at the highest bid made by him in the auction. This communication made by the appellant on November 3, 1970, which varies the terms of the offer accepted by the Government, makes the offer as well as the acceptance redundant, leaving no scope of the Government being bound by their acceptance to the offer made by the appellant, as contended by him.

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