

(2001) 12 DEL CK 0105
In the Delhi High Court
Case No : LPA 621 of 2001

Haresh Kumar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 352, 357, 427, 504, 506(2)

Citation : (2002) 96 DLT 28

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : M.M. Sudan, for the Appellant; Ujjawaal Bannerjee, H.K. Puri, P.K. Bhardwaj and R.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This appeal is directed against a judgment and order dated 31-10-01 passed by a learned single Judge of this Court whereby the writ petition filed by eh appellant herein praying for the following reliefs was dismissed:

(a) Issue a writ or writs including writ of certiorari quashing illegal, arbitrary and malafide allotment of petrol pump in favor of respondent No. 4.

(b) Declare that the respondent No. 4 is not eligible to participate in auction as per terms and conditions of advertisement.

(c) Declare that the acceptance of the alternative site at village Neori on Baskhari to Autraulia Azamgarh High way by the respondent is in violation of terms and conditions of auction and the advertisement for the auction and also the orders of this Court.

2. A writ petition in the nature of public interest litigation was filed questioning allotment of retail outlet/petrol pump at Padampur Crossing, on Budhanpur Kamaria, Distt Faizabad to one Smt Bimla Mishra. It is not in dispute that the

grant of retail outlet/petrol pump by the second respondent is covered by guidelines framed Therefore laying down terms and conditions of auction.

3. The notification provided for a schedule where the retail outlet is to be established. A PIL was filed which was marked as CWP 4003/94 and by a judgment and order dated 29.8.1997 the petrol pump allotted by the Minister under his discretionary quota was directed to be cancelled. The said decision is reported in Centre for Public Interest Litigation Vs. Union of India and Others, .

4. In 1997, a petrol pump was allotted to Ms Bimla Mishra. The said allotment was also cancelled. Thereafter the respondent had issued an advertisement for holding a public auction of the said petrol pump. The appellant herein applied therefore. The 4th respondent also applied for the said petrol pump together with other candidates. The bid of the fourth respondent was accepted. Thereafter a writ petition was filed on the ground that against 4th respondent several charges were filed and thus he was disentitled from participating in the auction. The terms and conditions of grant of outlet do not contain any stipulation debarring a person from participating in the bidding process. The eligibility criteria had been made a part of the advertisement, which, inter alia provided that the bidder should not have either been convicted or charged by the court for any criminal offence involving moral turpitude/economic offence (other than freedom struggle). It is alleged that charge sheet was issued against fourth respondent and a notice under Goonda Act had also been issued. The said charge sheet is in the following terms:

"First: That on 19.9.96 at about 7.00 a.m. due to enmity/dispute over land in village Gopalpur Majra, Sarai Hankar, P.S. Rajesultanpur Distt Ambedkar Nagar you damaged and destroyed the paddy crop sown by Avandhu the complainant of the case by driving tractor and allowing animals to crush the crop as a result he suffered heavy loss and the said act is offence punishable u/s 427 IPC and the same is cognizable by this Court.

Second: That on the above said place and date and time, you in furtherance of your common object abused the complainant of the case and insulted him which is offence punishable u/s 504 of IPC and is cognizable by this court.

Third: that on the above said date and time and place you to fulfill your common object made the complainant of the case to run to save the life by using criminal force which act is punishable u/s 352 IPC and the same is cognizable by this Court.

Fourth: That on the above stated date time and place you in furtherance of your common object threatened the complainant of the case to kill him which is offence punishable u/s 506(2) of IPC and the same is cognizable by this Court."

Notice issued against the fourth respondent states:

(a) Accused Suresh Singh son of Shri Hari Mohan Singh r/o Kamhariya, P.S. Raje

Sultanpur Distt Ambedkar Nagar is a Goonda and is habitual of committing offence punishable under Chapter 16, 17 and 22 of the IPC.

(b) His activities and actions create the risk of life and property of people of the area of the police station Raje Sultanpur and areas of nearby Police stations.

(c) Due to risk to their lives, people do not dare to give evidence against him.

