(2000) 07 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9767 of 2000 and Batch

Gunda Venkata Ramana APPELLANT

Vs

District Level Committee, Srikakulam and others RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 5, 9
Andhra Pradesh Panchayat Raj (Auction of Sand in the Water Courses Vesting in Gram Panchayat) Rules, 2000 — Rule 14, 27, 31, 7
Andhra Pradesh Panchayat Raj Act, 1994 — Section 268, 95
Constitution of India, 1950 — Article 14, 19, 299
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 4

Citation : AIR 2001 AP 92 : (2000) 4 ALD 585 : (2000) 4 ALT 623

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M/s. D. Srinivas, K. Chidambaram, V.V.V.N. Narayana Rao, S. Apadhara Reddy, V. Seshgiri Rao, Mrs. Shoba N., Government Pleaders for Panchayat Raj and Rural Development, for the Appellant;

Judgement

1. In all these writ petitions the petitioners are highest bidders in the auction conducted to lease out the right to quarry sand in watercourses falling within the jurisdiction of respective Gram Panchayats in Srikakulam District All the petitioners are aggrieved by a Notification dated 30-5-2000 issued by the District Level Committee proposing to re-auction the right to quarry sand on 16-6-2000 in certain villages. In view of the fact that the notification impugned is the same, the writ petitions are being disposed of by this common order at the stage of admission with the consent of the learned Counsel for the respective parties.

2. The averments in the affidavit accompanying the Writ Petition No.9767 of 2000 may briefly be noticed.

The first respondent, through its Member Convenor (third respondent herein), issued Sand Auction Notification dated 24-4-2000 in accordance with A.P. Panchayat Raj (Auction of Sand in Water Courses Vesting in Gram Panchayats)

Rules, 2000 (hereafter called the ''Sand Rules''). As per the notification the upset price for Karajada Village in Srikakulam District was fixed at Rs.1,92,000/-. The auction was held on 10-5-2000. There were eight bidders for the sand reach in Karajada Gram Panchayat. The petitioner submitted a bid for Rs.2,45,000/- and his bid was the highest one. The petitioner deposited an amount of Rs.61,250/- being 25% of the quoted bid on 12-5-2000. After waiting to receive confirmation orders from appropriate authority, the petitioner approached the Joint Collector. The petitioner raised 75% of the balance of the bid amount. In the meanwhile, the impugned notification was issued. The petitioner received proceedings in Ref. No.453/2000 P4, dated 31-5-2000. By the said proceedings issued by the second respondent, the petitioner was informed that before issuing orders, the confirming authority opined that the highest bid fetches in the auction held on 10-5-2000 is not reasonable price for the sand reach of Karajada Village and therefore it is decided to conduct reauction for the sand reach. In all other writ petitions the facts are same except that the highest bid amount differs from Panchayat to Panchayat.

3. The learned Government Pleader for Panchayat Raj has filed a common counter-affidavit in all the writ petitions through the Divisional Panchayat Officer, Palakonda. It is stated in the counter that on 10-5-2000 auction was conducted in respect of nearby rivers/canals, but the confirmation authority did not confirm the highest bid by the bidders/tenderers on the ground that the amount fetched is not reasonable for some of quarries, which include the quarries in the Panchayats in question. It is also stated that where the quarry is small or the reach is small situated in remote place and the upset price is below Rs.10,000/- the bids were accepted, as there is no possibility of getting more amount. As the petitioners do not have any right as the bid is not confirmed and there is no valid enforceable agreement between the petitioner and the concerned Gram Panchayat, the petitioners are not entitled to any notice before ordering re-auction. It is also stated that pursuant to the re-auction notice, auction was conducted on 16-6-2000 for seven quarries, which are subject matter of the writ petitions. Five out of seven quarries fetched higher amount than the highest bid in the earlier auction and in respect of two quarries the bid was lesser than the highest bid in the earlier auction. The details are as under :

Name of the reach & village WP No. Upset Price Rs. Bid amount (old) Rs. Bid amount (new) Rs.

