
(2002) 07 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 6733 of 2002

Dharmendra Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0013

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition arises from a controversy relating to the grant of minor mineral concession lease for one of the blocks in the district of Gaya.

2. The District Magistrate, Gaya issued a notice for the grant of leases under the Minor Mineral Concession Rules for 64 blocks in the district of Gaya, a copy of the notice which appeared in the daily newspaper Dainik Jagran of 5.5.2002 is at Annexure-4. The grant was to be made on the basis of public auction as provided under Rule 9(A), inserted in the Bihar Minor Mineral Concession Rules by an amendment w.e.f. 24.3.2001 and the auction was to be held on June 17/18, 2002. Clause 8 of the notice required a person desirous of making bid for the grant to submit an application, enclosing inter alia upto-date statements of income tax and a declaration that upto date taxes were paid by the applicant, an same the day (sic) are date of (sic) Gaya for a sum of Rs. 23,000/- for each of the blocks should also be submitted for which the applicant intended to bid by way of security money.

3. In the writ petition the notice was challenged on the ground that it was not in conformity with the provisions of the amended Rule 52(1) inasmuch as the notice did not give the detailed description of the different blocks and it did not indicate the portions of the blocks which might be covered by subsisting previous leases. The challenge to the notice, however, is now only of academic interest in view of the developments taking place after the filing of this writ petition.

4. The Petitioner did not succeed in getting an interim order of stay against the

auction scheduled to be held on June 17 and 18, 2002, He, therefore, proceeded to take part in the auction and with that object he obtained a bank draft dated 12.6.2002 for Rs. 23,000/- as the security money. However, his plan to take part in the auction was also frustrated when his application was rejected by the Collector and he was not allowed to take part in the auction. On the basis of the auction held on 17/18.6.2002 the lease for the block at serial No. 54 of the notice was granted to M/s Daya Engineering Works, Gaya.

5. In view of the subsequent developments M/s Daya Engineering Works Limited were impleaded as Respondent No. 4 on a prayer made on behalf of the Petitioner and counter affidavits are filed both on behalf of the State and on behalf of the settlee M/s Daya Engineering Works Limited.

6. As a result of these developments taking place during the pendency of this writ petition, this case was finally heard on the two connected issue whether the action of the District Magistrate in disallowing the Petitioner from taking part in the auction was legal, valid and reasonable and whether the auction for the settlement of the block at serial No. 54 of the notice was held in a fair and proper manner.

7. Mr. Ram Balak Mahto, learned Sr. Counsel appearing in support of this writ petition submitted that the District Magistrate had wrongly rejected the Petitioners application for taking part in the auction and the Petitioner was arbitrarily prevented from taking part in the auction for the settlement of the block in question. Learned Counsel further stated that the reserve jama for the block at serial No. 54 of the notice was Rs. 11,50,000. After the exclusion of the Petitioner from the fray, there were only two bidders for that block; one of them made a bid of Rs. 11,60,500.00 and the next bid of Rs. 11,61,000.00 was made by M/s Daya Engineering Works. After that no further bid was made and M/s Daya Engineering was thus given the grant on the basis of just one bid made of Rs. 11,61,000.00 on its behalf. He also referred to a letter, dated 20.6.2002 from the Special Secretary to the Government in the department of Mines and Geology, a copy of which is at Annexure-14. In this letter addressed to the District Magistrate, Gaya some slight dissatisfaction was expressed regarding the number of bidders in the auction being on the lower side, stating further that the bid amount might have gone higher in case the other ten applicants (whose applications were rejected, including the Petitioner) were allowed to take part in the auction. On the basis of the aforesaid, Mr. Mahto submitted that the Petitioner's application for taking part in the auction was wrongly rejected and further that the grant of lease for the block in question was made on the basis of an auction which was not held properly.

