(1991) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : M.P. No. 2563 of 1991

Jai Bhawani Timber APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 07-12-1991

Acts Referred:

Sales of Goods Act, 1930 — Section 62, 64, 64(2)

Citation : AIR 1992 MP 250 : (1992) 1 MPJR 224 : (1992) 37 MPLJ 423 : (1992) MPLJ 423

Hon'ble Judges : K.L. Issrani, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; B.M. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioners are all traders in timber. They were the highest successful bidders at the public auction held on 25-6-91 of lots of timber detailed in the impugned notice (Annexure-A). The auction conditions are contained in the auction notice (Annexure-A). The petitioners had made initial deposits of earnest money of 10% of reserve price as per auction condition No. 1. They signed the bid-sheet as successful bidders in terms of auction condition No. 9 and had deposited 25% of the bid amount, as required by condition No. 2(a)(i).

The contention of the petitioners is that the sales of various timber lots, for which they had offered the highest bid, were complete. Hence he respondents who are the authorities in the Forest Department of the State of M.P., had no right to cancel the auction sales vide impugned communication dated 25-7-91 (Annexure-C) of the respondent -- D.F.O. directing refund of the prices paid by them and for taking steps to reauction the timber lots.

The respondents supported their actions stating that the D.F.O. respondent No. 2, who was conducting the auction sale, had later on discovered that the petitioners had formed a "ring". The "ring" may be explained as a sort of combination or mutual understanding between the bidders to refrain from bidding against each other. Thus, according to the respondents, since there were no bid offered on competitive basis, the D.F.O. reported the matter vide its letter dated 4-7-91 (Annexure R-I) to the Conservator of Forests. The Conservator of Forests on his part reported the matter vide letter dated 4-7-91 (Annexure R-3) to the Chief Conservator of Forests, who took a decision on 16-7-91 to cancel the entire auction sale of teak lots. This resulted in issuance of the impugned communication dated 25-7-91 (Annexure CJ by the D.F.O. intimating annulment of all auction sales of teak lots and refund of prices already paid to the petitioners.

Learned counsel appearing for the petitioners contended that the D.F.O. being admittedly the authority competent to accept the bid, the contract of sale in respect of each lot was completed on fall of hammer and announcement of the closure of the auction, followed by signing of bid-sheet by each of the successful bidder. It was not open thereafter to the D. F. O. to seek advise of the superior officers and cancel such completed sales. It was submitted that the auction condition only permitted the D. F. O. to reject even the highest bid on the alleged ground of formation of a "ring" or collusion between bidders. But that stage was before the fall of hammer or announcement of the closure of auction on signing of bid-sheet. Reliance is placed on a Division Bench decision of this Court in Darshan Singh v. State of M.P., M.P. No. 28- 81, decided on 30-3-81. Where the same auction conditions came for interpretation by this Court.

Learned Additional Advocate General appearing for the respondents frankly conceded that if on interpretation of the terms of auction, it is held that the sales were complete, the respondents'' action cannot be supported. The contention on behalf of the respodents, however, is that since the D. F. O. had not signed the bid-sheets, there was no acceptance of the highest bids, offered by each of the petitioners for the lots knocked down in their favour and there were no complete sales. The D. F. O. was, therefore, competent to reject the bid holding that the bidders had formed a "ring" to deprive the State of fair competitive price of its forest produce. Learned counsel appearing for the respondents read the contents of all bid-sheets, which are common in nature and contended that against each of the lot, there was only one sole bidder, which shows a clear conspiracy of bidders with a view to depress the prices. The submission on behalf of the respondents is that such a collusive bids could be rejected before its acceptance by the D. F. O.

The first question for decision before us is whether, as contended by the petitioners, the highest bid can be held to have been accepted and the sales were complete, which text no right or option to the D. F. O. to annul the said sale. If the first question is answered in favour of the petitioners, it may not be necessary to consider the second question raised by respondents that the auction sales could be set aside, as it was discovered by the D. F. O. that the bidders had formed a "ring" to eliminate competition and to depress the prices.

The contract of sale becomes complete when offer is made by one and accepted by the other party. Auction sales are covered by the provisions of Section 64 of the Sale of Goods Act, 1930, hereinafter referred to as ''the Act, and the provisions thereof read as under :--

"64. In the case of a sale by auction -

(1) where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price.

(6) if the seller makes use of pretended bidding to raise the price the sale is voidable at the option of the buyer."