Karajada 9767/2000 1,92,000 2,45,000 2,60,000

Sankili 9918/2000 1,00,000 1,07,008 1,13,000

Attichi-Polavalasa 9920/2000 75,000 76,000 82,000

Bhyd 9946/2000 2,50,000 2,71,000 2,59,000

Thotada 9939/2000 5,50,000 5,68,000 5,58,000

Tamada 10011/2000 1,00,000 1,02,000 1,57,000

Kommana-palli 10017/2000 60,000 61,000 63,000

4. It is contended by the learned Counsel for the petitioners that after following the procedure contemplated under the Rules auction notice was issued, that the petitioners became highest bidders, that after having been allowed to participate in the auction and becoming highest bidders, it is not open to the respondents not to confirm the auction in favour of the petitioners and allow them to proceed, with the sand quarrying operations. According to the learned Counsel, the action of the respondents in not confirming the lease is violative of principles of natural justice, arbitrary and denies their legitimate expectation.

5. Opposing the petitions the learned Government Pleader for Panchayat Raj submits that in all these cases the difference between the upset price fixed by the Committee and the highest bid is not even ten per cent higher, that normally the highest bid for any sand quarrying will be at least hundred per cent of the market value and therefore it is contended that there is no fairness in the petitioners'' claiming themselves to be highest bidders having quoted negligibly or marginally higher figure. In such circumstances, it is submilted that it is always open to the various authorities as well as District Committee to reauction after following the same procedure as per the Rules. A special reference is made to Rules 7 and 31 of Sand Rules. The learned Government Pleader has also urged that a person who is a highest bidder in the public auction conducted or a tenderer whose tender is more responsive has no legal enforceable right before the bid or the tender is accepted resulting in a concluded contract.

6. Before examining the rival contentions, it is necessary to notice the relevant provisions of law and the relevant Rules/binding instructions issued by the Government and other authorities. The Mines and Minerals (Regulation and Development) Act, 1957 (the Act, for brevity) regulates mines and the development of minerals. u/s 4 of the Act no person shall undertake mining operations in any area except in accordance with mining lease granted under the Act and the Mineral Concession Rules or other Rules. u/s 15 of the Act the State Government is empowered to make Rules in respect of minor minerals. Sand is a minor mineral. Therefore, for quarrying sand a lease or permit in accordance with the Act is required.

7. In exercise of powers under subsection (1) of Section 15 of the Act, Government of Andhra Pradesh promulgated A.P. Minor Mineral Concession Rules (hereinafter called, the Statutory Rules). Rule 5 of the Statutory Rules prohibits quarrying any minor mineral except in accordance with the terms and conditions of quarry lease or permit granted under the Statutory Rules. Rule 9 of the Statutory Rules indicates the procedure for grant of lease for any minor mineral. Till 1996 subject of lease of right to quarry sand in all the sand bearing areas except major rivers was under the control of Mines and Geology Department. In 1996 by G.O. Ms. No.46 dated 6-2-1996, Rules 9-B to 9-U were inserted in the Statutory Rules. These deal exclusively with grant of lease of sand bearing areas by sealed tender cum auction. Notwithstanding anything contained in Rule 9 the

lease of sand bearing areas is to be governed by Rules 9-B to 9-U. The authority for granting lease by sealed tender-cum-public auction reach-wise or Mandal-wise is the Assistant Director of Mines and Geology.

