

(1988) 04 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 396 of 1988

B. Sambaiah

APPELLANT

Vs

Lakshmi Venkateswara Devasthanam and Others

RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1989 AP 65

Hon'ble Judges : Anjaneyulu, J

Bench : Single Bench

Advocate : G.M. Anjaiah, for the Appellant; N.V. Suryanarayana Murthy and Govt. Pleader for Education, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner herein belongs to a Scheduled Tribe community. It is stated that the petitioner's family is engaged in the traditional occupation of making "Savaralu" for women out of human hair. An advertisement appeared in "Udayam", a Telugu Daily, dated 29-11-87 that auction would be held in the premises of Sri Laxmi Venkateswara Devasthanam, Manyamkonda Mandal Mahaboobnagar District, for leasing out the right to collect human hair for the period 1-1-88 to 31-12-88. The petitioner accordingly attended the auction held on 10-12-87. From the record produced by the learned Government Pleader it would appear that this public auction was held in the premises of the temple in the presence of the Executive Officer of the Devasthanam, the hereditary trustee and the Asst. Commissioner of Endowments. Seven persons, according to the record, including the petitioner, had participated in the auction. The record produced by the Devasthanam relating to the auction indicated that while several persons stopped their bid in between Rs. 20,000/- to Rs. 26,000/-, one Yadaiah offered Rs. 34,500/- and that bid was improved by the petitioner to Rs. 35,000/-. The petitioner's bid happened to be the highest. The petitioner complied with the formalities of depositing Rs. 1,000/- and paying Rs. 8,500/-

being the 1/4th of the bid amount. What was left was the approval of the Commissioner of Endowments, respondent No. 2 herein. Immediately after the auction was conducted the Executive Officer addressed a letter dated 11-12-87 to the Commissioner of Endowments, setting out the details relating to the auction. He had pointed out that in the past the lease amount varied between Rs. 20,000/- to 22,000/-. He had further stated that on 10-12-87 a public auction was held at 11 O'Clock for leasing out the right to collect human hair during the year 1988 in the presence of the Asst. Commissioner. He further stated in that letter that the highest bid was Rs. 35,000/- relating to the petitioner. Finally he expressed the opinion that this year's bid fetched an excess of Rs. 13,000/- over the past years and sought the approval of the 2nd respondent so that the bid could be formally given effect to.

2. While the matters stood thus, it would appear that one A. Koteswararao of L.B. Nagar addressed a representation dated 14-12-87 to the Commissioner stating that he was willing to pay a lease amount of Rs. 40,000/-. The representation dated 14-12-87 of Koteswararao is not readily found on the record, but there appears to be little doubt that a representation of the nature was received by the Commissioner. On 28-12-87 the Commissioner addressed a memo to the aforesaid Koteswararao directing him to deposit the sum of Rs. 40,000/- with the Devasthanam within three days from the date of receipt of the memo so that necessary action could be taken. A copy of the aforesaid memo was endorsed to the Executive Officer of the Devasthanam. A separate letter was also addressed to the Executive Officer drawing attention to the offer made by Koteswararao for paying Rs. 40,000/-. The Executive Officer was instructed to report whether Koteswararao had deposited Rs. 40,000/- with the Devasthanam as instructed in the Memo dated 28-12-87.

3. Obviously Koteswararao complied with the direction for depositing Rs. 40,000/-. The Commissioner then addressed a Memo dated 7-1-88 to the Executive Officer wherein he referred to all the past correspondence and expressed the view that the bid of Rs. 35,000/- secured in the public auction held on 10-12-87 is not "found to be fair and reasonable". For that reason the Commissioner vetoed the lease held in public auction on 10-12-87 in favour of the highest bidder. The Executive Officer of the Devasthanam was directed to conduct re-auction of the leasehold rights. After receiving this Memo dated 7-1-88 the Executive Officer addressed a letter to the petitioner on 8-1-88 informing the petitioner briefly that the Commissioner of Endowments declined to approve the bid on the ground that adequate lease amount was not offered and consequently the Commissioner vetoed the highest bid. The petitioner was informed that the re-auction would be held on 20-1-88 at 3 p.m. The Executive Officer advised the petitioner to participate in the re-auction. After receiving this letter the petitioner filed the present writ petition questioning the correctness of the order of the 2nd respondent for withholding the approval of the highest bid according to the public auction held on 10-12-87. The petitioner also seeks a direction to respondents 1 and 2 to implement the leasehold rights in his favour.

