
(1992) 09 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3208, 3412 and 3949 of 1992

H.U. Construction Company and Another	APPELLANT
Vs	
The State of Raj. and Others	RESPONDENT

Date of Decision : 07-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 13, 14, 19, 21

Citation : (1992) 2 RLW 209 : (1993) 1 WLC 280 : (1992) 2 WLN 275

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Judgement

Jasraj Chopra, J.—These three writ petitions raise identical questions of law and facts and, therefore, they were heard together and are being disposed of by a common order/judgment.

2. The facts necessary to be noticed for the disposal of these three writ petitions briefly stated are as follows:

H.U. Construction Co'S Case:

3. This writ petition was filed on 24.6.1992. In this case, Shri Kesharam, petitioner of S.B. Civil Writ petition No. 3949 of 1992 has also filed an application to become a party to the writ petition and he has been impleaded as respondent No. 5.

4. The case of the petitioner is that he came to know about the auction of royalty collection contract for Sand Stones excavated in Tehsil Jodhpur on 19.6.1992 at 11.30 A.M. Thereafter, one of the partner of the petitioner firm Shri Idu Khan approached respondent No. 2 and he was informed that a notification about the impugned auction was notified in local News-Paper Rajasthan Patrika on 4.6.1992. Later, he offered Rs. 10,000/- in cash to respondent No. 2 but that was not taken.

5. According to the petitioner, this auction is against the provisions of Rule 34(a) and (b) of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as "the Rules"). The demand of earnest money of Rs. 5 lakhs is also against the provisions of Rule 34(a) and (b) of the Rules. He has submitted that the auction was conducted on the roof of the Office of the Superintending Engineer (Mines) and the general public including the petitioner was not permitted to enter the auction place. He has further submitted that he came to know that the respondents have joined hands with the proposed bidders, who have formed a group and it was because of this that the bid was knocked down at 2.56 Crores of Rupees whereas the respondents have fixed the target of royalty collection for the year 1992-93 of Rs. 2.73 Crores. According to the petitioner, the impugned auction will result in loss of the revenue of the State Govt. to the tune of Rs. 1.5 crores. As per him, the impugned auction by the respondents is violative of Articles 13, 14, 19 and 21 of the Constitution; the demand of Rs. 5 lakhs as earnest money was also against the provisions of Rule 34(d) of the Rules and the auction has not been taken place at a public place and, therefore, the impugned auction is illegal and deserves to be set aside.

6. A reply to the writ petition has been filed on behalf of the respondents wherein it has been contended that as the final bid was knocked down in favour of Surajpal Singh & Party and they have deposited Rs. 53 lakhs against the installment of the auction and, therefore, a right has got vested in them. It was further submitted that as Surajpal Singh & Party have not been impleaded as parties to this writ petition, this writ petition suffers from non-joinder of necessary parties and therefore, it should be dismissed on this ground alone.

7. It was further submitted that Shri B.C. Parekh and Akshey Parekh Advocates filed a writ petition before this Court bearing No. S.B. Civil Writ Petition No. 3117 of 1992 Salex Office System Co. v. State of Raj. but that writ petition was got dismissed and that fact has not been mentioned in this writ petition and, therefore, material facts have been suppressed by the lawyers of the petitioner. It was also submitted that these two lawyers also filed a Civil Suit on behalf of one Shri Hanif last year and in that suit, an application for temporary injunction was filed and that was dismissed. Thereafter, they availed their remedy before the District Consumer Protection Forum on that very day on behalf of one Saddam Hussain and obtained an ex-parte stay order, which was vacated in appeal by the State Forum for Consumer Protection, Jaipur. This year also, the advertisement notified for the auction for royalty collection was challenged by filing a writ petition on behalf of Salex Office System Company, Delhi (S.B. Civil Writ Petition No. 3117 of 1992 and ultimately that writ petition was got dismissed as withdrawn on 19.6.1992. It was, therefore, contended that as these facts have been suppressed, this writ petition deserves to be dismissed.

8. It was submitted that the notification for the auction royalty collection contract for sand-stones of Jodhpur region was initially published in the Official Gazette dated 8.4.1992 and thereafter, it was published in Rajasthan Patrika dated

4.6.1992 and Jalte Deep dated 10.6.1992. In addition to it, it was also published in the Hindustan Times, Jan Satta (Hindi), Navbharat Times (Hindi), Dainik Navjyoti (Hindi) and Hind Jayte Hind. Thus, a wide publicity was given to the auction notice and the petitioner-firm ought to have known about the auction much before 19.6.1992 and, therefore, it was vehemently denied that the petitioner-firm came to know about the auction on 19.6.1992 at 11.30 AM.

9. According to the respondents, the petitioner never approached the office of the Mining Engineer Jodhpur and never offered a sum of Rs. 10,000/- to them. The auction place being a public place, every body was allowed to join and participate in the auction proceedings. The provisions of Rule 34 of the Rules have been fully complied with and, therefore, there is nothing wrong in the auction proceedings. It was submitted that the petitioner has not made it clear that who are the persons or the groups related to the Chief Minister of Rajasthan and favoured by the respondents. He has levelled uncalled for and baseless allegations against the Chief Minister of Rajasthan, who has nothing to do with the auction proceedings.

10. It was contended that the notification issued by the respondent No. 2 clearly mentioned the amount of royalty received in the previous year and the authorities are restrained from accepting the bid less than it. The amount of royalty collection which was received in the previous year forms the reserve price. The royalty collection in the previous year was Rs. 2.38 lakhs and, therefore, the earnest money was demanded as Rs. 5 lakhs. Thus, the respondents were perfectly justified in demanding the earnest money amounting to Rs. 5 lakhs. It was submitted that the target for the year 1992-93 was fixed at Rs. 2.73 crores and it is also true that the highest bid was for Rs. 2.56 crores but that was not the result of any collusion between the respondents and the bidders. If the petitioner really intended to take a contract for royalty collection for Rs. 4 crores, he was free to participate in the open auction by depositing Rs. 5 lakhs as earnest money. A highest bidder is required to deposit 12.5% of the amount of highest bid as security and advance and if this is calculated on the whole bid of Rs. 4 Crores, the security amount and the advance one month's instalment comes to Rs. 83,33,333/-. When the petitioner has not even deposited Rs. 5 lakhs, how could he deposit this amount.

