

(1961) 02 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 80 of 1960

Bhola Nath Hari Shah and Others	Vs	APPELLANT
Regional Settlement Commissioner, Jullundur City and Others		RESPONDENT

Date of Decision : 17-02-1961

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 87, 88

Citation : AIR 1961 P&H 553

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Advocate : H.L. Sibal, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Gosain, J.—The petitioners in the present case,

Sarvshri Bhola Nath, Bishan Das and Radha Kishan Kaul, are the ex-employees of the Ministry of Rehabilitation, who allege that they voluntarily gave up the service but regarding whom the respondents allege that their services were terminated for one reason or the other. Petitioners NOS. 1 and 2 were employed in the office of the District Rent and Managing Officer, Amritsar, and No. 3 was employed in a similar office at Gurdaspur.

They have formed a partnership firm known as "Friends Property Dealers" and are carrying on their business at Amritsar. Their main activities are to purchase compensation pool proper-ties at the auctions against verified claims either for themselves or as attorneys for others. About six months before the filing of the present petition they went as usual to bid for certain evacuee properties in the public auction, but the Managing Officer who was conducting the auction re-fused to entertain their bids on the ground that they were not allowed to bid for the purchase of any evacuee property either themselves Or on behalf of anybody else.

They made some efforts to find out the reasons which had led to the said course and approached the higher authorities for withdrawal of the said orders. Having failed in those attempts they have now come up to this Court under Article 226 of the Constitution of India and seek to have a writ of mandamus or any other writ, order or direction prohibiting the respondents from interfering with their rights to bid at the public auctions of evacuee properties. They have impleaded the Regional Settlement Commissioner, Jullundur City, as respondent No. 1, the District Rent and Managing Officer as respondent No. 2 and the Chief Settlement Commissioner, New Delhi, as respondent No. 3.

2. Their case in the petition is that they have a fundamental right to carry on their trade and to acquire properties and that these fundamental rights have been guaranteed to them by Clauses (f) and (g) of Article 19(1) of the Constitution of India. They characterise the action of the respondents as contrary to law and as one interfering with their trade as also with their right to acquire property.

The petition is being opposed by the respondents who have filed a detailed written statement supported by an affidavit of Shri Y.L. Taneja, Settlement Commissioner, New Delhi. The respondents admit to have passed orders forbidding the petitioners to bid at the auction sales of the evacuee properties in the compensation pool, but they allege that this has been done in the public interest and for good reasons. In different paragraphs of the written statement they have given some facts on the basis of which they seem to have passed the alleged orders. In paragraph 4 it is stated as under:--

"As ex-employees they collected Information regarding the reserve prices of saleable compensation pool properties and on termination of their services they formed themselves into a firm of property dealers."

In paragraph 7 it is stated:--

"They could not be allowed to continue their business for the purchase of the pool properties on behalf of their principals as they did not allow fair and free auction to take place."

In paragraph 9 it is stated that

"the conduct of the petitioners at the auctions was not in the interest of justice and fair play and, therefore, they were debarred from offering bids. Moreover, they were ex-employees of the Department and having started business in the same place where petitioners Nos. 1 and 2 were originally posted, they had an easy approach to the officials and could get any secret information about valuation etc. of the properties scheduled for auction, which they thought could help them in getting the property at a low price.

It was also noticed that the petitioners' connivance with the sale supervising staff interfered with public auctions of the acquired evacuee properties with the result that the auction could not be held in a proper and impartial manner. Thus,

genuine auction purchasers who wanted to purchase properties against their claims were deprived of the opportunity of purchasing the property which they needed."

(3) Mr. H.L. Sibal, learned counsel for the petitioners, urges before me precisely the same points which he has raised in the petition. His main contention is that the Displaced Persons (Compensation and Rehabilitation) Act, 1954, or the Rules framed thereunder do not place any restriction on anyone to bid at the auction sales of the properties forming part of the compensation pool and that the respondents had no right whatever in the matter of placing any restrictions on the rights of the petitioners to bid at the said sales. My attention has been drawn to rules 87, 88 and 89 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Rule 87 provides for the mode of sale of property and reads as under:--

"Any property forming part of the compensation pool may be sold by public auction or by inviting tenders or in such other manner as the Chief Settlement Commissioner may, by general or special order, direct."