8. The Government modified the sand policy in 1998. The policy adumbrated in Rules 9-B to 9-U was reconsidered by orders issued in G.O. Ms. No.328 Industries and Commerce (Mines-I) Department, dated 14-9-1998. The sand bearing areas in Krishna and Godavari Rivers with major tributaries are to be notified for auction in small reaches by the Director of Mines and Geology. In all the remaining areas in the State the local bodies were conferred with the right to auction the reach for removal of sand, giving exclusive right over the revenue collected to the local bodies. Accordingly, Rules 9-B to 9-U were appropriately amended by the Rules issued in G.O. Ms. No.417 Industries and Commerce (Mines-I) Department, dated 1-12-1998. The conspectus of these new rules dealing with auction of sand bearing areas is that the right to quarry sand in rivers Krishna and Godavari along with their major tributaries in small reaches shall have to be leased by sealed tenders or public auction by the Assistant Director. In all other areas the respective Gram Panchayats/Municipalities/ Municipal Corporations etc., can lease the sand bearing areas, if they so desire, as per the procedure laid down by the Panchayat Raj/Municipal Administration Department subject to other conditions and Rules, Pursuant to the amendments made to the Statutory Rules the Gram Panchayats leased out sand bearing areas by public auction every year.

9. Again in G.O. Ms. No.356, dated 22-11-1999 the Government of Andhra Pradesh in Industries and Commerce Department, considering the demands of A.P. Panchayat Sarpanches'' Association directed that the subject matter of ''auctioning of sand'' be transferred to Panchayat Raj and Rural Development Department from Industries and Commerce Department so as to vest with the Gram Panchayat the absolute right to auction the sand bearing areas in major rivers as well as minor rivers. G.O. Ms. No.356 also laid down the procedure to be adopted by the District Level Committee constituted in the G.O. for auctioning the sand bearing areas in the jurisdiction of Gram Panchayats. The revenue whereof has to be apportioned to Zilla Parishads, Mandal Parishads and Gram Panchayats.

10. In furtherance of the object of G.O. Ms. No.356, dated 22-11-1999 the Government framed Sand Rules in G.O. Ms. No.71, dated 29-2-2000 in exercise of powers under Clauses (ix) (xii) (xxii) of Section 268 read with Section 95 of A.P. Panchayat Raj Act, 1994. These Sand Rules are comprehensive and deal with all aspects of leasing out of sand quarries vesting in Gram Panchayats. They provide for identifying sand bearing areas in the Gram Panchayat jurisdiction, for fixation of upset price by the Assistant Director of Mines and the method and manner of conducting auction for selling the right of quarrying sand.

11. The Rules also provide for various authorities that deal with the subject. Rule 7 provides that District Committee shall be responsible to deal with the matters

pertaining to auctioning of sand and other related matters. As already noticed the District Level Committee was constituted by the Government in G.O. Ms. No.356, dated 22-11-1999 which consists of Chairperson, Zilla Parishad, as Chairperson, Joint Collector, Mandal President, Assistant Director of Mines and Geology and Sarpanch of Gram Panchayat as members. After identifying the reach and fixing the upset price the Committee shall publish auction-cum-tender notice in leading Telugu daily newspapers having largest circulation in the village. After expiry of atleast fifteen days from the date of publication the auction shall have to be conducted in accordance with Rules 9 to 18 of the Sand Rules. Rules 19 and 20 provide for method and manner of payment of amount by the successful tenderer or bidder and for entering agreement with the Panchayat. Rule 27 provides for various authorities who are competent for auctioning, for confirming and to hear appeals, which is as follows :

Sl.No. Upset value Auctioning Authority Confirming Authority Appellate Authority

1. 1,000-1,00,000 MRO RDO Jt. Cellector

2. 1,00,000-5,00,000 RDO Jt. Collector District Collector

3. 5,00,000 and above Jr. Collector District Collector Commissioner of Panchayat Raj & Rural Employment

Rule 32 empowers the District Committee to decide any matter in enforcing the Sand Rules.

12. The brief analysis of Mineral Rules and Sand Rules would show that right to extract mineral is not an absolute right and nobody can claim such right unless he satisfies the provisions of the Act and various Rules.