11. According to the respondents, a copy of the notification was sent to the Office of the Municipal Council, Jodhpur to be affixed on the notice board for publication and in fact, it was affixed on the notice board of the Municipal Council, Jodhpur. The copies of the notifications were also sent to all the Panchayats and Tehsil Head Quarters of Jodhpur Tehsil for publication and it was ascertained that the notices were in fact published in Panchayat Offices. It was submitted that if this Court considers the petitioner's non participation and holding of re-auction to be unjust then the petitioner be pinned down with a condition that he will deposit 12.5% of Rs. 4 crores as security plus one month's advance instalment with the Mining Engineer or to deposit the above amount in

the Court before he is allowed to participate in the re-auction proceedings.

12. A rejoinder has been filed on behalf of the petitioner, in which it has been submitted that the reply is not in accordance with the Rules. It has not been properly verified and, therefore, it should not be read.

13. In this case, an application was filed by Ravindera Singh & Party for becoming a party to the proceedings. That application was allowed. Amended cause title was filed. Applications were also filed on behalf of Jafarkhan and Rameshchandra Gupta for becoming parties to the writ petition and those applications were also allowed, on this condition that they will deposit Rs. 5 lakhs each as earnest money within a period of one week from the date of the order, which was dated 14.7.1992. The petitioner also showed his willingness to give a bid of Rs. 4 crores and he too was directed to deposit a sum of Rs. 5 lakhs as earnest money within a period of one month from the date of the order i.e. 14.7.1992. Neither the petitioner nor the applicants Jafarkhan and Rameshchandra Gupta have deposited that amount and, therefore, it was made clear that they will be heard only as regards the validity of the auction proceedings and they will not be allowed to participate in the re-auction, if it is so ordered.

Facts of Rajasthan ministerial services Association Case:

14. The case of the petitioner is that it is an Association of the Ministerial Staff of the various Departments of the State of Rajasthan and is affiliated to Rajasthan Rajya Sanyukt Karamchari Mahasang, which is a duly recognised Union. The District Unit of the petitioner-Association is particularly representing the Ministerial Staff employed in the Mining Department at Jodhpur and is espousing their cause because they are the members of the petitioner-Association. It has been submitted that it is a public interest litigation. It has been made clear that this writ petition has been filed on behalf of the Narkedars of the Mining Department, who are responsible for the collection of the royalty.

15. It was contended that in a democracy governed by the rule of law, the executive Government or any of its Officers should not possess arbitrary power over the interests of the individuals. Every action of the Govt. must be informed with reason and should be free from arbitrariness. The auction which was knocked down in favour of a particular party has not yet been confirmed and, therefore, it was claimed that the Govt. cannot withhold the largesses in its arbitrary discretion or at its sweet will. It cannot give any contract of royalty without following due procedure of law. It was claimed on behalf of the petitioner- Association that the Narkedars of the Mining Department have collected Rs. 2.37 Crores in the year 1991-92 and for the year 1992-93, the target was fixed at Rs. 2.73 Crores but still the auction has been knocked down at Rs. 2.56 Crores because the Officers who conducted auction were hand in gloves with certain persons. The auction has been held on the roof of the Office of the Mining Engineer, Jodhpur, where a few persons participated. According to

the petitioner-Association, even notices were issued to certain persons only, inviting them to participate in the auction and to the petitioner's knowledge, only 30 notices were issued and the interest of the petitioner-Association was completely ignored.

16. It was submitted that the petitioner-Association is ready to collect at least Rs. 3 crores or more whereas the offer received by the respondents is only 2.56 Crores of Rupees. According to the petitioner-Association, during the last 3 month i.e. from March, 1992 to June 1992, the Members of the petitioner-Association have collected Rs.66 lakhs as royalty and this amount proportionately corresponds to the target amount of Rs. 2.73 Crores. It may be clarified here and now that the period from March 1992 to June 1992 covered four months and if the royalty collected during this period is multiplied by three, the figures come to Rs. 1.98 Crores and, therefore, that conforms to the target amount of Rs. 2.73 Crores., it appears to be a wrong arithmetical calculation.

17. The contention of the petitioner is that the word "auction" connotes wide publicity and every person should know that such a contract shall be auctioned. There should be largest participation in such matters. For public auction, the procedure is laid down in Rule 34(a) and (b) of the Rules. According to the petitioner, notice for auction has not been published in any news paper 30 days before the date of auction and, therefore, the auction is hit by the provisions of Rule 34(a) and (b) of the Rules.

18. It was also submitted by the petitioner-Association that in addition to the work of royalty collection, Nakedars of the Mining Department also work for collection of sales tax, for which they are not charging a single penny. Besides this, there is a practice that tear weight of the private vehicles is being conducted by the machines of respondent-Department and through this means, lakhs of rupees are being collected and deposited in the Government Treasury, and that comes to Rs. 10 to 15 lakhs. Thus, the policy of the Govt. to auction royalty collection work will put the State Govt. to a huge loss running in crores of Rupees. The royalty collecting Staff also prepares Panchnamas under Rule 68 of the Rules and if the royalty collection work is auctioned and given to a private party, there will be no Panchanamas and thereby the Govt. will be put to huge losses on that count also.

19. The petitioner-Association has offered that they are ready to collect Rs. 3 crores or more and, therefore, the respondents should favour their own fraternity i.e. their own employees who are consistently vigilant about their honesty and working and, therefore, throwing of contract in the lap of a Private Person clearly demonstrates that the auction authorities have completely lost sight of the possible loss of revenue which otherwise would have been acquired by wide publication and making a legal auction. The amount for which it was knocked down had no nexus between the figure which was worked out by the Govt. i.e. Rs. 2.73 Crores and that under the established practice of the auction-sale, reserve price is fixed and the bid starts from that reserve price. In other words, it

was contended that the auction bid should have been started at the target which was fixed by the Department rather than the collection of the last year and, therefore, the entire action of the respondents is arbitrary and unreasonable and as such, the auction bid should not be allowed to be confirmed.

20. It was alleged that the persons who participated in the auction formed a pool in connivance with the respondent authorities and manipulated to get the auction concluded at 2.56 Crores of Rs. only. It was submitted that in the year 1991-92 the target fixed was Rs. 2.12 Crores but the amount collected by the members of the petitioner-Association was Rs. 2.37 Crores and, therefore, they have prayed that the auction-proceedings dated 19.6.1992 be quashed and set aside, and the respondents may be restrained to confirm the same. The respondents may further be directed to continue the present system of royalty collection through the members of the petitioners-Association and they be given a target, which the petitioner-Association offers to be Rs. 3 crores for the year 1992-93.