Rule 88 provides for the class of persons who may bid or offer tenders, and according to this rule, the Chief Settlement Commissioner may, from time to time, determine the class of persons who shall be entitled to bid or to offer tenders in respect of the various kinds of properties in the compensation pool proposed to be sold. Rule 89 debars officers or other persons having any duties to perform in connection with the valuation or sale of any properties from bidding for or otherwise acquiring any interest in such properties.

It is urged that the Chief settlement Commissioner has taken no action whatever under Rule 88 and has not determined any special class of persons who shall be entitled to bid or to offer tenders in respect of the various kinds of properties in the compensation pool, and that every citizen of India is, therefore, entitled to bid for such properties. It is conceded that the Chief Settlement Commissioner has the power to determine the manner in which any property forming part of the compensation pool may be sold, but it is urged that the Chief Settlement Commissioner has not prescribed any particular manner.

4. After giving my careful consideration to the matter I am unable to agree with the aforesaid contentions of Mr. Sibal. The entire property now forming part of the compensation pool vests in the Central Government and it is for the Government to decide in what way and to whom the said property shall be sold. The Chief Settlement Commissioner who is respondent No. 3 in the present case, has filed a written statement alleging that the petitioners have been forbidden to bid for the properties forming part of the compensation pool because it was thought that this course would be in the public interests.

It cannot, therefore, be said that the Chief Settlement Commissioner has not laid down the manner in which the properties in question have to be sold, nor can it be said that the Chief Settlement Commissioner has not taken any action under

Rule 88. In my opinion the provisions of Rules 87 and 88 have also been substantially complied with inasmuch as the Chief Settlement Commissioner alleges that he has forbidden the petitioners from bidding for the properties forming part of the compensation pool. Apart from this, the Government which has to sell its own properties has, in my opinion, a power to say that the said properties would not be sold to any particular person unless of course there are any definite rules which stand in the way of the Government from taking such an action.

5. In *K. Bhaskaran Vs. State of Kerala*, a Division Bench of the Kerala High Court held that

"a citizen of India undoubtedly has a fundamental right to carry on a trade or business, but he has no fundamental right to insist upon the Government or any other individual, doing business with him. The Government, as well as any individual, has got a right to enter or not into a contract with a particular person."

In that case a contractor had been black-listed and the Government refused to allow him to tender for a particular contract.

He brought a petition under Article 226 of the Constitution of India alleging that he had a fundamental right to carry on his trade as a contractor and that the action of the Government in refusing to accept his tender amounted to an infringement of that fundamental right. The Division Bench of the Kerala High Court which heard that case held that the Government could not be compelled to enter into a contract with any particular person and that no one has a fundamental right to insist that another person or the Government would necessarily be compelled to enter into a contract with him.

In *A. Vedachala Mudaliar Vs. Divisional Engineer, Highways, Saidapet, Madras and Another*, a contractor tendered for a certain work but he was asked to produce the Income Tax clearance certificate as a condition precedent to the acceptance of his tender by the Government. He did not produce the requisite certificate and as a consequence of that his tender was rejected. He filed a petition under Article 226 of the Constitution of India alleging that unnecessary restrictions had been placed upon the carrying on of his trade and that his tender had been rejected on a ground which was flimsy and untenable. The Division Bench who heard that case held that--

"The Government, as well as any individual, has got a right to enter or not into a contract with a particular person, and has also the right to decide on the terms of the contract. For instance, a private body can say that it will entrust its work only to a solvent person who should file a statement of his Immovable properties and produce a nil encumbrance certificate. It cannot be said that an insistence on such a term being fulfilled in any way infringes the fundamental right of the person with whom the contract is being entered into. Similarly, an Insistence by the Government on the production by a party of proof of solvency or an Income Tax clearance certificate would not amount to a restriction on the right to carry

on a business."

In a case decided by the Supreme Court of the United States of America and reported as Perkins v. Lukens Steel Co., (1939) 84 LEd 1108 it was held that

"the Government, like private individuals, enjoys the unrestricted power to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases."

6. With great respect I agree with the view taken in the aforesaid three cases and I do not find any justification for holding that the action of the respondents in the present case in refusing to accept bids of the petitioners at the auction sales of the evacuee properties in the compensation pool does in any way amount to an infringement of any of the fundamental rights of the petitioners. The petitioners have, no doubt, right to carry on their business, but that does not amount to saying that they have the right to insist that their bids must be received at every auction sale. Any person or the Government may very well refuse to deal with any particular person and it cannot be said that this would in any way amount to infringement of that person's right to carry on his business. The petition is, in my opinion, misconceived and has no merits at all.

7. In the result, I dismiss the petition with costs.