
(2008) 07 OHC CK 0082
In the Orissa High Court

Balaram Sahoo

APPELLANT

Vs

Sub-Collector-cum-Executive Officer and Others

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Citation : (2008) 106 CLT 507 : (2008) 2 OLR 794 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—In this Writ Petition, the Petitioner has made a grievance that the auction of the Cycle Stand, which he was running for the year 2007-08, has been settled in favour of O.P. No. 3 for the year 2008-09 without following due procedure and without giving any opportunity to the Petitioner to participate in the bid.

2. Briefly stated, the case of the Petitioner is that the auction of the Cycle Stand was settled in his favour for the year 2007-08. While the Petitioner was running the Cycle Stand, the Opposite Parties published a notice through a daily newspaper and also issued an official notice stating therein that the intending parties were required to participate in the tender to be held on 20.02.2008. Time and venue of such tender were also fixed. The tender related to 13 items of Sri Sri Dhabaleswar Jew and Sri Sri Sarpeswar Jew under Athgarh Endowment jurisdiction for the year of 2008-09. The notice further contained that in case of failure to hold the auction of any item on 20.02.2008 auction for the same shall be carried on 21.02.2008 and in the event of failure to do so on 21.02.2008, same shall be carried on 22.02.2008. Pursuant to said notice, the Petitioner was present on the scheduled date and time notified by the Opposite Parties in the auction notice for the aforesaid three consecutive days. He was very much watchful in the office hour in those three days to take part in the tender. The Petitioner noticed that the office staff of Opposite Parties 1 and 2 avoided him to say anything about the auction. On those three days, no auction took place.

Subsequently, the Petitioner came to know that on 04.03.2008, O.P. No. 3 was given the Cycle Stand on the basis of auction held pursuant to another notice No. 554 dated 20.02.2008 for the year 2008-09. Being aggrieved by such action of the Opposite Parties 1 and 2, the Petitioner has challenged the legality of the same in this Writ Petition. This Court on 28.03.2008 made it clear that if ultimately this Court finds that the settlement of auction in favour of the O.P. No. 3 has not been properly made, in that case the Court would cancel such settlement, but it allowed O.P. No. 3 to run the Cycle Stand with the condition that such running would abide by the result of the Writ Petition.

3. The Learned Counsel appearing on behalf of the Petitioner submitted that the Petitioner had taken the Cycle Stand for the year 2007-08 as he was the highest bidder and offered Rs 4.0 lakhs, but he sustained loss in the business. After construction of bridge by the Government of Orissa, the Petitioner was hopeful to participate in the auction for next year and would try his luck to make up the loss of the previous year. According to the Petitioner, he was present on three consecutive dates pursuant to auction notice No. 517 dated 6.02.2008 on which dates no auction took place due to absence of the Sub-Collector-cum-Executive Officer of Athgarh Debottar. He further submitted that the first auction notice dated 06.02.2008 was given to the authorities of grass-root level and all public officials, i.e., Tahasildar, Athgarh, Executive Officer, Athgarh NAC, Executive Officer, Chandi Mandir, Sarapanch of Mancheswar G.P. informing them about the auction. Besides, same was intimated to one Lambodar Nayak, a staff of Sub-Collector Office, Athgarh to make the public aware through drumbeat. It was also intimated to the Addl. Dy. Endowment Commissioner, Bhubaneswar, the Collector, Cuttack and the Sub-Collector, Athgarh to make wide publication. The Deputy Superintendent of Police, Athgarh was also intimated about the same apprehending law and order situation at the time of auction. Thus in total 11 persons holding different administrative posts were intimated about the said auction. The same thing has not been done while the subsequent auction notice No. 554 dated 20.02.2008 was issued on basis of which the Cycle Stand was settled in favour of O.P. No. 3 for the year 2008-09. The further case of the Petitioner is that the Opposite Party Nos. 1 and 2 without following the proper procedure necessary for holding an auction in fair manner, settled the auction in favour of O.P. No. 3 which was illegal. The Petitioner vehemently argued that he and other intending candidates have not been afforded any reasonable opportunity to participate in the auction held on the basis of subsequent notification dated 20.02.2008.