21. A reply to the writ petition was filed on behalf of the respondents. It was submitted that this is not a public interest litigation. It is personal litigation to safeguard the interest of Nakedars, who do not form any recognised Union and have no right to challenge the auction for collection of royalty held on 19.6.1992, because they are not aggrieved persons. In any way, the auction has not prejudiced them. Whether royalty should be collected through the Staff or the auction proceedings is an administrative policy decision matter and their lordships of the Supreme Court in a number of decisions have held that the Court should be slow in interfering with the administrative policies unless the action of the State Govt. is highly arbitrary or opposed to the public interest. It was submitted that for royalty collection, expenditure on the Staff comes to Rs. 23 Lakhs and, therefore, if the contract has been knocked down at Rs. 2.56 crores then the difference in the fixed target of Rs. 2.73 crores is nominal. There is no question of any collusion between the respondents and the auction bidders. It was also submitted that the auction proceedings were conducted under the supervision of one of the senior most Officer of the Department i.e. Addl. Director, Mines and Geology, Udaipur, who was specially deputed for this work. Besides this, the auction was also supervised by the Superintending Mining Engineer, who is overall Incharge of Jodhpur Circle. It is true that the auction was held on the roof of the Office of the Mining Engineer but it was accessible to all the persons interested in giving a bid in the auction and in fact, many persons assembled there to participate in auction or to watch the proceedings. It was submitted that in all 49 notices were issued to different persons to intimate them about the auction of the royalty collection contract. In addition to publicity through Gazette Notification, press publicity was also done and display of notices was made on the Notice Boards of Tehsil, Municipal Council, UIT. and various Govt. Departments viz., PHED, PWD, Irrigation and various Offices of the Department of Mines and Geology. Out of 49 persons, 15 persons are the existing royalty collection contractors of the Mining Department. The other Govt. Departments viz., PWD., Irrigation, Railway and UIT etc were also asked to

furnish the list of "A" Class Contractors, who may be interested in participating in the auction of royalty collection contract. Out of the list furnished by these departments, 32 persons were sent the copies of the said notification. Two persons, Shri Kalu Ram and Bachraj Bhati personally obtained the copies of the notification from the Office of the Mining Engineer. This was all done with an intention to make a wide publicity, attracting the persons of the various walks of life to the auction. Further, copies of the notifications were also displayed on the notice Boards of all A.M. Es., M.Es., S.M.Es. and Director Offices for giving wide publicity to the auction of the royalty collection contract.

22. In para 7 of the reply, it was submitted that for the year 1988-89, the target fixed was Rs. 1.97 crores and the actual collection was Rs. 1.81 crores. In the year 1989-90 and 1990-91 the targets fixed were for Rs. 2.09 and Rs. 2.15 Crores but the actual collection were Rs. 1.77 and 1.57 Crores respectively. In the financial year 1991-92, a collection of Rs. 1.59 Crores only was made during the period from April 1991 to December 1991. When the progress was reviewed and it was apprehended that the target will not be achieved, the Department paid special attention and arranged special checking of the departmental Nakas, as a consequence of which, a collection of Rs. 78 lakhs was ensured from January 1992 to March 1992. The average monthly collection for the first three quarters of the year 1991-92 was Rs. 17.44 laks per month only whereas the special efforts of the Department ensured average monthly collection of Rs. 26 lakhs during January 1992 to March 1992. Further special checking were organised from 6.6.1992 to 10.6.1992 and 9 Senior Officers of the Department were deputed for this purpose and therefore, the total collection during these 5 days came to Rs. 6,85,995/- i.e. Rs. 1.34 lakhs per day against the average collection of Rs. 89,491/- per day during the previous 9 days. Thus, it was claimed that the collection of royalty at the hands of departmental Nakedars has been conspicuously less than what could have been collected and this position is further supported by the fact that subsequent to 10th June, 1992 when the special team of 9 Officers was withdrawn, the royalty collection started showing conspicuous decline at the hands of the departmental Nakedars.

23. It was contended that the petitioner has given a misleading and wrong interpretation to the rule 34 of the Rules Rule 34(b) prescribes a period of 30 days for a notification to be published before the date of auction. It is not disputed that the notification was published on 8.4.1992 in Rajasthan Rajpatra well 30 days before the date of auction. The provisions contained in this sub-rule have been fully complied with. Rule 34(a) deals with the manner and way in which publicity is to be given to the auction proceedings. 30 days notice in a News Paper is not an essential condition precedent for holding an auction. It is a well settled legal position that the publication of a notification in Official Gazette is a valid publication. Thus, the provisions of Rule 34 of the Rules have been fully complied with.

24. According to the respondents, if the Department gives a royalty collection

contract to a Contractor, the Sales Tax Department will collect its own dues. It was submitted that the last year's collection of Rs. 2.37 crores included the weighing charges also and similarly, present year's highest bid of Rs. 2.56 Crores will also include the weighing charges. No Panchnamas have been received after 1990. Certain dales have been given when notices were published in different News Papers.

25. It was submitted that the petitioner association is unnecessarily poking its nose when it is not required to peep in. Although, the petitioner has given an offer of collection of 3 crores of rupees as royalty but if it fails to do so, what will be the fate of State revenue. The notification contains a condition that if any new mining area is opened, the Contractor will not be entitled to collect royalty for the stand-stones excavated from newly opened area. It was also submitted that as per practice, the collection of the last year is deemed to be reserve price for this year's auction bid and hence the last year's collection of Rs. 2.38 Crores was the reserve price, for this year's auction bid.

26. It was admitted that one representation against the auction bid was received, which was signed by one Shri Usman Gani and one other person. As that representation was wholly irrelevant and based on unfounded claims and allegations, it deserved no attention. According to the respondents, the provisions of Rule 34(a) and (b) of the Rules are directory in nature. They are not mandatory. According to the respondents, the petitioner has lost sight of the expenses that have to be incurred in the collection of royalty. The amount of Rs. 2.56 Crores cannot be considered as low because the expenses to be incurred on collection of royalty will be borne by the Contractor himself and not the Department. Keeping in these facts and circumstances of this case, the respondents have taken a policy decision regarding collection of royalty and therefore, that policy decision should not be lightly interfered with.

27. On behalf of the petitioner, an additional affidavit has been filed by Shri Ravindra Kumar Bohra, in which it was claimed that compliance of Rule 34(a) and (b) have not been made. Certain Nakas are covered by the Municipal Area but certain Nakes are outside the Municipal area, the list of those Nakes has been furnished alongwith additional affidavit.

28. One more additional affidavit was filed by Shri Ravindra Kumar Bohra, in which, it was submitted that the petitioner association is part of the recognised association, so much so, the Department has also accepted its recognition and has requested it vide letter dated 4.7.1992. to postpone the proposed action of going on joint leave. It was further submitted that even after 1990 panchnamas have been prepared and filed. A list of those panchnamas have been filed with this affidavit.