4. I have heard Sri Anjaiah, learned Counsel for the petitioner and also the learned Government Pleader Sri N.V. Suryanarayana Murthy. The facts indicated above would clearly show that the only ground for the Commissioner withholding the approval and vetoing the highest bid secured in the public auction held on 10-12-87 is the offer made by Koteswararao. to pay Rs. 40,000/-. Now the question for consideration is whether the offer of Koteswararao to pay Rs. 40,000/- could be regarded, in the facts and circumstances of this case, as a relevant consideration justifying the Commissioner to withhold the approval. Now it is not in dispute that wide publicity was given for the conduct of the auction proposed on 10-12-87, As many as seven persons participated in the public auction. This public auction was conducted in the immediate presence of the Executive Officer, the hereditary trustee and the Asst. Commissioner of Endowments. The record of the proceedings kept by the Executive Officer would indicate that the auction was conducted with zeal and enthusiasm as it is noticed that almost every person participated in the auction and improved the bid amount from time to time. Eventually the petitioner's offer of Rs. 35,000/- was found to be the highest. The petitioner complied with the formality of making the appropriate deposits.

Thus there is not one step in the conduct of the entire auction proceedings which can be said to be unsatisfactory. On the contrary, it calls for a word of praise that on a relatively unimportant matter like this extreme precautions were taken by the Executive Officer to conduct an open and impartial public auction to ensure that Devasthanam gets highest amount.

5. Now to this, add the weight of the recommendations of the Executive Officer who categorically states that in the past the lease amounts did not exceed Rs. 20,000/- to Rs. 22,000/- whereas this year's bid was attractive with an increase of Rs. 13,000/-. The Asst. Commissioner wholeheartedly recommended to the Commissioner that the bid may be confirmed so that necessary formalities could be gone through. Had it not been for the intervention of Koteswararao, there is little doubt that the Commissioner of Endowment would have straightway given his approval, because there is nothing on record to give him a feeling that what was secured as lease amount in the public auction on 10-12-87 was not "fair and reasonable" and, therefore, he ought to exercise his right to veto the bid. The question for consideration is whether the intervention of a person like Koteswararao afforded any justification to the Commissioner to come to the conclusion that the bid amount secured in the public auction was not fair and reasonable. In my opinion, the answer is clearly in the negative. While every endeavour should be made to protect the interests of public institutions against abuse by private arrangements in the matter of leases and sales, there is no justification for giving up the principles of good conduct and behaviour on the sole ground that a slightly higher monetary consideration would be received by a public institution. There may be cases where the offer of lease amount or sale consideration by private negotiations may be found to be so hopelessly low that the authorities administering public institutions can legitimately come to the