4. The Learned Counsel appearing on behalf of O.Ps. 1 and 2 submitted that as per the Petitioner's own admission he took the Cycle Stand through auction for the year 2007-08 as the highest bidder for Rs. 4.0 lakhs, but he suffered heavy loss. Since for the year 2008-09 the Cycle Stand was auctioned and settled at Rs. 4,45,500/- in favour of the highest bidder, i.e., O.P. No. 3, the Petitioner could have never made profit at the higher bid amount of Rs. 4,45,500/-. The further case of O.Ps. 1 and 2 is that the auction was fixed to 20.02.2008 and

many aspirants were present on that date. Since the Sub-Collector, Athgarh (O.P. No. 1), who was the Executive Officer, Athgarh Debottar, proceeded to Hyderabad on 20th morning for attending a National Level Conference on S.H.G. Federation, the auction did not take place on the scheduled date notified in auction notice dated 06.02.2008. Therefore, on 20.02.2008 notice was exhibited in the notice board postponing the auction date to 04.03.2008. Signatures of some of the aspirants were taken. Since presence of O.P. No. 1 was essential for law and order situation, it was felt necessary to postpone the auction in his absence on 20.02.2008. It is further submitted that when the question of adjournment arises it is not mandatory to issue notice of auction in the same manner as was done while issuing first notice of auction. Learned Counsel further submitted that it is not a fact that procedure was not followed and reasonable opportunity was not given to the aspirants through wide publication. It is also submitted that the Petitioner was hatching a conspiracy with other members/aspirants/bidders not to participate in the auction with an intention to take the sairat source on negotiation at lower amount. This attempt of the Petitioner did not materialize at the end as some aspirants fell out of the conspiracy and participated in the auction. To the above effect, O.P. Nos. 1 & 2 have filed a counter affidavit.

5. In the rejoinder, the Petitioner denied the statements made in the counter affidavit filed on behalf of the Opposite Parties 1 and 2. It is stated in the rejoinder that no notice was exhibited on the notice board on 20.02.2008 for postponement of auction and fixing the further date to 04.03.2008. It is denied that the signatures of some of the aspirants were taken on 20.02.2008. The Petitioner further alleged that O.Ps. 1 to 3 might have manipulated the same due to their after-thought. Referring to the note sheets maintained in the file of the auction, the Petitioner submitted that the aforesaid falsehood of O.Ps. 1 and 2 is clear from the said note sheets. It is further stated that the copy of the note sheet of the file of the auction was obtained by the Petitioner under Right to Information Act, 2005 (hereinafter referred to as R.T.I. Act,) and annexed to the rejoinder as Annexure-4. According to the Petitioner, it was never the practice that in the event of adjournment of auction, the same was to be announced on the first day. The stand taken by O.Ps. 1 and 2 is not known to law rather it is against the principle of law. Learned Counsel further relying on the note sheet maintained by the Opposite Parties submitted that in the note sheet entry dated 20.02.2008 and 11.03.2008, inter alia, it was noted that balance sources, viz., Cycle Stand, Shoe Stand and Tea Stall may be put to auction afresh. For this, purpose, local notice may be served and advertised in one Oriya daily. In spite of the same, on 11.03.2008, the auction was settled in favour of O.P. No. 3 and agreement was entered into by him with O.Ps. 1 and 2. It is further submitted that the auction was not postponed due to the absence of O.P. No. 1, rather it was done with a view to accommodate O.P. No. 3 and others as per their choice for sairat lease.

In course of hearing when this aspect was highlighted by Learned Counsel for the

Petitioner, the Learned Counsel appearing on behalf of O.P. No. 3 simply replied that since the source has already been settled in favour of O.P. No. 3, same should not be declared illegal on a technical ground. It was submitted on behalf of O.Ps. 1 and 2 as well as O.P. No. 3 that since according to Petitioner's own averments he sustained loss during the financial year 2007-08 on payment of bid amount of Rs. 4.0 lakhs he should not sustain further loss by paying any amount more than Rs. 4.0 lakhs for the year 2008-09.