29. An additional affidavit has been filed by one Shri Khyali Ram Sharma, Mining Engineer, Jodhpur on behalf of the respondents. It was submitted that the auction notice was notified in the News-Papers and their cuttings have also been

filed alongwith an affidavit. It was further submitted that the auction proceedings were held at the appointed place, at the appointed time and the conditions were read over and were signed by the persons present. A photostat copy of the application of one Shri Rajandra Singh, who desired notice of auction has been submitted marked as Ex. Rule 13.

30. A rejoinder was filed on behalf of the petitioner, in which, it was submitted that the auction notices were not published in the News-Papers one month before the date of auction. The auction proceedings and the petitioner-Association is well within its right to make a prayer that this procedure which results in loss of revenue should not be adopted. It was submitted that there respondents have intentionally suppressed the target fixed for the year 1991-92 and have further suppressed this act that target was achieved. It was also submitted the inspite of Gazette Notification, people did not come to know of this notification and, therefore, they did not take part in the auction, According to the petitioner, in such a big auction, neither any Officer of District Administration nor any Officer of Accounts Wing was called for.

31. A reply to the rejoinder has also been filed in which it has been claimed that the Govt. policy cannot be ordered to be changed as the policy which has been adopted by the Govt. is neither arbitrary nor unreasonable. It was submitted that the rate of royalty was revised from 11.3.1991, which resulted in the increase of revenue for the year 1991-92. The rates prevailing prior to 11.3.1992 were Rs. 12.50 per tonne for Sandstone (Patti, Katla Ashlat) and Rs. 2.50 per tonne for masonry stone. These rates were revised as Rs. 20/- per tone for standstone (Patti Katla and Ashlat) and Rs. 3/- per tonne for masonary stone. Thus, the increase in rates of royalty of standstore was to the tune of 60% and in masonary stone, it was about to 20%. The everall effect on account of revised rates of royalty comes to more than 45%. Thus, the petitioner cannot claim any additional credit for the increase in amount of royalty collection during the year 1991-92. Thus, it was claimed that if Rs. 2.37 crores have been collected in the year 1991-92, that was because of the increase in rates, and other factors mentioned in the reply. It was also claimed that all the Nakas established for the collection of royalty are within Municipal limits of Jodhpur and notice for auction of royalty collection has been displayed on the notice Board of the Municipal Council Jodhpur as also on the Tehsil Head quarters.

32. It was further contended that the offer made by the petitioner-Association cannot be accepted because the State Govt. cannot enter into a contract with its own employees and if it is accepted, that would raise number of complication. The Nakedars presently posted at Jodhpur may be transferred, On administrative grounds, if any deficiency is found, they may be suspended or for any misconduct, they may be dismissed from Service and in such circumstances, how could they be pinned down for fulfilling the target for collection of the royalty, if such a contract is entered into between them and the Government.

Facts of Kesha Ram'S Case:

33. This writ petition raises almost similar points, which are raised in S.B. Civil Writ Petition No. 3208 of 1992, filed by H.U. Construction Company. In addition to that, the petitioner has given an offer that he is ready to give a bid of Rs. 3.25 Crores and if open bid is held, then the bid can be even more than Rs. 3.25 Crores.

34. No separate reply was filed to this writ petition. The reply filed in H.U. Construction Co.'s case was adopted in this writ petition also.

35. In this case also, Ravindra Singh & party were impleaded as respondents.

36. I have heard Mr. Moinudeen, Mr. M.D. Purohit, Mr. Anand Purohit, Mr. N.M. Lodha, the learned Counsel appearing for the petitioners, Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate for the respondents and Mr. P.C. Sharma for Ravindra Singh & Party. I have carefully gone through the record of the case.

37. The main point which crops up for consideration in these writ petitioners is whether wide publicity of the notification has not been made and that has resulted in non-compliance of the provisions of Rule 34(a) and (b) of the Rules and thereby, the auction proceedings deserve to be set aside.

38. The contention of the learned Counsel appearing for the petitioners is that the provisions of Rule 34(a) and (b) of the Rules are mandatory in nature because the word "shall" has been used. According to them, non-compliance of the provisions of Rule 34(a) and (b) of the Rules vitiates the auction proceedings. In this respect, Mr. N.M. Lodha has drawn my attention to a decision of their lordships of the Supreme Court in *Khub Chand v. State of Rajasthan* AIR 1967 SC 1074, wherein it has been held that though term "shall" is construed as "may" under certain circumstances, in its ordinary significance, the term is mandatory. The term "shall" shall be interpreted as mandatory unless such interpretation leads to some absurd or inconvenient consequence or be at variance with intent of legislature to be collected from other parts of the Act.

39. According to Mr. Lodha, the word "shall" has been used in Rule 34(a) and (b) of the Rules and, therefore, the provisions of Rule 34(a) and (b) of the Rules are mandatory.

40. Here, it will be useful to quote the provisions of Rule 34(a) and (b) of the Rules:

Rule 34, Procedure for auction. The following shall be the procedure for holding auction for mining leases under Rule 21 and for royalty collection contract under Rule 32:

(a) The auction shall be notified in the Rajasthan Gazette on the notice board of the Director's and Mining Engineer's or Assistant Mining Engineer's Office and at least in one news paper having wide circulation in the locality nearest to the area in question.

(b) The auction notification shall be published at least 30 days before the date of auction and shall mention the date of auction. A copy of such notification shall be sent to the Panchayat or the Municipal Board having jurisdiction over the area in question."

The question of the learned Counsel appearing for the petitioners is that provisions of sub.Rule (a) and (b) of Rule 34 of the Rules should be read together and the period of 30 days provided by sub. Rule (b) of Rule 34 equally applies to Sub-rule (a) of Rule 34 of the Rules which lay down that (a) the auction has to be notified in the Rajasthan Gazette; (b) on the notice board of the Director's and Mining Engineer's or Assistant Mining Engineer's Office; and (c) at least in one news paper having wide circulation in the locality nearest to the area in question. According to them, this should be done at least 30 days before the date of auction as provided by Rule 34(b) of the Rules.

41. This contention raised by the learned Counsel appearing for the petitioners has been seriously opposed by Mr. K.L. Jasmatiya, the learned Additional Advocate General cum Government Advocate. He has contended that Sub-rules (a) and (b) of Rule 34 of the Rules in their implication although they are parts of the same are independent to each other. Sub-Rule (a) of Rule 34 of the Rules provides that the auction has to be notified in the Rajasthan Gazette on the notice Boards of the Director's Mining Engineer's and Assistant Mining Engineer's Office and at least in one News Paper having wide circulation in the locality nearest to the area in question. It does not prescribe any time limit. It was not disputed by Mr. Jasmatiya that wide publicity should be given to the auction notice and this is what the respondents have done in this case.