The above quoted Sub-section (2) of Section 64 provides that the sale is complete when the auctioneer announces its completion by "fall of hammer or in any other customary mode. "It has been held by the Supreme Court in A.V. Thomas and Co. Ltd. Vs. Deputy Commissioner of Agricultural Income Tax, and Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, that the right of party in auction sale governed by legal provisions of Section 64 of the Act, is subject to the express contract or agreement between the parties, and the provisions of section 62 of the Act can also be read as governing the rights and liabilities of the parties in relation to the auction-sale u/s 64 of the Act. Therefore, if there are such terms and conditions in the auction notice, which negative completion of sale in auction by mere fall of hammer or announcement of completion of sale, it may be held that the sales were not complete, It is, therefore, necessary to examine the relevant terms and conditions of the auction contained in the auction-notice --Annexure -- A and to determine its true legal import. The relevant conditions of auction, which need considered, are reproduced hereunder:

"2(a)(i) Immediately on acceptance of the bid or within seven days from the date of auction as may be allowed by the D. F. O. at his discretion the successful bidder shall have to pay such further sum as may be required to make up 25% of the bid amount through a call deposit receipt or a crossed Bank Draft issued by any scheduled Bank on its local branch, drawn in favour of the Divisional Forest Officer ....Division, failing which the sale shall be cancelled and the 10% of the sale price deposited as E. M. D. under condition (a) above shall be forfeited to the Got. and the lot shall be auctioned afresh without risk to the defaulting bidder."

XX XX XX XX the Divisional Forest Officer may fix a reserve price for each lot and may withdraw any lot from auction; if the bid to be less than such reserve price.

the Divisional Forest Officer may fix the minimum amount of each lot in advance on the previous bid and alter the amount so fixed from time to time in the course of bidding. In the event of any dispute arising out of the bids given; the bidding shall be immediately suspended at the last undisputed bid.

the Divisional Forest Officer shall have the power without assigning any reason to :--

(a) Prohibit any one from bidding at any stage of the auction.

(b) reject the highest or any bid;

(c) accept the highest or any bid; and withdraw any lot from the auction at any .stage notwithstanding the readiness of the bidders to purchase the same.

The successful bidder shall immediately after acceptance of his bid sign, the bid-sheet in respect of the lot knocked down in his favour and also furnish in writing to the Divisional Forest Officer to the postal address to which any communication intended for him may be sent. Any change of address shall also likewise be communicated by him to that officer. Any communiction sent at that address under a Certificate of posting or by registered post shall be deemed to have duly reached the successful bidder.

The sales of contracts beyond the power of sanction of the Divisional Forest Officer shall be subject to the sanction of the competent authority and the successful bidder shall remain bound by his bid and until orders are passed by the competent authority.

The successful bidder whose bid has been accepted by the competent authority shall be the purchaser."

Learned counsel appearing for the contending parties have tried to place such interpretation on the above auction conditions which best favour their respective cases. In our opinion, the auction conditions have to be read in the light of the provisions contained in sections 62 and 64 of the Act to determine whether the sale can be held to be complete or not and what are ''the rights of the D. F. O. and the other superior authority of the Forest Department.''

It is not in dispute that the D. F. O. in respect of all the lots had fixed a reserve price and he alone was competent to accept or reject the bid. It is also not in dispute that the relation to teak lots, on the relevant date of auction, he was competent even to accept the bid below 10% of the upset price. On a conjoint reading of the above quoted auction-conditions, it is clear to us that the auction sales were complete on announcement of the closure of auction by the D. F. O. and by permitting the successful bidder to sign the bid-sheets. That is the necessary legal result of the provisions of Section 64 of the Act, in the absence of any express provision to the contrary in the terms and conditions of the auction. It is relevant to note the following words used in condition No. 9 :--

"The successful bidder shall immediately after acceptance of his bid sign the bid-sheet in respect of the lot knocked down in his favour............"

The above express language used in condition No. 9 clearly stipulates that signing of bid-sheet by the bidder is to be done only after the auctioning-authority accepts the bid. The act on the part of the auctioning -authority in permitting the highest bidders to sign the bid-sheets in respect of their concerned lots, amounts to acceptance of their bids.