6. The issue involved in the present case is whether the public authority while holding the auction of cycle stand has followed the procedure of law, and thereafter legally settled the said sairat source in favour of O.P. No. 3, after giving reasonable opportunity of taking part in the bid to other aspirants including the Petitioner. The copy of note sheet which was obtained by the Petitioner under R.T.I. Act, has been attached to the rejoinder as Annexure-4. The entry dated 10.03.2008 reveals that the balance sources, viz., Cycle Stand, Shoe Stand and Tea Stall were to be put to auction afresh. The next noting in the said note sheet made on 11.03.2008 is to the effect that for this auction local notice may be served and advertisement made in one Oriya daily. Thus, as per the said note sheet entries dated 10.03.2008 and 11.03.2008, a fresh auction was to be conducted in respect of the Cycle Stand, Shoe Stand and Tea Stall and for the said purpose auction notice was to be served locally and advertisement was to be made in an Oriya daily. In such circumstances, it is difficult to appreciate how auction in respect of said Cycle Stand, took place on 11.03.2008 and the same was settled in favour of O.P. No. 3 and to that effect an agreement has been executed by O.P. No. 3 with O.Ps. 1 and 2. This is certainly a gross irregularity, and such a course is not permissible in law. It is against fair play.

7. The plea of the O.P. No. 3 that since auction has already been settled in his favour, the same should not be declared illegal on technical ground, cannot legalize the auction which was settled in his favour illegally in violation of the principles of natural justice and without following due procedure. It is also immaterial whether the Petitioner would sustain further loss by paying more than Rs. 4.0 lakhs for the year 2008-09. Apart from the above, in paragraph 5 of the Writ Petition, the Petitioner averred that he had sustained some loss in business, but after construction of the bridge by the Government of Orissa he was hopeful to participate in next year's auction and try his luck best to make up the loss of the previous year. Be that as it may, an administrative authority is expected to function in a fair and impartial manner. This is more so while it relates to public auction of any sairat which generates revenue for development of Debottar and public at large.

8. The administrative authorities are not expected to function in any manner which is detrimental to the interest of the Debottar as well as the public. They must exercise the power conferred upon them by following due procedure prescribed by law. Democracy is protected if Rule of Law prevails. If this is forgotten by an authority while exercising the power vested in him, the same

shall be nothing but arbitrariness leading to chaos, confusion and lawlessness in the society . In the present case, it cannot be denied that the auction as required to be held in terms of Orders Dated 10.03.2008 and 11.03.2008, has not been done while settling the sairat in question in favour of O.P. No. 3. We are shocked to note that even though the note sheet entries dated 10.03.2008 and 11.03.2008 reveal that in respect of the balance sairat source in question, i.e., the Cycle Stand, Shoe Stand and Tea Stall the notice was to be served locally and also was to be advertised in an Oriya daily, the same was ignored and the auction was settled in favour of O.P. No. 3 without following due procedure. This action of O.Ps. 1 and 2 is unsustainable in law. Such action of Opposite Parties 1 and 2 is highly unwarranted and it amounts to transgressing the limit of jurisdiction conferred upon them. This arbitrary action of O.Ps. 1 and 2 no doubt deprived the Petitioner as well as many other aspirant bidders from participating in the auction which might have resulted In fetching higher revenue. The settlement of auction in favour O.P. No. 3 is, therefore, not sustainable. Consequently, the agreement entered into by O.P. No. 3 with O.Ps. 1 and 2 for the year 2008-09 is not valid in the eye of law and deserves to be quashed.

9. In view of the above background facts, we quash the settlement of auction made in favour of O.P. No. 3 and direct O.Ps. 1 and 2 to hold fresh auction in respect of Cycle Stand for the remaining period of the year 2008-09. The said exercise should be undertaken by them as soon as possible, preferably within a period of four weeks from today. However, to protect the interest of Debottar, O.P. No. 3 is allowed to run the Cycle Stand till a fresh auction is held and finalized. Since O.P. No. 3 has already paid Rs. 4,45,500/- for the year 2008-09, he is entitled to get pro-rata refund for the period he is deprived of running the sairat, i.e., from the date of finalization of fresh auction, as directed above, till end of the financial year 2008-09 unless he is a successful bidder in the fresh auction.

10. The Writ Petition is allowed, but in the circumstances without any order as to costs.

I.M. Quddusi, AC.J.

11. I agree.