And generally and mainly the following are the charges against him with regard to (a) (b) and (c) above:-

FIR No. 115/82, 135/83, 132/88, 91/89, 90/89, 137/92, 197/96, NCR 138/96, NCR 139/96 u/s 143/148/149/352/379/407/504/506"

5. Relating to the said charge sheet, learned counsel for the appellant would urge that the Single Judge has erred in dismissing the writ petition inasmuch as the charge sheet contains allegations which clearly demonstrate involvement of the fourth respondent in an offence involving moral turpitude. Strong reliance has been placed on Allahabad Bank and Another Vs. Deepak Kumar Bhola,

6. Learned counsel would contend that the fourth respondent had been allotted a petrol pump at a distance of 22 Kms by changing the rule of the game which is impermissible. In any event, counsel contended that non-disclosure of the said charge-sheet by the 4th respondent amounts to practicing fraud which would disentitle him from the grant of dealership by the 2nd respondent. Learned counsel for the 4th respondent would submit that this writ petition was not maintainable.

7. The writ petitioner appears to be the brother-in-law of the previous allottee and despite cancellation of his allotment he is still running the petrol pump. It was further submitted that this writ petition should not have been entertained at the instance of a person who could not successfully compete in the bid.

8. The only question which arises for consideration is as to whether any disclosure of the aforementioned charge sheet and the notice would amount to suppression of material facts disentitling the 4th respondent from taking part in the auction.

9. Moral turpitude has been defined in Black's Law Dictionary as follows:

"Moral turpitude. The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general contrary to accepted and customary rule of right and duty between man and man. Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offences as distinguished from others. The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.

10. In Allahabad Bank and Another Vs. Deepak Kumar Bhola, , while considering

a service matter the Apex Court observed:

"8. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

9. This Court in Pawan Kumar Vs. State of Haryana and another, , dealt with the question as to what is the meaning of the expression "moral turpitude" and it was observed as follows:

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity"

This expression has been more elaborately explained in Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, where it was observed as follows:

"The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If Therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

11. Applying the aforesaid test, the question which has to be posted and answered it as to whether the 4th respondent is guilty of suppression of material facts and/or the charge-sheets filed in criminal case No. 737/97 disclose an offence involving "moral turpitude". The fourth respondent was charged u/s 427/357 IPC. The charge as disclosed in the charge-sheet against the 4th respondent was that out of enmity or dispute over a land he destroyed the paddy by driving a tractor as a result of which the complainant suffered loss. Having regard to the fact that the said offence arose out of a land dispute, it did not involve "moral Turpitude".

So far as notice dated 30.9.96 is concerned, the same was issued u/s 3 of the U.P. Goonda Control Act, 1970.

12. It has been stated at the bar that the fourth respondent has been acquitted in the said criminal case. So far as the notice purported to have issued u/s 3 of the U.P. Goonda Control Act, 1970 is concerned, the same is merely a notice. It

may be that several FIRs were lodged against the 4th respondent but the details whereof have not been disclosed. Nothing has been pointed out to show that the allegations made in the said FIRs contain allegation of commission of any offence involving "moral turpitude".

A notice issued u/s 3 of the UP Goonda Control Act, 1970 was not required to be disclosed by the 4th respondent in terms of the aforesaid detail. A citizen of India has a right to carry on business. Such a right can be curtailed only in accordance with law. Any condition imposed restricting the right of a person from carrying on business must be strictly construed. In terms of the aforesaid advertisement, a person bidding for allotment of an outlet was only liable to disclose that he was charged, sheeted or convicted by any Court for an offence involving moral turpitude. The fourth respondent admittedly has not so been convicted of any offence. Further no action has been taken pursuant to the notice. We are therefore of the opinion that issuance of the charge-sheet and notice did not disentitle the 4th respondent from participating in the bid.

13. We may note in this connection that this Court in *Centre for Public Interest Litigation Vs. Union of India and Others*, has held:

"17.....The personal property can be given away at one's whim and fancy. That cannot be the standard while parting with the property of the others, namely the Nation. We may note that most of these petrol pumps particularly in big cities like Delhi, Bombay, Bangalore, Calcutta and Madras are worth huge amounts if put to auction. If a person has to acquire a petrol pump in a city like Delhi he would have to spend lakhs of rupees. We are not suggesting that ignoring these financial aspects or loss of revenue which may result on grant of discretionary allotment, the government cannot make allotment for the benefit of certain persons or class of persons to carry out its welfare objects. Such allotments, however, have to be made on rational basis and on consideration of relevant factors whether there exists or not any written guidelines. If there are no written guidelines governing such discretionary allotments, the yardstick has to be reasonableness and fairness of action. If the procedure is not laid down it only means a reasonable and just procedure from the view point of a reasonable average man. This has to be the standard while considering the exercise of discretionary power of the Government in the matter of grant of allotments concerning the public property. Non-adherence to these principles has necessarily to result in quashing of impugned action. We are unable to accept the plea urged by some counsel equating these allotments with that of favor for a bed in a Government hospital or a railway ticket or a domestic gas connection or alike."