42. It was next contended by Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate that Sub-rule (b) of Rule 34 of the Rules is totally independent to Sub-rule (a) of Rule 34 of the Rules. The period of 30 days provided by Sub-Rule (b) of Rule 34 relates to the auction notification and not to the auction notices or auction advertisements. As per him, Sub-rule (b) of Rule 34 of the Rules provides that the auction notification shall be published at least 30 days before the date of auction and shall mention the date of auction. A copy of such notification shall be sent to the Panchayat or the Municipal Board having jurisdiction over the area in question. Thus, he has submitted that a copy of such notification has to be sent to the Panchayat or the Municipal Board having jurisdiction over the area in question, which in this case has been done by the respondents. There is no requirement of law that auction has to be notified on the notice boards of the Panchayat or the Municipal Boards. What is required is that a copy of such notification has to be sent to the Panchayat or the Municipal Board having jurisdiction over the area in question, However, enough precautions were taken to notify the auction not only on the notice board of the Director's and Mining Engineer's or Assistant Mining Engineer's Offices but the auction was notified in number of news papers having wide circulation in the locality nearest to the area in question. It was further notified on the notice board of the

Municipal Council, Jodhpur and on the notice boards of Panchayat Head quarters as well as the Office of the PWD., PHED., Irrigation Department and UIT etc. The submission of Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate is that the auction is not required to be notified on the notice board of the Panchayat and the Municipal Board, as per Rule 34(b) of the Rules. What is required is that the auction notification shall be published at least 30 days before the date of auction and shall mention the date of auction and a copy of such notification shall be sent to the Panchayat or Municipal Board having jurisdiction over the area in question. It is nobody's case that the copy of auction notification has not been sent to the concerned Panchayat or Municipal Boards. What has been claimed is that the auction notices have not been notified on the notice boards of the Panchayats or the Municipal Boards and that is not the requirement of law.

43. I have considered the rival submission made at the bar and I am inclined to agree with the submission Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate that sub. Rules (a) and (b) of Rule 34 of the Rules are independent of each other. The requirement of Sub-Rule (b) of Rule 34 of the Rules is that the auction notification shall be published at least 30 days before the date of auction and shall mention the date of auction. In this case, it has not been disputed that the auction notification was published in the Rajasthan Gazette before 30 days of the date of auction. It was submitted by the respondents that the auction was notified in the Rajasthan Gazette on 8.4.1992 and this fact has not been disputed by the petitioners. Thus, it cannot be said that the auction notification was not published in Rajasthan Gazette at least 30 days before the date of auction. Sub-Rule (b) of Rule 34 of the Rules does not require the auction notification be notified on the notice board of the Panchayat or the Municipal Board having jurisdiction over the area in question. A lot of controversy has been raised as to whether the jurisdiction over the area in question is covered by the Municipal Board or it is covered by the area of nearby Panchayats but that controversy has no significance because it is nobody's case that the auction notification has not been sent to the Municipal Board or the Panchayat. Sub-Rule (a) of Rule 34 of the Rules provides that the auction shall be notified in the Rajasthan Gazette on the notice board of the Director's and Mining Engineer's or Assistant Mining Engineer's Office and at least in one News Paper having wide circulation in the locality nearest to the area in question. In doing so, no time limit has been prescribed. The time limit of 30 days has been prescribed for the publication of auction notification in the Rajasthan Gazette.

44. The word "Notification" came up for interpretation before a Division Bench of this Court in Bhikam Chand and Others Vs. The State and Others, wherein it has been observed:

The term "notification" has to be considered in the light of the statutory dictionary of words provided by the Rajasthan General Clauses Act and a Govt. order will, in law, become a notification when it fulfils the two requisite

conditions, namely; (i) its publication in the Gazette and (ii) its publication under proper authority. These condition can benfulfilled only when the notification is published and not when it is drafted and approved in the Secretariat hidden from public Gazette and when the date is put by some officer of Govt.

Section 32(48) of the General Classes Act, which defines "the term "Notification" reads as under:

32 (48) "notification" or "public notification" shall mean a notification published under proper authority in the Gazette.

This, to constitute a notification or a public notification as held by their lordships of the Division Bench, two conditions are essential: firstly the notification has to be published in the Gazette and secondly its publication has to be under proper authority. Thus, when the notification is published in the Rajasthan Gazette under proper authority, it becomes a notification.

45. In this case what was the requirement of Rule 34(b) of the Rules is that the auction notification shall be published at least 30 days before the dale of auction. This time limit of 30 days is not provided in Sub-Rule (a) of Rule 34 of the Rules. Admittedly, in this case, the auction notification has been published in the Gazette 30 days before the date of auction., and a copy of such notification has been sent to the Panchayatl or the Municipal Board having jurisdiction over the area in question. It has also not been disputed by the learned Counsel for the petitioners that the auction has been notified in the Rajasthan Gazette or on the notice boards of the Director's and Mining Engineer's or Assistant Mining Engineer's Offices and at least in one Newspaper having wide circulation in the locality nearest to the area in question. Mr. Jasmatiya has submitted that the auction has been notified not only in one news paper having wide circulation in the locality nearest to the area in question but it has also been notified in various news papers having wide circulation in the State as also the union. Not only that the auction was notified to 49 intending bidders whose names were supplied either by the Mining Department or by PWD, PHED, UIT and Irrigation Department etc. Thus, efforts were made to notify the auction on a very wide scale. Simply because only 49 persons participated in the auction, it cannot be said that there was any collusion between them and the Department. When the auction has been notified not only in local news papers but also in the news papers having wide circulation in the State, the respondents cannot be accused of not giving, it wide publisciy. Thus, there is is no violation of the provisions of Rule 34(a) and (b) may be held to be mandatory but they are independent each other. The time limit of 30 days for publication of a notification before the date of auction as provided by Rule 34(b) of the Rules cannot be read in Rule 34(a) of the Rules. Thus, to this extent, the contention of the learned Counsel appearing for the petitioners has no substance.

46. It was further contended by the learned Counsel appearing for the petitioner that the auction has not taken place at a public place. It cannot be held that

auction will become a public auction only when it is held in an open chowk. The Office of the Superintending Engineer (Mines) is a public place, which is accessible to every citizen and if the auction is held on the roof of a Govt. Office, which place has been notified in the Gazette Notification as also in the auction notices, it cannot be said that the auction has not taken place at a public place.