Learned counsel for the respondents laid such emphasis on the fact that none of the bid-sheets contains signatures of the D. F. O. at the appropriate bottom portion of the sheet. The contention is that the sales may be completed only the D. F. O. signing the bid-sheet in token of acceptance of the bids. The above contention, in our opinion, has no legal force and gets no support from the terms of the auction conditions, The auction-conditions nowhere provide that signing of bid-sheet by the auctioneer is a necessary act for showing acceptance of bids. As we understand as per the terms of the auction-conditions, signing of the bid-sheet by the highest bider is a formality to be observed so as to bind him at his bid, after acceptance of the bid by the auctioneer. Postponement of signing or non-signing of bid-sheet by the auctioneer, after closures of the auction, is of no legal consequence and the sale is completed on signing of the bid-sheet by the bidder, as provided in Section 64 of the Act. The Division Bench case of Darshan Singh (supra) is on converse facts. There, the sales were held complete, although the bidders, who were willing to sign the bid-sheet, had not signed them. See the following observations in Darshan Singh''s case (supra):

"The learned Government Advocate submitted that the petitioners did not immediately after acceptance of the bids sign the bid-sheets in accordance with Clause 9 of the terms and conditions of auction (annexure-A). This argument, however, cannot be accepted for the simple reason that it is not pleaded in the return that the petitioners declined to sign the bid-sheets after acceptance of the bids. This is also not one of the reasons mentioned in the return for refusing to give effect to the sales made in favour of the petitioners."

11A. Learned counsel for the respondents in support of his contention laid much stress on the contents of condition No. 11 of the auction notice, to contend that it is only on signing of bid-sheets by the D. F. O. that the sales should be held as complete. Interpretation placed on condition No. 11 by the respondents does not appeal to us at all and the contention cannot be accepted. Condition No. 11 cannot be read in isolation of other conditions and should be read conjointly with those preceding and following it. Particularly condition No. 11 has to be read in conjunction with condition No. 10, which immediately precedes it. Two conditions Nos. 10 and 11 use the words ''competent authority'', which is an authority other than the D. F. O., who is the auctioneer in every auction sales. The above two conditions lay down that where the D. F. O. is incompetent to accept the bid, being beyond his pecuniary powers, acceptance of bid by him, will be subject to the sanction-and ''eventual acceptance by the competent authority. It is in respect of such auction-sales, which are beyond the power of acceptance of D. F. O. that signing of bid-sheet, by the competent authority signifies the acceptance of the bid. The argument of the respondents, therefore, cannot be accepted that signing of bid-sheets by the D.F.O., where he himself was competent to accept the bids, was necessary to complete the sale.,

The above interpretation placed by us on conditions Nos. 10 and 11 accords "fully with the one placed on the same condition in the Division Bench case of this Court in Darshan Singh (supra). In our opinion, the sales were complete soon after announcement of completion of auction and by the act of D. F. O. In permitting the bidders, in whose favour the bids were knocked down, to sign the bid-sheets, he clearly signified his acceptance of the bids. Non-signing of the bid-sheets, in the above circumstances, by the D. F. O. was inconsequential in law and, therefore, did not permit the D. F. O. to repudiate the sales on his second thought. Even if, as contended by the respondents, the facts pleaded by them are accepted as true that the D. F. O. found that the petitioners had formed a "ring" in mutual benefit to avoid competition, the stage to withdraw the lots from "sale or to reject the bids, was before making formal announcement of closure of auction and permitting signing of bid-sheets by the successful bidders. Once the bid was knocked down, the auction was announced as closed and bid-sheets were signed by the successful bidders, the sales were completed. The D.F.O. was thereafter powerless to retrace his step and repudiate the sale for good or bad reason. This is the clear effect of the provisions of Section 64 of the Act and the contents of the auction-conditions. Another interpretation, as sought to be placed on behalf of the respondents, on the terms of auction-conditions, will result in loss of credibility of public-auctioning-authorities, more so where the highest bidder is compelled to stand by the bid offered and to incur obligation with risk of forfeiture of his earnest money deposit and 25% of the bid-money, in case as successful bidder be retracts his bid. Auction condition No. 10 read with Section 64(2) of the Act binds the bidder to his offer. A corresponding obligation, to be bound by the acceptance of bid by auctioning-authority with announcement of closure of auction, is a necessary intendment of law contained in Section 64 of the Act to lend credibility and fairness to the sales effected by public auction.

