
(2008) 07 AHC CK 0153

In the Allahabad High Court

Case No : CMI Miscellaneous Writ Petition No. 30930 of 2008

Hazi Bahar Ahmad

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Citation : (2008) 07 AHC CK 0153

Hon'ble Judges : S.P.Mehrotra, J and Vineet Saran, J

Final Decision : Dismissed

Judgement

1. Heard Sri H.N. Singh, learned Counsel for the petitioner, and Sri C.K. Parikh, learned Counsel for Nagar Palika Parishad, Saharanpur, and the learned Counsel for the respondent No. 4.

2. The petitioner has filed the present Writ Petition, inter alia, praying for quashing the order dated 6.2.2008 and the order dated 11/15.4.2008 passed by the Executive Officer, Nagar Palika Parishad, Saharanpur, copies whereof have been filed as Annexures. 10 and 12, respectively to the Writ Petition.

3. It is averred in the Writ Petition that Nagar Palika Parishad, Saharanpur invited bids for the collection of fee from Animal Market, Kamela Road situated near the Slaughter House in Saharanpur for the year 200708. The petitioner participated in the said bid, and his bid for a sum of Rs. 35,84,000.00, being highest, was accepted by the Executive Officer, Nagar Palika Parishad, Saharanpur.

4. It is, further, averred in the Writ Petition that the petitioner paid a sum of Rs. 7,50,000, as earnest money on 19.3.2007 and further a sum of Rs. 15,00,000.00

Q was deposited as the first instalment, and that thus, a total sum of Rs. 22,50,000.00 was deposited by the petitioner.

5. By the order dated 6.2.2008, the petitioner has been called upon to pay the balance amount of bid money alongwith stamp duty. By the order dated 11/15.4.2008, the petitioner has again been called upon to pay the balance amount

of bid money.

. 6. It is, further, averred in the Writ Petition that in the year 1993, both the

D Slaughter House as well as the Animal Market were shifted from the locality Lohani Sarai Dhola Khal to Kamela Road, Saharanpur. On the objection raised by the Pollution Control Board, U.P, the Slaughter House was closed with effect from 21.2.2005. On 4.9.2006, the MemberSecretary, U.P.Pollution Control Board passed an order suspending the Closure Order dated 21.2.2005 on certain conditions which were to be complied with by the Nagar Palika Parishad, Saharanpur. Permission was granted by the U.P. Pollution Control Board, Saharanpur, for opening of the Slaughter House with effect from 4.9.2006 for a period of six months only which came to an end on 4.3.2007.

7. It is, further, averred that the Slaughter House continued to run till 10.8.2007, when it was again closed by the District Magistrate, Saharanpur in view of the Closure Order of the U.P. Pollution Control Board dated 21.2.2005.

8. It is, further, averred that despite closure of the Slaughter House on 10.8.2007 and despite the fact that the Animal Market could not run, the Executive Officer issued the said order dated 6.2.2008 Annexure 10 to the Writ Petition) by which the petitioner was required to deposit the balance amount of bid money and the amount of stamp duty.

9. Thereupon, the petitioner filed a Writ Petition before this Court being Civil Misc. Writ Petition No. 13103 of 2008. By the order dated 10.3.2008, the said Writ Petition was decided with the direction to the Executive Officer, Nagar Palika Parishad, Saharanpur to decide the representation of the petitioner.

10. Pursuant to the said order dated 10.3.2008, the representation of the petitioner has been decided by the Executive Officer, Nagar Palika Parishad, Saharanpur by the order dated 11/15.4.2008 (Annexure 12 to the Writ Petition).

11. In the said order dated 11/15.4.2008, it has, inter alia, been recorded that the Animal Market was an independent unit and it had no legal connection with the Slaughter House, and therefore, the Animal Market had nothing to do with the closure of the Slaughter House.

12. Sri H.N. Singh, learned Counsel for the petitioner submits that the Animal Market as well as the Slaughter House were shifted to Kamela Road in the year 1993, and both were closely connected. It is further submitted that the Nagar Palika Parishad was bound to disclose the fact that the Slaughter House would

" stop functioning with effect from 4.3.2007, as the permission granted by the U.P. Pollution Control Board was up to that period.

13. Sri C.K. Parikh, learned Counsel for the Nagar Palika Parishad, Saharanpur submits that the petitioner was fully aware about the entire facts, and was having full knowledge of all the aspects before submission of his bid. It is further submitted that the permission was in respect of the Animal Market which was an

independent contract, and it had nothing to do with the business of running of the Slaughter House or closure of or prohibition on the running of the Slaughter House. It is pointed out by Sri C.K. Parikh, learned Counsel for the Nagar Palika Parishad, Saharanpur that in Condition No. 13 in the tender which has been mentioned in the order dated 11/15.4.2008 (Annexure 12 to the Writ Petition), it has been clearly stipulated that the contractor would not be entitled to any relief in case of any restriction on or closure of the Slaughter House. In the circumstances, it is submitted, the petitioner is liable to pay the entire amount under the contract entered into for the year 200708 in respect of the Animal Market.

14. Having regard to the facts and circumstances of the case and having considered the submissions made by the learned Counsel for the parties, w.e are of the opinion that the controversyinvolved in the present Writ Petition is in connection with and arising out of a contract, and the controversy is basically factual in nature, requiring leading of evidence. Such controversy, in our view, cannot appropriately be decided in a Writ Petition.

15. The Writ Petition is, therefore, liable to be dismissed. The Writ Petition is, accordingly, dismissed.

16. This order will, however, not come in the way of the petitioner seeking appropriate remedies in appropriateforums.