13. The submission that the impugned decision violates principles of natural justice requires examination of two inter-related points. The first point is whether the petitioners have any right to demand that they should be put on notice before the confirming authority cancels the highest bid offered by them. Secondly, whether the petitioners have any legitimate/reasonable expectation, which ordinarily requires a pre-decisional notice to the petitioners. Incidentally the question also arises whether in every case of complaint of denial of legitimate expectation the decision maker is required to give notice to the aggrieved person.

14. The contention that the action of the respondents in issuing a notice for re-auctioning the reach within the respective jurisdiction of the Gram Panchayat violates principles of natural justice cannot be examined within a straightjacket formula. The question arises in connection with the legitimate expectation of highest bidder that his offer might be accepted. Therefore, unless the petitioners are able to show that there is an abuse of power vested in the District Committee in re-auctioning the reach an occasion does not arise for examining the issue whether the principles of natural justice are violated or not. Indeed, the person

who is denied legitimate expectation ordinarily has a limited right of being heard before denying legitimate expectation as held by the Supreme Court in Union of India and others Vs. Hindustan Development Corpn. and others, . But law does not require such notice, if denial is based on public policy and public interest.

15. When a public auction is conducted by the State or the agencies of the State or local bodies for conferring an exclusive right, privilege or giving largesses every participant in the auction has ''reasonable expectation'' or ''legitimate expectation'' that highest bid of a person shall be accepted and the lease confirmed. In the realm of private law when tenders are invited the person invites offers from interested parties for a particular work and when such an offer is made it requires acceptance by the person inviting offers. As long as offer (highest bid) is not accepted the person offering cannot claim any right, as there is no concluded contract. But the State, its agencies and other local bodies, being charged with public duty are bound to take action, which is in accordance with Articles 14 and 19 of the Constitution of the India.

16. In Hindustan Development Corporation case (supra) the Supreme Court laid down as under:

"Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largesse by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the Court has to see whether it was done as a policy or in the public interest either by way of GO, rule or by way of a Legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power."

17. Therefore, it may be taken as well settled that a highest bidder has legitimate expectation that his bid may be accepted. In such an event it is unfair to deny the legitimate expectation unless there are compelling reasons. If any action of the authority results in denying legitimate expectation in furtherance a policy or in the public interest either by way of Government Order, a Rule or by way of Legislation and the same does not amount to abuse of power, then the person dented of legitimate expectation cannot have any grievance.

18. In this case, as rightly pointed by the learned Government Pleader the highest bidder has quoted an unfair price and therefore it should be held that in ordering reauction there is no abuse of power and the decision is taken in

Srikakulam District by the highest authority to sub-serve the public interest, namely, raising the revenue of local bodies. Hence, the submission based on legitimate expectation should be rejected.

19. The auction was conducted in accordance with Rules up to the stage of confirmation under Rule 19 read with Rule 27 of the Sand Rules. The petitioners therefore submit that in such an event the action of the respondents in not confirming the bid and reauctioning is violative of Rule 14(g) of the Sand Rules and therefore arbitrary. Rule 14(g) of the Sand Rules lays down that the nominated authority shall knock down the highest tender or bid whichever is higher for a particular reach and that the auctioning authority shall have the power to reject the highest tender or bid on substantial grounds to be recorded in writing at the time of auction accepting the next lower tenderer bid and that once the proceedings are concluded it shall not be reopened under any circumstances. If this were accepted, Rules 7, 19-A, 27 and 32 would be rendered useless. Rule 19 says that the successful bidder shall enter into an agreement within five days after the confirmation of sale. Rule 27 provides that for all the auction where upset price is Rs.1,00,000/- to Rs.5,00,000/- the Joint Collector is the confirming authority. In these cases the Joint Collector did not confirm the auction on the ground that the bid was unreasonable. Rules 7 and 32 of the Sand Rules provide that the District Committee shall have all powers in dealing with the matters. A combined reading of the Rules would show that the words ''auctioning authority'' used in Rule 14(g) also includes the confirming authority mentioned in Rule 27. The auction shall have to be treated as concluded only when the confirming authority confirms the auction. In these cases the auction is not yet completed and therefore the reliance on Rule 14(g) by the petitioners is misplaced.