47. It was argued by Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate that Rs. 5 lakhs have been demanded as earnest money for giving a bid in the auction on the basis of the amended Rule 34(d) of the Rules. The last year's collection was Rs. 2.37 Crores and, therefore, the official bid was to start from Rs. 2.38 crores. It was contended by the learned Counsel for the petitioners that this bid has not been notified in the notification. The opening bid is not required to be notified in the Notification but the intending bidders must know that if Rs. 5 lakhs have been demanded as earnest money, at what amount, the bid will start. The bid need not start with the target fixed by the Department because sometimes, the target can be achieved and some times, it cannot be achieved and, therefore, it was most reasonable for the Department to start the bid at the collection of the previous year. The last year's collection was Rs. 2.37 Crores and the opening bid was started at Rs. 2.38 Crores and therefore, there was no illegality in starting the bid at Rs. 2.38 Crores.

48. In this case, on behalf of the respondents, a copy of the auction notice read at the time of the auction has been filed. It has been signed by number of persons and, therefore, it can safely be said that a number of persons were present at the time of auction and only those persons, who deposited Rs. 5 lakhs as earnest money took part in the auction and their bids have been recorded in Annexure-Rule 14. Thus, it cannot be said that the auction was a collusive affair.

49. While replying on a decision of their lordships of the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it was argued by Mr. Anand Purohit that where the Govt. is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Govt. cannot act arbitrarily at its sweet will like a private individual who may deal with any person as it pleases him but its action must be in conformity with standards or norms which are not arbitrary, irrational or irrelevant. In *Ramana's* case, tenders were invited for running a restaurant and two snack bars. The tender notice stated in clear terms that sealed tenders in the prescribed form are hereby invited from registered IInd Class Hoteliers having at least 5 years' experience for putting up and running a Hnd Class Restaurant and two Snack Bars at this Airport for a period of 3 years. In that context, it was held by their lordships of the Supreme Court that the authorities cannot accept tender of a person who does not fulfil the requisite qualification.

50. Mr. Anand Purohit has further drawn my attention to certain observations of their lordships of the Supreme Court contained in Para 10 of the judgment in *Ramana's* case (*supra*) wherein it has been observed;

This judicially evolved rule of administrative law is now firmly established and if I may add rightly so. He that takes the procedural sword shall perish with the sword.

...It Is indeed unthinkable that in a democracy governed by the rule of law, the executive Govt. or any of its Officers should possess arbitrary power over the Interests of the individual. Every action of an executive Govt. must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves the affectation of some right or denial of some privilege.

He then took me to para 12 of judgment, wherein it has been observed:

A democratic Govt. cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

It was contended by Mr. Purohit that the persons in whose favour, the bid has been knocked down have been informed personally though they did not belong to Jodhpur region. Actually, they belong to Jaipur or Sikar region. He has, therefore, contended that a democratic Govt. act arbitrarily and capriciously giving choice of persons with whom it will deal.

51. Mr. Purohit has also drawn my attention to a decision of their lordships of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, wherein their lordships of the Supreme Court have observed:

Although there are no positive words In the Statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

It was contended by Mr. Purohit that by giving the work of royalty collection to some Private Contractors, the employees of the Mining Department who have been employed to collect royalty will be affected and therefore, a right of hearing should have been provided to those employees.

52. Mr. N.M. Lodha has drawn my attention in this respect to an authority of their lordships of the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, wherein it has been observed:

It must follow as a necessary corollary that the Govt. cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to the public interest. The Govt., therefore, cannot for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive principle is sought to

be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property.

It was argued by Mr. N.M. Lodha that the Govt. cannot act in any manner which would benefit a private party at the cost of the State and such an action would be unreasonable and contrary to public interest. The Govt., therefore, cannot for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless there are other considerations which render it reasonable and in public interest to do so. Mr. Lodha has further drawn to the following observations of their lordships of the Supreme Court contained in paras 14 and 19 of the Judgment in M/S Kasturilal's case (supra):

There may be an infinite variety of considerations which may have to be taken into account by the Govt. in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Govt. in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest.

One basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Govt. is unreasonable or without public interest. But where it is so satisfied it would be the plainest duty of the Court under the Constitution to invalidate the Governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law.

Thus, it is clear that the Govt. action has to be reasonable and in public interest and that reasonableness and public interest has to be presumed. One who alleges otherwise has to prove it. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Govt. is unreasonable or is against public interest.

53. Let us examine whether the Govt. has acted arbitrarily, unreasonably or against public interest. In reply to the writ petition filed in S.B. Civil Writ Petition No. 3412 of 1992, the respondents have given the figures regarding targets fixed and the actual collections made for the years 1988-89, 1989-90, 1990-91 and 1991-92. It was submitted that in the years 1988-89, 1989-90 and 1990-91, the targets fixed were Rs. 1.97, 2.09 and 2.15 Crores respectively but the actual collection were Rs. 1.81, 1.77 and 1.57 Crores respectively. It is, therefore, clear

that in all these three years, the targets fixed by the Govt. were never achieved. It was submitted that in the financial year 1991- 92, from April, 91 to December, 1991, only a collection of Rs. 1.59 Crores was made. Our review of the progress of royalty collection, it was apprehended that the target fixed for the years will not be achieved. Therefore, special efforts were made by the Department in the next three months and as a consequence of which, the collection of Rs. 78 lakhs was ensured from January 1992 to March 1992. It was further submitted that in the year 1991-92, the royalty rates were increased to the over all tune of 45% and that has resulted in the higher collection. For the year 1991-92, the target fixed by the Govt. was Rs. 2.13 Crores whereas the actual collection was 2.37 Crores. Why this target was so achieved, explanation has been furnished in para 7 of the reply to the writ petition. Moreover, this target was achieved on account of special efforts and frequent special checkings of the departmental Nakas.

54. It was offered on behalf of the petitioner in S.B. Civil Writ Petition No. 3412 of 1992 that they will collect more than Rs. 3 Crores as royalty. When it was asked to Mr. Purohit as to what guarantee they could furnish that if the royalty collection falls short of the target offered by them, how they will reimburse the Govt. for the short-fall. It was submitted by Mr. Purohit that firstly that amount may be recovered from their salaries and secondly it was submitted that they offer that it may be recovered from their General Provident Fund amount. When it was finally asked to Mr. Purohit as to what figures he wants to offer on behalf of the petitioner for royalty collection. He gave out the figures of Rs. 3.30 Crores.