It is argued that the action of the respondents be supported, being in the interest of revenue of the State. The argument does not appeal to us. If the interest of revenue was to be safeguarded, the stage for the D. F. O. was before signing of the bid-sheets by the bidders. In auction sale on-the-spot decision is expected from the auctioning authority, as contemplated by the terms of the auction and he cannot postpone his decision to accept the bids after he had consulted the higher authorities on his second thought. We are clearly of the opinion that the auction sales were complete in law and the respondents were powerless to annul the sales directing refund of prices and order reauction.

The next question, whether there was any legal justification for the respondents to repudiate the sales, in fact, is not necessary to be decided after we have held that the sales being complete on signing of the bid-sheets could not have been annulled. Yet, we may deal with the second question, as it also in our opinion, cannot be answered in favour of the respondents.

The contents of letter dated 4-7-91 (Annexure-R-l) of the D.F.O. has been read in full and commented by the parties. Learned counsel for the respondents read the contents of several bid-sheets on record and cumulatively marked as Annexure R-3 to impress upon us that the bidders, particularly for teak lots, had formed a "ring" and only one bid was offered against each teak lot. Reading of the bid-sheets to infer formation of a "ring" by the bidders does not appear to be correct. Such of the bid-sheet contains only one name of the highest bidder, whose bid was accepted and signed by him. The bid-sheets need not necessarily contain all names of bidders who had offered bids against a particular lot. Only appearance or names of highest successful bidders in each of the bid-sheets does not mean that no bids were offered for the lots by others below the last highest bid accepted.

The contents of letter (Annexure R-l) also shows that all bids accepted for teak, except one lot, were all above the reserved price. We are also of the view that formation of "ring" cannot, in all circumstances, be taken as a good ground to set aside the sale Bidders'"ring" is a sort of mutual agreement whereby one dealer agrees not to bid for one item and another another dealer agrees not to bid for another item. It is also described in other words as ''knock-out''. This sort of formation of a "ring" or "knock-out" is not held to be illegal at common law in England or by any statutory law in India. See the observations under the head "knock out" in the Sale of Goods Act by Pollock and Mulla, Fifth Edition, at page 399 :--

"Knock-outs".-- A conbination between intending bidders to refrain from bidding against each other, commonly known as a knock-out, has been held not to be illegal at common law (w) and the same rule applies in India (x). The bidders may form a "ring" and refrain from bidding in competition with each other in order to depress the price (y). In England the position has been modified by the Auctions (Bidding Agreements) Act, 1927, (17 and 18 Geo. Section 12)."

See also Chalmers "Sale of Goods", Eighteenth Edition, pages 258-259 : --

"After much doubt it was settled that an agreement for a "knock-out" (i.e. a combination between intending bidders to refrain from bidding against each other) was not illegal. The seller could protect himself by fixing a reserve price (I). Conversely, an agreement between bidders to run up prices at an auction for a collateral purpose may not be illegal (U). But the common law has since been modified, and it is now provided by S. 3 of the auctions (Bidding Agreement) Act, 1969,"........

It has, therefore, to be held that an agreement between the bidders to form a "ring" or "knock-out"-, i.e. refrain from bidding in competition with each other in order to depress the price is neither illegal, nor appears to us immoral. The auctioneer can protect himself against such ''ring'' by fixing a reserve price and reserving a right to reject the bid on justifiable reasons. In the terms of the present auction-conditions, such a right was reserved to the auctioneer, which could have been exercised on the spot before announcing closure of the auction and permitting the bidders to sigr the bid-sheets. We, however, find that the r .ght reserved to the D.F.O. as an auctioning authority in terms of Clause 8, having not been exercised in due time by the D.F.O., the authorities superior to him in rank, could not repudiate the sales and direct reauction.

The petition consequently succeeds and is allowed. The impugned communication dated 25-7-91 (Annexure C) cancelling the auction-sales held on 25-6-91 is hereby quashed. It is directed that the respondents shall treat the auction-sale held on 25-6-91 as complete and valid. It is further directed that in accordance with the terms contained in condition No. 2(b)(i) of the auction-notice (Annexure A). The respondents shall give the petitioners, within a month from today, notices in writing to enable them to deposit the balance 75% of the bid money against their bids offered and accepted by the D.F.O. On such deposits, the respondents shall deliver to the petitioners various lots knock-ed-down in their favour and described in Annexure C. The petitioners shall also get the costs of this petition. Counsel''s fee Rs. 2000/-, if certified.

