
(2003) 04 AHC CK 0118
In the Allahabad High Court
Case No : C.M.W.P. No. 14186 of 2003

Dr. Arun Kumar Chand

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 2431

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare and Himanshu Singh, for the Appellant; K.N. Mishra and S.N. Dwivedi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Prakash Krishna, JJ.—Heard learned counsel for the petitioner and the learned standing counsel.

2. The petitioner has challenged the impugned order dated 29.3.2003, Annexure-5 to the writ petition and has prayed for a writ of mandamus directing the respondents not to hold fresh auction of Taxi stand, Gola bazaar, Gorakhpur.

3. It appears that the petitioner was one of the bidders in an auction having bid Rs. 1,70,000. The highest bidder did not deposit the auction money. The Chairman, Nagar Panchayat, made a recommendation to the District Magistrate, Gorakhpur vide letter dated 27.3.2003, Annexure-3 to the writ petition, recommending that the bid of the petitioner be accepted. However, the District Magistrate, by the impugned order has not accepted this recommendation and has ordered for fresh auction, which is going to take place tomorrow.

4. Sri K.N. Mishra, advocate, has filed his vakalatnama on behalf of one of the bidders, Sri Vijay Kumar Verma and has stated that Sri Vijay Kumar Verma had bid Rs. 11,50,000 but the contract was not given to him. On the other hand, the petitioner submits that Sri Vijay Kumar Verma did not deposit the auction money

and his security money has been forfeited.

5. It is not necessary to enter into the factual controversies of the case, because we propose to dispose of the writ petition on another point.

6. It is well-settled that there are two kinds of auctions, the first is an auction which is not subject to the approval by any authority. Such an auction is complete on the fall of the hammer. The other kind of auction is where it is subject to approval of some authority. In the second kind of auction, it is settled that the auction is not complete unless approval is granted by the said authority, and no right is created in favour of any bidder (even the highest bidder) unless such approval is granted. Hence, neither opportunity of hearing is to be given in this type of auction before disapproving the highest bid nor any writ petition is maintainable, since writ lies only when some right has been created and later on it is infringed.

7. In U. P. auction by local bodies are usually subject to approval by the District Magistrate, and this is usually mentioned in the tender conditions. In the present case, the petitioner has not filed the tender conditions, but as revealed to us in many cases, we can, therefore, presume that there was such tender condition in the petitioner's case also. The learned counsel for the petitioner has not disputed this.

8. By the impugned order, the District Magistrate has not approved the bid of the petitioner, as he found some irregularities in the auction. Since no bid has been accepted at all, in our opinion, no right accrued in favour of the petitioner and hence no writ petition lies because a writ lies only when some right has been created and later on is infringed. If the petitioner is eligible, he can participate in the auction to be held tomorrow.

9. The writ petition is dismissed with the aforesaid observation.

10. Sri K.N. Mishra and Sri S.N. Dwivedi, appears for the respondents.