
(2004) 12 AHC CK 0166
In the Allahabad High Court
Case No : C.M.W.P. No. 10931 of 2004

Ashok Kumar

APPELLANT

Vs

Zila Panchayat/Parishad and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 1 AWC 372 : (2005) 1 ESC 129 : (2005) 2 UPLBEC 1195

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : A.R. Dube, for the Appellant; Suneel Rai and P.K. Singh and J.J. Munir, S.C., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for permitting the petitioner to deposit the amount of Rs. 6 lakhs, being the highest bidder in the auction held on 9.2.2004, and to grant licence in his favour for taking the carcass of dead animals away, its skinning, storage of hides and bones from three Blocks, namely, Khair, Tappal and Chandaus, District Aligarh and restraining the respondent Nos. 1 to 3 to grant licence in favour of other bidders, i.e., respondent Nos. 4 to 6, for a consideration of Rs. 1,60,000 for the said three Blocks.

2. The facts and circumstances giving rise to this case are that respondent Zila Parishad published an advertisement dated 16.1.2004, inviting the contractors for auction bidding for collecting the bones and carcasses for the aforesaid areas. Petitioner submits that he made a bid of Rs. 6 lakhs on 9.2.2004 on behalf of his society, when the auction was held, but he was not given the licence, nor he was permitted to deposit the money, though the respondent Nos. 4 to 6 are being permitted to have the licence for a sum of Rs. 1,60,000 only.

3. Shri Suneel Rai, learned counsel appearing for the Zila Parishad, Shri J.J.

Munir, learned counsel appearing for respondent Nos. 4 to 6 and learned standing counsel appearing for respondent No. 3 have denied the factum of having the auction for the whole area. According to them, auction had been held only for the area, wherein no Society, registered with the U.P. Khadi Gramodyog Board, existed. Auction cannot be held where such a society exists. If in a particular area more than one Society exist, they can be the rival bidders, but in case there is only one Society in the area, licence is to be granted in respect of the same without holding the auction.

4. Petitioner also represents a Society registered with Khadi Gramadyog Board, but no explanation is being given as to why the case of his Society was not considered. Registration of his Society, i.e., Sheila Gramodyog Sansthan is valid upto 13.1.2008 as is evident from its certificate (Annexure-1). More so, if more than two Registered Societies are in the field, why auction was not held for the aforesaid three Blocks.

5. Original documents had been produced before us, which creates utter confusion rather than resolving the issue, for the reason that the amount had been deposited on various dates, even prior to 9.2.2002, and the learned counsel appearing for the respondents could not explain as on what date earlier contract expired, when the new contract began, how the amount could be deposited prior to the date of holding the auction, as admittedly, in certain cases, auction is shown to have been held as on 9.2.2004, but the amount had been deposited by the respondent Nos. 4 to 6 prior to that date.

6. We had asked the respondents' counsel vide order dated 19.11.2004 to explain as under what circumstances amounts of Rs. 80,000, 1 lakh and 1,15,000 had been received from the respondent Nos. 4 to 6 by the Zila Parishad on 31.1.2004, if the auction was to be held on 9.2.2004. The Officer was directed to remain present in the Court and explain the circumstances, however, no satisfactory explanation could be furnished in this regard.

7. In absence of any statutory provisions it is required that settlement of such contract should be by inviting tenders or by public auction.

8. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Hon''ble Supreme Court held that while dealing with public property, the executive must make an endeavour to dispose it of by public auction or by Inviting tenders, though that is the ordinary rule, may not be an invariable rule. Where there are compelling circumstances necessitating the departure therefrom, then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Therefore, in case of dealing with public property, certain percepts and principles have to be observed and public interest is the paramount consideration and when a public property is disposed of, they should try to get the maximum price.

9. In Ram and Shyam Company Vs. State of Haryana and Others, the Hon''ble

Supreme Court held as under :

"A Welfare State exists . for largest good of the larger number, more so when it proclaims to be the socialist State dedicated to eliminate poverty. All its attempts should be to obtain the best available price while disposing of its property because the greater is the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraints may weaken the tempo of activities. Such an approach serves the larger public purpose of extending welfare activities primarily for which the Constitution envisages the setting-up of a Welfare State."