conclusion that there was something wrong with private negotiations. That was the reason why Courts frown at private negotiations in the matter of transactions concerning public institutions like Devasthanams. This is not because that every private negotiation is associated with ill-reputation. It is because of the anxiety to show to the public that there was no possibility of any collusion or abuse of private negotiation. It was for this reason the Courts encourage public auctions. This does not justify that even a public auction held in conformity with rules could be considered to be inadequate just because after conclusion of the auction somebody intervenes to pay a farthing more. A person occupying a high office of the Commissioner of Endowments, should not be guided by an advantage in monetary consideration secured by the intervention of a person who did not care to participate in the public auction. It is the duty of the Commissioner to uphold the public auction if there is no ground to believe that the auction is conducted by questionable considerations. Cases may come to the notice of the authorities who are required to give approval where there is collusion among the bidders or the public auction is not largely attended. In such cases the Commissioner may withhold approval. But in a case where the authorities conducting public auction give a solemn assurance to the Commissioner of Endowments that the public auction was conducted in an atmosphere of great trust, the Commissioner of Endowments should not reject the result of such a public auction taking into consideration that some one who did not participate in the public auction came forward to offer a little more. If this consideration is the guiding principle then it is not possible to draw a line at any particular point. For instance a re-auction is held and the highest bid is accepted and when the approval of the Commissioner is sought, another person makes a representation to the Commissioner offering a higher lease amount. Would the Commissioner reconduct the whole auction ? If so, how many auctions he would be willing to conduct? If one has to set his foot down, as a matter of principle, against considerations like this, it must stop at the point where the first public auction was held in an atmosphere of total trust and without evoking any suspicion. In my opinion it is totally irrelevant on the part of the approving authority to take into consideration the representations from third parties after the closure of the auction proceedings. This is precisely what happened in the present case. The Commissioner was guided away by the fact that Koteswararao was willing to offer Rs. 5,000/- more. I am willing to accept that the Commissioner acted absolutely bona fide and in the interests of the institution which is likely to secure Rs. 5000/- more. But then the action of the Commissioner, notwithstanding his bona fides, is open to criticism that he discarded principles that should really govern an institution like the present one. I must therefore, hold that there is not the slightest justification on the part of the Commissioner to withhold approval in the present case, and it must be stated that the Commissioner acted arbitrarily and unreasonably. The action of the Commissioner must be regarded as violative of Article 14 of the Constitution of India.

6. With his usual thoroughness, Sri N.V. Suryanarayana Murthy, learned

Government Pleader sought to urge that this is a case where the Devasthanam would be benefitted by Rs. 5,000/- more and Courts should lean in favour of a situation which would benefit public institutions. Learned Counsel invited attention to a decision to the Supreme Court reported in Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, . In my opinion the reliance placed by the learned Government pleader on this decision is misplaced. The Supreme Court was dealing in this case with a private negotiation. The price secured by private negotiation eventually turned out to be too low compared to what it fetched in public auction. The Supreme Court frowned at the conduct of the transaction by private negotiations. Facts apart, learned Government Counsel invited my attention to para 6 wherein the Supreme Court made certain general observations. Having given my careful consideration to the observations, I do not think it is the Supreme Court's view that the authorities connected with public institutions have a licence to discard good principles just because of a little monetary gain. In my opinion, principles are more relevant and important in governing public institutions than monetary considerations.

7. Learned Government Pleader also referred to what he considers to be an important question, namely, the rights of the petitioner. According to the learned Government Pleader the petitioner has no legal right. It is stated that the deposit of Rs. 1,000/- and Rs. 8,500/- does not vest in the petitioner any right legally to claim that the lease must be secured in his favour. It is pointed out by the learned Government Pleader that the persons participating in the public auction were clearly told that the highest bid was subject to the approval of the Commissioner of Endowments. With this awareness instilled into the minds of the persons participating in the auction, learned Government Pleader contends, the petitioner cannot claim any rights in the transaction. It is not necessary to go into this question because once respondent No. 2 is found to have withheld his approval arbitrarily and unreasonably and his action is considered as violative of Article 14 of the Constitution then all that remains is the petitioner and his bid. If the petitioner alone is the highest bidder at the auction the logical conclusion is that his bid should be approved and he should be allowed to work out his rights.

8. Having regard to the above, I am fully convinced that the action of respondent No. 2 is wholly unsupportable and a direction shall issue to respondent No. 2 to convey his approval forthwith to respondent No. 1 so that the petitioner can proceed to work out his leasehold rights. The writ petition is allowed with costs.

Advocates fee Rs. 250/-.