55. It was contended by Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate that firstly, the Govt. cannot enter into a contract with its own employees as that would not only be unethical but against the Rules. He has submitted that the Govt. servants are governed by the Rajasthan Service Rules and the Conduct Rules framed thereunder and according to those Rules, these employees of the Govt. cannot enter into any other contract with the Govt. except their contract of service. He has further submitted that this writ petition (S.B. Civil Writ Petition No. 3412 of 1992) has been filed on behalf of the Rajasthan Ministerial Services Association to safeguard the interest of the Nakedars working in the Mining Department. According to Mr. Jasmatiya, there are 43 regularly employed Nakedars and 24 work-charged Nakedars. Their salaries cannot be attached because that will require a decree and then Section 60 C.P.C. would come into play. The Govt. is obliged to pay salary to its employees for the work done by them and it cannot recover the amount of short-fall from their salaries. He has further submitted that the total deposit of G.P.F. amount of these 43 regularly employed Nakedars comes to Rs. 4 lakhs and 84 thousands and out of this amount, Rs. 23000/- have been withdrawn by them. The deposit of GPF amount by the work-charged employees is only Rs. 1.31 lakhs. Thus, the entire GPF deposits of these Nakedars comes to Rs. 5.95 lakhs. It is a very meager amount and hence, the undertaking given by the petitioner becomes meaningless. They are not ready to give any other security for making good the short-fall in collection of royalty by them. He has further submitted that

if a contract is given to these Nakedars, who are the employees of the Govt., that would be against their conduct Rules. If any misconduct is found, no Nakedar can be suspended and if an employee (Nakedar) is suspended or dismissed from service for his misconduct, he will be absolved from his responsibility as regards the recovery of short-fall in royalty collection. According to Mr. Jasmatiya, the amount of G.P.F. is not refundable to them before their retirement. They can only take loan from this amount but they cannot withdraw it and, therefore, the entire offer that has been furnished by the petitioner is meaningless and it turns to nothing.

56. It was next contended by Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate that the Rules provide that royalty can be collected either through the agency of the Department or it can be collected through Contractors. Rule 32 of the Rules provides that royalty collection contract may be granted by auction or tender only in respect of such area and such mineral as the Director may by a general or special order, direct. Thus, it is permitted by Rule 32(1) of the Rules that royalty can be collected either by auction or by tender. This being a matter pertaining the Govt. policy, the Govt. is the best Judge to decide that policy. On the basis of the experience of last four years, the State Govt. has thought it fit that in order to plug the leakage and pilferage of royalty collection, it will be better that the royalty collection work is given on contract by auction. This being a policy matter, no court or Tribunal can compel the Govt. to change its policy. In this respect, Mr. Jasmatiya has drawn my attention to a decision of their lordships of the Supreme Court in Lieutenant (Mrs.) India Kumari Kartiayoni Vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-I and others, , wherein their Lordships of the Supreme Court have held that the policy decision of the Govt. cannot be allowed to be changed. No court or Tribunal can compel the Govt. to change its policy which involves financial burden on it.

57. Mr. Jasmatiya has next drawn my attention to a decision of their Lordships of the Supreme Court in G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, wherein it has been held that the Govt. or its instrumentality is free to involve any method for execution of a project. The policy decision of the Govt. is not subject to the judicial review so long the method is within the Constitutional and legal limits. It was further observed that though there is a degree of public accountability in all Governmental enterprises, but the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities there is an increasing dimension to Governmental concern for stimulating efficiency keeping costs down, improved management methods, prevention of time and cost over runs in projects, balancing of costs against time-scales, quality control, cost benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of project with concomitant economic expediencies. These are essentially matters of

economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pre-judicial environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide within the limits of authority.

58. It was submitted by Mr. Jasmatiya that in this case, the Rules provides that royalty can be collected either through auction or by tender. It can also be collected through the agency of Govt. Servants. He has submitted that the Govt. is the best Judge to decide which particular procedure has to be adopted by it. However, in this case, keeping in view the past experience of the last four years, the Govt. has thought it fit that in order to plug the leakage and pilferage of royalty collection, it will be better that the royalty collection work is given on contract by auction. This policy decision of the Govt. is not subject to the judicial review so long the method is within the Constitutional and legal limits. Thus, the argument of Mr. Purohit and Mr. Lodha that this procedure is unreasonable and arbitrary cannot be accepted.

59. It is true that the petitioner has offered that they will collect Rs. 3,30 Crores as yearly target of royalty collection but in case of any short-fall in royalty collection of Rs. 3.30 Crores per year, they have failed to furnish adequate security. Their salaries cannot be attached. Even their GPF deposit amount is very meagre and this amount cannot be withdrawn before their retirement. The Nakedars of the Mining Department being Govt. servants cannot enter into a contract with the Govt. because that will be against their Service Rules and Conduct Rules. Moreover, for any misconduct, they cannot be suspended and dismissed from service if a contract is entered into between them and the Govt. Thus, I am firmly of the view that no fresh contract can be entered into between them and the Govt. over and above their contract of service. They are supposed to put their best efforts to collect the royalty. At best an undertaking can be taken from them that if the target suggested by them is not achieved, they furnish a particular guarantee for its execution but the guarantee offered by them is little and of no consequence. Thus, the offer made by the petitioner Association cannot be taken seriously.

60. It was next contended by Mr. Purohit that Nakedars of the Mining Engineer also collects Sales Tax. If the contract is given for the collection of royalty then the Govt. will have to take that work of collection of Sales Tax dues through a separate agency. As stated above, the Govt. is the best Judge to decide a particular procedure for the collection of royalty and that decision being a policy matter cannot be interfered with by the Courts. At best, the petitioner can claim that best interest of the Govt. will not be served if the auction is knocked down at 2.56 crores of rupees but that contention also is devoid of force because they are unable to match their offer by any suitable guarantee by which the Govt. can place reliance on it so that if the members of the petitioner Association fails to collect Rs. 3.30 Crores, the Govt. is not going to put to any loss. No proper and

effective method of its execution has been suggested. Unless a legal right vests in them to seek a direction through the Court asking the Govt. to change its policy, no mandamus can be issued in favour of the petitioner. In this respect, I place reliance on a decision of their lordships of the Supreme Court in *Mani Subrat Jain and Others Vs. State of Haryana and Others*, wherein it has been observed that it is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something. In this case, no such legal right vests in the members of the petitioner Association nor any legal obligations are fastened on the Govt. to get the royalty collection work done only through them. The law itself permits that the royalty collection work can be got through auction or tender method as per the provisions of Rule 32(1) of the Rules. Thus, no writ of mandamus can be issued in this case against the respondents.

