
(2003) 04 AHC CK 0284
In the Allahabad High Court
Case No : Appeal No. 47208 of 2000

Diwakar Rai and Another

APPELLANT

Vs

Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 5 AWC 4221 : (2003) 95 RD 84

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : N.L. Pandey, for the Appellant; Haridwar Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and R.S. Tripathi, JJ.—Heard learned Counsel for the Petitioner, learned standing counsel and Sri Haridwar Singh, learned Counsel for Respondent No. 5.

2. Petitioner is challenging the impugned order dated 30.3.2000 passed by Respondent No. 1 granting fishery right in favour of Respondent No. 5 over plot No. 67/2 in village Mahro Kalan, Tahsil Lalganj, district Azamgarh.

3. It has been alleged in paragraphs 8 and 9 of the writ petition that fishery right was granted in favour of Respondent No. 5 without advertising it in well known news papers and thereafter holding public auction. In the counter-affidavit filed by Respondent No. 5, it has been stated in paragraph "4" that the fishery right in question was granted to Respondent No. 5 on the basis of a resolution of the Land Management Committee. It appears that earlier Respondent No. 5 was granted fishery right from 24.3.1990 till 23.3.2000 and thereafter fishery right has been granted in his favour for another 10 years merely on the basis of the resolution of the Land Management Committee. The allegations in paragraphs "8" and "9" of the writ petition are that there was no advertisement in well known news papers and thereafter holding public auction. The said allegations

have not been denied in the counter-affidavit filed by Respondent No. 5. Hence, those allegations are being treated as correct. It has been held in a large number of decisions that public contracts including fishery rights can only be granted after public auction/ tender after advertising the same in well known news papers having wide circulation. This is essential otherwise Article 14 of the Constitution will be violated. The public contracts are not largesse as held by the Supreme Court in *Ramana Dhayaram Shetty v. International Airport Authority of India and Ors.* AIR 1979 SC 1678 . In *Ram and Shyam Company Vs. State of Haryana and Others*, , the Supreme Court as well as this Court in *Ram Bharosey Lal Vs. State of U.P. and Others*, and *Desh Kumar and others Vs. State of U.P. and others*, , have held that public contracts cannot be given by private negotiations but only after public auction/tender. Since the fishery right in question was granted without following this procedure, the grant is wholly illegal. Hence the impugned order, dated 30.3.2000 is quashed. Respondent No. 5 is restrained from continuing to exercise fishery right over the plot in question. The fishery right will now be given after public auction/tenders in which all eligible persons can apply after advertising it in two well known newspapers having wide circulation. In our opinion, this is essential for transparency.

4. Until grant of fishery right in accordance with the above procedure, we direct that as an interim measure, the District Magistrate, Azamgarh, through his officials should operate the fishery right over the plot in question.

5. Petition is accordingly allowed. No order as to costs.