So far as second contention of the appellant is concerned, it appears that in the counter affidavit, it has been stated:

"It is denied that the respondent No. 4 has not been in a position to provide for any land in the above noted village in the close proximity of existing Petrol Pump

and has offered the land at another place at Neori on Buskhari to Atraulis, Asamgarh highway which is at a different route, as alleged. As a matter of fact the answering respondent who is having sufficient land at the same place where the Petrol Pump of Smt Bimla Mishra exists but in compliance of the decision of the Oil Corporation, keeping in view the need of Public and the facts and circumstances the answering respondent purchased land at Neori which is approximately 20-22 kilo-meters from the Petrol pump of Smt Bimla Mishra."

14. Even a public interest litigation cannot be entertained when a policy decision had been taken and the same had been executed. The Apex Court in *Narmada Bachao Andolan Vs. Union of India and Others*, has clearly laid down the said dicta even in a case where public interest was involved. So far as the cites of the petrol pump is concerned, the same is a matter between the respondent No. 2 and respondent No. 4. The Court will have no say in this regard. In *Centre for Public Interest Litigation v. UOI (1999) I Delhi*, Y.K. Sabharwal, J. (as his Lordship then was) has held:

"There is no doubt that the government has freedom of contract and is allowed a fair play in the joints but its decision has to be free from arbitrariness and not affected by bias or actuated by malafides and if it is so, the court is duty bound to quash the same despite the fact that it relates to matter of contract and irrespective of a competitor having not challenged it. If a contract is result of arbitrariness, bias or malafides resulting in distribution of State largesse to individuals the court will not hesitate in quashing it when such irregularities are brought to its notice by a public spirited person by filing a public interest litigation or in ordering an independent enquiry or investigation if strong case for issue of such directions is made out. The Court would not, however act on mere suspicion and surmise of the petitioner. In public interest litigation relating to grant of a contract by the Government, a really strong case will have to be shown by the petitioner alleging corruption and bribe and then only the court will exercise jurisdiction in clear and rare cases and not in cases where reasonable plausible Explanation exists for grant of contract. The Court will not act as a super auditor and take the Govt to task even if Govt has faltered so long as it has acted fairly. The Govt is allowed certain amount of flexibility in such matters and its decision would be quashed only by applying *Wednesbury* principle that the decision is so unreasonable that no sensible person would have arrived at it. While deciding such a case the court would of course keep in view, as one of the factors of a competitor having not challenged the award of contract. It is different matter that when a public interest writ petition in such a matter of contract is filed the court would be more careful in examining the matter so as to ward off the possibility of a competitor having set up the petitioner. It has also to be borne in mind that an investor in particular a foreign investor should not be entangled in avoidable litigation as foreign investment is one of the important aspect of open economy."

15. It is not in dispute that the matter had been thoroughly enquired into and

location of the plots where petrol pump was to be situated had been held to be a proper place by the 2nd respondent and as such the said decision cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It further appears that the 4th respondent not only participated in the auction, he was the highest bidder. He deposited ten percent of the bid amount immediately after the auction was held and on 31.5.1999 deposited the entire balance amount. He completed the requisite formalities on 28.2.2000 where after a dealership of the retail outlet was allotted to him after due verification and all necessary enquiries. He was also granted NOC by the District Magistrate, Ambedkar Nagar upon making a due enquiry and upon completion of all necessary requisite formalities therefore.

The 4th respondent also obtained NOC from the District Collector on 1.3.2000 and from Joint Chief Explosive Controller on 28.3.2000 and Diesel Selling license for the said purpose was granted to 4th respondent on 18.7.2000.

16. From a perusal of the counter-affidavit filed on behalf of the said respondent it is evident that he has completed all the formalities. In a situation of this nature we are of the opinion that having regard to the fact that all the steps for grant of allotment of the petrol pump were complete before filing of the writ petition. Thus even on the ground of delay and laches on the part of the appellant herein this Court should decline to exercise its jurisdiction under Article 226 of the Constitution. There is no merit in the appeal. It is accordingly dismissed.