61. Now, I will deal with the contention raised by petitioner Keshavram. It was contended that though the petitioner has not participated in the auction proceedings but as per the orders of this Court, he has deposited Rs. 5 lakhs as earnest money and has also given an offer that he is ready to take a contract of royalty collection at Rs. 3.25 Crores.

62. It was submitted by Mr. K.L. Jasmatiya, the learned Addl. Advocate General cum Govt. Advocate as also by Mr. P.C. Sharma, the learned Counsel for the applicant Ravindra Singh & party that a right has got vested in the respondent Ravindra Singh & Party as their bid has been accepted and they have deposited a sum of Rs. 53,39,117/- and, therefore, that right cannot lightly be interfered with. Simply because somebody is ready to give a better offer, the authorities are not bound to accept that bid. It may be stated here and now, that till the auction bid is accepted or confirmed by the Govt., no right vested in the persons in whose favour the bid has been provisionally accepted by the Govt. In this respect, I place reliance on a decision of their lordships of the Supreme Court in *Navalkha and Sons Vs. Ramanuja Das and Others*, wherein it has been observed:

Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court, the offer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case, it is the duty of the Court to satisfy itself that having regard to the market value of the property, the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price, the act of confirmation of the sale would not be a proper exercise of judicial discretion.

Thus, it is now settled law that before the confirmation, the authorities concerned can examine whether the auction bid is to be confirmed or not and whether the offer received during auction is adequate or not. In this view of the matter, the contention of the respondents that certain right got vested in the Ravindra Singh & Party has no legs to stand.

63. It may be stated here that neither H.U. Construction Company nor Shri Jafarkhan and Shri R.C. Gupta have come forward to deposit a sum of Rs. 5 lakhs as earnest money and, therefore, their cases for allowing them in the bid cannot be field to be just and reasonable and, therefore, their offers appear to be fictitious because none of them have deposited Rs. 5 lakhs as earnest money though the Court ordered them to deposit this amount so that the genuineness of their offer may be examined. However, they failed to do so. It was only petitioner Kesharam who has done so and he has given an offer of Rs. 3.25 Crores for royalty collection.

64 Mr. N.L. Lodha, the learned Counsel for the petitioner Kesharam has submitted that if the price fetched in the auction is inadequate, the Court can order for re-auction and can compel the authorities to do so in such manner as it deems reasonable and the matter can be ordered to be settled by negotiations between the parties. In this respect, my attention has been drawn to a decision of this Court in *Malu Khan Vs. State of Rajasthan and Another*, wherein a Division Bench of this Court has held that the Excise Commissioner is empowered to enter into negotiations with the third party in the situation which has arisen in the present case. On the contrary, his action appears to be in the public interest because it results in raising the State revenues.

65. My attention was next drawn to a decision of their lordships of the Supreme Court in *Excise Commissioner v. Manminder Singh* 1983 (4) SCC 318, wherein it has been observed:

It may be that the Excise Commissioner is not bound to order re-auction every time he receives a better offer and the Court will not interfere if he refuses to entertain better offers after the auction is held. On the other hand, if he receives substantially better offers and in the interest of the revenues, he orders re-auction, then too the Court should not interfere.

66. Mr. Lodha also drew my attention to a decision of this Court in *Bherulal v. State* S.B. Civil Writ Petition No. 521 of 1983, decided on 7.3.1983. In that case, the petitioner showed his readiness to give a higher bid and the learned Addl. Advocate General submitted before the Court that the Commissioner has not confirmed the bid and, therefore he is ready to consider the case of the petitioner and all equally situated persons. That prayer was accepted by the Court and the Commissioner was directed to allow the petitioner to give his bid in the interest of the revenue. It was, therefore, argued by Mr. Lodha that although the petitioner Kesharam has not participated in the auction but when he has given a bid which increases the revenue by about 69 lakhs of rupees per year

and when the auction bid has not yet been confirmed, the Mining Department will be well within its rights to accept this higher bid of the petitioner.

67. M. P.C. Sharma, the learned Counsel appearing for Ravindra Singh & Party has drawn my attention to a decision of their lordships of the Supreme Court in Ram and Shyam Company Vs. State of Haryana and Others, That was a case in which the highest bid when it was sent for confirmation was not confirmed by the Govt. and a higher bid given by somebody else was accepted at the behest of the Chief Minister without giving him any opportunity to the highest bidder at the auction to raise the bid or to point out the falsity of the allegations made by the respondent in the letter as also the inadequacy of his bid.

68. In view of the discussion made herein above, I deem it just and proper that the respondents should negotiate the highest bid between Ravindrasingh & Party and petitioner Kesharam. If Ravindrasingh & Party is ready to raise their bid at Rs. 3.25 Crores then their offer should be accepted and if Kesharam is ready to increase his bid from Rs. 3.25 Crores to something more than Rs. 3.25 Crores then the higher offer should be negotiated between these two parties viz., Kesharam and Ravindrasingh and Party. This Procedure will be not only reasonable but in the public interest. This procedure will be most reasonable and in public interest. Although, there is no illegality in the auction that has been conducted by the State Govt. but when substantial higher offer has come then the interest of the revenue has to be watched and the contract has to be given to the higher bidder because the highest bid has not yet been confirmed. Petitioner Kesharam and applicant Ravindrasingh & Party should appear before the auction Committee, whose meeting should be called within a fortnight from today.

69. The upshot of the above discussion is that I find no force in the writ petitions filed by H.U. Construction Company and Rajasthan Ministerial Services Association bearing S.B. Civil Writ Petitions No. 3208 of 1992 and 3412 of 1992 respectively and, therefore, they are hereby dismissed without any order as to costs.

70. However, the writ petition filed by petitioner Kesharam bearing S.B. Civil Writ Petition No. 3949 of 1992 is partially allowed and the respondents are directed to convene a meeting of the Auction Committee on 21.9.1992 and on that day, petitioner Kesharam as also Ravindrasingh & Party should appear before the Auction Committee at 11.00 AM and the auction bid should be negotiated between these two parties. The highest bid given by either of them should be accepted but if Ravindrasingh & Party as also Petitioner Kesharam both give an offer of Rs. 3.25 Crores or an offer of equal amount which may be higher to Rs. 3.25 Crores then the bid of Ravindrasingh & Party should be accepted because Ravindrasingh & Party has given highest bid at the earlier auction and have participated in the auction proceedings and have already deposited near about Rs. 55 lakhs with the Govt. The contract will be effective from the date of the execution of the contract for a period of one year.

71. In the peculiar facts and circumstances of this case, I leave the parties to bear their own costs of this writ petition.