
(2009) 02 AHC CK 0065
In the Allahabad High Court

Bhrigu Nath Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : (2009) 2 AWC 1573 : (2009) 106 RD 568

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Shri Salil Kumar Rai, the learned Counsel for the petitioner and the learned standing counsel appearing for the respondents.

2. An advertisement dated 5th of September, 2005 was issued by the Deputy District Magistrate, Sahjanwa, district Gorakhpur, in which it was notified that an auction would be held on 14th of September, 2005 for grant of fisheries" rights in various villages, which included village Bikora, Post Bikora, Tehsil Sahjanwa, district Gorakhpur having an area of 0.713 hectares. It is alleged that the petitioner participated in the said auction and his bid of Rs. 12,500 was the highest, and at the fall of the hammer, deposited a sum of Rs. 3,125 being 1/4th of the bid amount. Before the auction could be finalised, the Deputy District Magistrate, by an order dated 27th of September, 2005, cancelled the auction, on the ground that the bid was inadequate, and directed that a fresh auction should be held. The petitioner, being aggrieved by the re-auction and the rejection of his bid. has filed the present writ petition.

3. At the time of the filing of the writ petition, it was urged by the petitioner that there was no irregularity in the publication of the auction and that the petitioner made an offer of Rs. 75,000 instead of Rs. 12,500. On that basis, the Court, by an interim order dated 23rd of December, 2005, stayed the re-auction till the next date of listing, provided the petitioner deposited a further sum of Rs. 19,000 before the Tehsildar to prove his bona fides. The learned Counsel for the

petitioner submitted that pursuant to the interim order, the petitioner had deposited the amount of Rs. 19,000.

4. The learned Counsel for the petitioner submitted that there was no irregularity in the publication of the auction, and consequently, the auction could not have been cancelled on the sole ground that the consideration was inadequate. The learned Counsel further submitted, that assuming without admitting, that the auction could be cancelled on account of inadequacy of the consideration, in that event, before cancelling, the petitioner should have been given an opportunity to revise his bid. Further, the learned Counsel submitted that the impugned order cancelling the auction was violative of the principles of natural justice, and that, an opportunity of hearing was required to be given, which was also contemplated and provided under Rule 115S of the U.P. Zamindari Abolition and Land Reforms Rules, 1952. In support of his submission, the learned Counsel has placed reliance upon a decision of the Supreme Court in *Ram and Shyam Company Vs. State of Haryana and Others*, wherein the learned Counsel placed emphasis upon the observation made by the Supreme Court in paragraphs 13 and 18 of its judgment, which provided that an opportunity ought to have been given to the petitioner to improve his bid when his bid was rejected on the ground that it did not represent the adequate market consideration.

5. Having heard the learned Counsel for the petitioner and having perused the counter-affidavit filed by the State, the Court is of the opinion that the submissions raised by the learned Counsel for the petitioner is patently misconceived and bereft of merit. The judgment cited by the learned Counsel is not applicable to the present facts and circumstances of the case. In *Ram and Shyam Company (supra)*, the Supreme Court found that the petitioner's bid was the highest but was rejected on the ground that another competitor arbitrarily gave an enhanced bid subsequently. It was, in that light, that the Supreme Court held that an opportunity of hearing should have been provided to the petitioner to enhance his bid, but, this is not the case in the present scenario.

6. In the present case, the bid has been cancelled by the State authorities on the ground that the bid was inadequate. No doubt, detailed reasons have not been given in the impugned order, but the counter-affidavit reveals the ground for cancellation of the auction. The State has come out with the stand that the High Court had delivered a judgment in *Babban Ram Vs. State of U.P. and Others*, decided on 6th October, 2004, in which the Court had directed that the fisheries' lease in future should be granted at the minimum rate of Rs. 10,000 per hectare per year. This judgment was delivered prior to the advertisement issued in the present case. Since the direction of the Court was violated, the advertisement itself became incorrect. The reasoning given by the authority in the impugned order was correct, namely, that the bid was inadequate, though detailed reasons were not given, but that became immaterial, since a direction of the Court was not followed by the authorities.

7. Admittedly, the area of the pond is less than a hectare and a fisheries'. right

for 10 years was required to be auctioned. Consequently, the bid given by the petitioner to the tune of Rs. 12,500 was grossly inadequate.

8. In view of the aforesaid, the impugned order cancelling the auction does not suffer from any error of law. In fact, the Supreme Court in the case of Ram and Shyam Company (supra), held that the Government was entitled to reject the highest bid if it found that the price offered was inadequate. The Supreme Court, further held, that after rejecting the offer, it was obligatory upon the Government to act fairly, and that at any rate, it should not act arbitrarily.

9. In the present case, the authorities have cancelled the auction on the ground that the price bid was grossly inadequate and has directed that a fresh auction should be held. No illegality or arbitrariness has been committed by the State authorities in directing re-auctioning of the fisheries" right.

10. In so far as the provisions of Rule 115S of the U.P.Z.A. and L.R. Rules is concerned, this Court finds that the initiation of the auction though the advertisement itself was incorrect and against the directions of the High Court given in the judgment of Babban (supra). Consequently, the stage of Rule 115S had not as yet started.

11. The learned Counsel for the petitioner in the end submitted that he was willing to pay a price of Rs. 75,000 for the fisheries" rights and that his bona fides has been tested since he has deposited 1/4th of the amount as per interim order of the Court. In my view, the mere fact that the petitioner has deposited some amount pursuant to an interim order of the Court only prima facie proves his bona fides, but this, by itself, could not entitle the petitioner to get the fisheries" right, especially when other bidders are not before the Court to match the price offered by the petitioner. The law is very clear, namely, that the fisheries" right has to be settled by auction. An offer given by the petitioner before the Court does not become a public auction, especially when other bidders are not before the Court. The Court had entertained the writ petition by directing the petitioner to deposit the amount as an interim measure to show his bona fides. By entertaining the writ petition, the Court did not mean that a fisheries" right would eventually be granted. Now, the version of the State is before the Court and, one finds the reason for the cancellation of the bid which was done in terms of the directions of the Court in the case of Babban (supra).

12. In view of the aforesaid, this Court does not find any error in the impugned order. The writ petition fails and is dismissed. It is however clarified that the amount so deposited by the petitioner pursuant to the fall of the hammer and pursuant to the interim order of the Court, shall be refunded to the petitioner within four weeks from the date of moving such an application alongwith a certified copy of this order.