8. In the counter affidavit filed on behalf of the State it is stated that the applications for taking part in the bid, along with the bank draft for security money and the necessary enclosures were required to be filed, five days before the date of the auction, in the office of the Assistant Mining Officer. In other words, the applications were required to be filed not later than 5 P.M. on

12.6.2002 in the office of the Assistant Mining Officer. Thirty six applications were filed in the office of the Assistant Mining Officer by 5 P.M. on 12.6.2002; ten applications, including that of the Petitioner were not filed in the office of the Assistant Mining Officer till 5 P.M. on 12.6.2002. The Petitioner admittedly filed his application (undated) along with the security money draft in the office of the District Magistrate and his application along with 9 other similar applications were put up before the District Magistrate on 14.6.2002. The District Magistrate, directed for the rejection of those applications on the ground that those were not filed an time; copies of the Petitioner's application (undated) and the note of the District Magistrate rejecting his application are at Annexure-A to the State's counter affidavit.

9. Mr. Ashok Kumar Singh, Spl. P.P. for the mining department submitted that apart from this, the bank draft for the security money submitted by the Petitioner was made in a wrong name and was quite useless for the authorities and that was one more ground for rejecting his application. Mr. Singh pointed out that in the notice it was clearly stated that the Bank draft for the security money should be made in the name of the Assistant Mining Officer but the Petitioner's Bank draft was made in the name of the Assistant District Mining Officer. Mr. Singh stated that there was no such designation as Assistant District Mining Officer and consequently there was no account in that name in which the draft could have been deposited. Mr. Singh further submitted that even though it was stated in the notice that the bank draft should be made in the name of Assistant Mining Officer, the authorities would have accepted the draft in the name of the District Mining Officer or even in the name of the District Magistrate because these being regular designations, there were corresponding accounts in their names and hence, the bank draft could have been deposited in a proper account. The Petitioner's bank draft in the name of Assistant District Mining Officer was of no use as there was no account in which this draft could be deposited.

10. Mr. Chittranjan Sinha, learned Sr. Counsel appearing on behalf of M/s Daya Engineering Works submitted that there was another important reason for disqualifying the Petitioner. Mr. Sinha pointed out that Clause 8 of the notice required the applicant to submit upto date statements of income tax return and a declaration that he had paid upto date taxes. Mr. Sinha submitted, and in my view rightly, that this requirement was mandatory and from the Petitioner's application at Annexure-1 it appears that it was not accompanied with the income tax statements/declaration as required by Clause 8.

11. Mr. Ram Balak Mahto tried to counter these submissions on the basis of the decisions of the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Learned Counsel submitted that the only reasons for rejecting the Petitioner's application given by the District Magistrate was that the application was filed beyond time, in his office and not in the office of the Assistant Mining Officer. It was, therefore, no longer open to the

Respondents to justify the rejection of the Petitioner's application on any grounds other than the one mentioned in the District Magistrate's note.

12. I am unable to accept the submission. It is quite debatable whether in the facts and circumstances of this case such a restriction would apply to the State but this restriction would certainly not apply to the private Respondent who was granted the lease. The private Respondent, to my mind, would be perfectly free to show to the Court that the application of the Petitioner was not in order and therefore he was not qualified to take part in the auction and hence, the order of the District Magistrate did not call for any interference.

13. Apart from this technical aspect of the matter, I am satisfied that the grant of the lease for the block in question was not made at an unreasonably low value and the auction does not suffer from any infirmity on this score. Though assailing the auction for not securing the fair and proper value for the lease, when asked as to what offer the Petitioner was willing to make for taking the lease of the block in question, Mr. Tiwary after taking instructions from the Petitioner who was present in Court stated that the Petitioner's offer was Rs. 12,00,000/-. Thus after all the bitter dispute and Court proceeding he is not willing to increase the bid by more than 3.4%. As against this M/s Daya Engineering Works was willing to take the lease for a sum of Rs. 12,01,000/-. In these circumstances I find it difficult to accept that there was under valuation in the grant of lease for the block and the auction was held improperly or unreasonably.

14. No relief can, therefore, be allowed to the Petitioner. But Respondent No. 4 will now have to take the lease for that block on payment of Rs. 12,01,000/- in accordance with the offer made before this Court. In case the deed of lease is already executed, Respondent No. 4 will make additional deposit of Rs. 40,000/- within two months from today.

15. In the result, this writ petition is dismissed subject to the aforesaid direction to Respondent No. 4.