20. Further, Rule 6 of the Sand Rules postulates that after ascertaining the value of material and proposal in accordance with Rule 4, the Gram Panchayat shall submit the material to the District Level Committee through the District Panchayat Officer to notify the sand bearing areas for public auction for fixing the upset price. Then the District Committee shall fix the upset price, which shall be nearly 70% of the market value of the material that can be obtained during the lease period. When the upset price is 70% of the market value of the sand that can be obtained the reasonable highest price, subject to other imponderables and exigencies, could be at least 100% value of the quantity that can be obtained during the lease period. In these cases, as per the figures furnished by the respondents, the highest bid did not even exceed more than 80% of the market value of the sand that can be obtained. Therefore, there is no arbitrariness in the decision taken by the first respondent to re-auction the readies. I may hasten to add that what could be the most reasonable highest bid is a matter to be decided by the District Committee and it is not within the scope of judicial review.

21. In State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , the

Supreme Court considered a similar question. In that case the Excise Commissioner of Government of Orissa conducted an auction of exclusive privilege of selling country liquor in retail for 1971-72. One Harmarayan became the highest bidder for eight shops in Cuttack District and the District Collector provisionally accepted the bid. The Government rejected the bid being of the view that inadequate prices had been offered, as a result of collusion between the bidders the Government ordered the Excise Commissioner to call for tenders in respect of those shops. After receiving fresh tenders, the Government accepted the tender in respect of one shop and rejected other tenders as the Government was of the opinion that the price offered was inadequate. The remaining seven shops were, therefore, sold by negotiating with some of the tenderers, which resulted in fetching the price, which was substantially more than the bid offered earlier. There were number of such instances for the year 1971-72. The highest bidders in the auction filed writ petitions in the High Court of Orissa, which allowed the writ petitions holding that the Government had no power to refuse the confirmed bids of highest bidders except on good grounds, that absolute power conferred on the Government to confirm or reject the highest bids is unguided power violating Articles 14 and 19(1)(g) of the Constitution and that mandatory considerations were irrelevant for deciding the question whether the highest bid should be confirmed or not. Aggrieved by the judgment of Orissa High Court, the State of Orissa carried the matter to Supreme Court.

22. Relying on the provisions of Sections 22 and 29 of Bihar and Orissa Excise Act, 1915, the Supreme Court upheld the Government Order dated 6-1-1971 directing the re-auction of right of exclusive privilege to sell liquor. Clause 6(i) provided that no sale shall be deemed to be final unless confirmed by the State, who shall be at liberty to accept or reject any bid without assigning any reasons therefor. The Supreme Court further held that without challenging the provisions of Section 29 of the Excise Act it is not possible for the bidders to challenge the clause in the Government Order. While rejecting the challenge on the ground of arbitrariness the Supreme Court held as under :

"The fact that the price fetched by the sale of country liquor is excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e., the Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power."

23. In State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, , in the context of an auction of forest lots, the Hon''ble Supreme Court held as under :

" ..... the Government had the right, for good and sufficient reason, we may say not to accept the highest bid but even to prefer a tenderer other than the highest bidder. The High Court was clearly in error in holding that the Government could not refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition No.10 does not so restrict the power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids which may impel the Government not to accept the highest bid."

24. The Supreme Court further held that if the Government has power to accept or not to accept the highest bid, it has also power to change or revise the policy subsequent to provisional acceptance, but before final acceptance. In my considered opinion these two authorities also support the view that the highest bidder till there is a concluded contract, cannot be presumed to have any right and therefore there is no necessity to issue notice to the petitioners. To satisfy the doctrine of fairness the Joint Collector sent communication on 31-5-2000 informing that the District Committee has decided to re-auction the sand quarries.

25. For the above reasons, the writ petitions are devoid of any merits and accordingly they are dismissed without costs.