10. In *Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others*, the Hon"ble Apex Court indicated that the best method of disposal of public property is by public auction and not by private negotiation, and the authorities entrusted with care of public property are required to show exemplary vigilance.

11. Similar view has been reiterated in *Rashbihari Panda etc. Vs. State of Orissa*, *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and *State of Haryana and Others Vs. Jage Ram and Others*,

12. Unfortunately, none of the counsel is in possession of any bye-laws though it is submitted that in exercise of the powers conferred upon the Zila Parishad, Aligarh u/s 239 (2) (E) of the U.P. Kshetriya Samiti Parishad and Zila Parishads Adhiniyam, 1961 (hereinafter called the 1961 Act), the bye-laws having statutory force had been framed which provided for settling such rights by public auction. There is an agreement amongst the members at the Bar that till today no amendment had ever been brought in the said bye-laws. In absence of the initial bye-laws or any other subsequent amended bye-laws, we are not in a position to examine the correct position.

13. The issue of validity of such contract came up before this Court in large number of cases. In *Jagat Dhari and Anr. v. Zila Parishad, Pratapgarh and Ors.*, the Court held that the Zila Parishad in exercise of the powers under the said provisions of the 1961 Act, is not competent to settle the right or privilege to carry on such trade to public auction inasmuch as it created thereby a monopoly in favour of an individual or group of individuals. A similar view has been reiterated by this Court in *Mohd. Iqbal, and Ors. v. Zila Parishad, Varanasi and Mirzapur*, while deciding Misc. Writ Petition No. 2086 of 1976 vide judgment and order dated 7th January, 1977. A Full Bench of this Court in *Jaggu and Ors. v. Zila Gonda and Ors.* 1981 ALJ 1, held that the considerations of public health, safety and convenience were equally relevant to the rural areas, and therefore, the individual's right to trade in putrefying carcass of a dead animal which was an obnoxious thing, was necessarily subject to the State's police power, and accordingly, it was competent for the Zila Parishads to frame bye-laws in exercise of the powers conferred by Section 239 (2) (E) (a) of the 1961 Act to provide that no person shall store bones of dead animals or shall skin the carcass or shall

cure any dye skins or shall prepare leather goods in the rural areas except unless he has obtained a licence, the view earlier taken that the effect of the impugned bye-law for framing out the right or privilege of carcass utilisation was to create a monopoly in favour of an individual or group of individuals, i.e., the highest bidder at the auction. In substance, the Full Bench held that carcass of dead animals is nothing but a putrefying organic matter and a dangerous thing, and is, therefore, subject to the State's police power to regulate the manner of their disposal in public interest for maintaining public health and hygiene.

14. In *Gulshan and Others Vs. Zila Parishad and Others*, the Honble Supreme Court considered all the aforesaid judgments and came to the conclusion that the communities traditionally engaged in the work of scanning, tanning and preparing articles of leather goods etc., should not be deprived of the means of livelihood and subsistence, nor they should become the victims of exploitation by contractors. Therefore, the Government should bring out a scheme creating Co-operative Societies involving all such persons of the community and protect their interests. During the pendency of the said case, a Circular dated 7th June, 1986 was issued by the Special Secretary to the Government of Uttar Pradesh, which reads as under :

"I have been directed to invite your attention to the above subject and state that the disposal of carcasses of animals is performed by the District Boards under their own bye-laws and the District Boards generally get this work performed by taking recourse to auction. With a view to safeguarding the interests of the persons, who are traditionally engaged in this work, the Government after due consideration have decided that in future the licences for disposal of carcasses of animals should be granted only to registered industrial Co-operative Societies formed by the persons engaged in this work and for this purpose the average income of such society during the last three years enhanced by 15% thereof should be treated its potential income. Apart from this care should be taken to ensure that orthodox contractors are not allowed to enter this society in pseudoform."

The aforesaid circular provided for preferential rights to the Co-operative Societies consisting of members of the traditional occupations for the disposal of the carcasses of dead animals.

15. The Hon'ble Supreme Court disposed of the petition making observation that the bye-laws of the State should be amended so that it may be in consonance with the aforesaid Circular, and in the meanwhile, the Zila Parishads may continue working out in accordance with the bye-laws if auction is permitted therein. However, such a course was permissible only with the prior consent of the State Government. The arrangement so made was only till the Co-operative Societies are formed in the area and the bye-laws are amended. Admittedly, bye-laws have not yet been amended.

16. The transitory measures provided by the Hon'ble Apex Court were meant for

a short time, permitting the Zila Parishads to violate the bye-laws framed by it. It has been admitted by the learned counsel appearing for the parties that the said circular dated 7th June, 1986, cannot override the bye-laws having statutory force. It is unfortunate that neither the State Government nor the Zila Parishads in U.P. made any attempt to ensure the compliance of the directions issued by the Hon''ble Supreme Court. It represents a very sorry state of affairs. Co-operative Societies appear to have been formed in certain Blocks of the Zila Parishads, but not in all. Learned standing counsel is not able to furnish any explanation as under what circumstances the State Government did not consider it proper to implement the aforesaid Judgment of the Hon''ble Apex Court. Even if in certain Blocks the Co-operative Societies had been formed or more than one Co-operative Societies has been formed, what is the mode of settling the rights. Nor it is clear as by what date the Co-operative Societies should be formed. The Apex Court only recognised the preferential rights to the Co-operative Societies consisting of persons traditionally engaged In this profession. Law provides preference only and only when other things are equal. It does not provide that merit of a case may be escaped completely while considering the case of a Co-operative Society giving preference to it. (Vide Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, ; Executive Officer Vs. E. Tirupalu and others, C.R. Siva Reddy and another, T. Venkateswarlu and another, C. Vani, ; The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others,

17. Another question arises that in order to exploit a particular situation, a contractor may float a Co-operative Society genuine or bogus on the date of grant of contract. No cut-off date is provided anywhere even in any circular issued by the State Government or by Zila Parishads. While interpreting a similar provision providing for right of preference to the Co-operative Societies in case of grant of permits under the provisions of Motor Vehicles Act, 1939, the Calcutta High Court in Kali Kinkar Kundu Vs. Sadhan Chandra Dey and Others, held that the Society must be in existence prior to the date of inviting the applications for grant of permits. Otherwise, it would open the flood-gates of corruption and nepotism, depriving the genuine persons from getting the permits.

18. Similar view has been reiterated subsequently by the Hon''ble Supreme Court in Ishwru Yatayat Co-op. Society Vs. State Transport Appellate Authority and Others, approving the said judgment of the Calcutta High Court,

19. Thus, in the instant case, In spite of the best efforts of the Court, it could not be spelt out as what is the existing position for grant of contract for collecting the carcasses etc.

20. Be that as it may, there is no dispute to the fact that if there are more than one registered Society in the area concerned, the rights have to be settled by auction between them. In the instant case, petitioner as well as respondent Nos. 4 to 6 had been the interested Society for the contract for same area. Thus, submission on behalf of the respondents, that petitioner could not participate or

there could be no auction at all, is not worth acceptance. If petitioner has been willing to pay Rs. 6 lakhs for the said area, how the contract could be awarded for a petty sum of Rs. 1,60,000 only. No explanation could be furnished why there should be financial loss to the public exchequer.

21. In this fact situation, petition succeeds and is allowed.

22. There has been an interim order dated 18.3.2004 of this Court. Petitioner's Society 1c entitled to participate in the auction. The respondent Nos. 1 to 3 are directed to hold a fresh auction forthwith after the advertisement allowing all the registered Societies of the area to participate and settle the rights accordingly.

23. The learned standing counsel appearing for the State has assured the Court that the directions issued by the Hon''ble Apex Court in Gulshan's case (supra) shall be complied with very soon.

24. In view of the above, the State Authorities are directed to ensure the compliance of the directions referred to above herein by the Apex Court as early as possible.

25. No costs.