(1988) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1083 of 1988

Janardan Prasad Sharma APPELLANT

Vs

State of Madhya Pradesh and others RESPONDENT

Date of Decision : 29-04-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1988) MPLJ 719

Hon'ble Judges : Y.B. Suryavdnshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : A.D. Deoras and A.K. Pandey, for the Appellant; Deepak Varma, Government Advocate for respondents Nos. 1 to 3 and Ravindra Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

This is a petition under Article 226 of the Constitution of India by the petitioner, an unsuccessful bidder, seeking cancellation of the order of re-auction by the Excise Commissioner.

The Excise Commissioner issued an auction notice on 30-12-1987 for the sale of privilege to vend country liquor of various groups within the State including 32 shops of the Sarangarh group in Raigarh district. The auction for Sarangarh group was held on 8/9th February 1968. In the auction held by the Collector, the petitioner''s bid of Rs. 33,01,000/- which was the highest, was provisionally accepted. Since the bid amount was over 15,00,000/-, the bid was subject to acceptance by the Excise Commissioner. Under clause 6 it was open to the Excise Commissioner to reject any offer without disclosing any reason. Under clause 12, an unsuccessful bidder had then option to make an application to the Collector for re-auction within 3 days, provided he gave an offer of value of 10 per cent higher than the highest bid given in the auction and deposited 1/3rd of the offered bid. On receiving such an application, the Collector was required to re-auction the shops within 7 days. Respondent No. 4 made applications on 16-3-1988 and 22-3-1988 before the Hon''ble Minister for Excise, which were forwarded to the Excise Commissioner, enclosing a draft of Rs. 5,70,000/- with an undertaking to deposit the balance of Rs. 6,41,000/- before the re-auction. By order dated 23-3-1988, the Excise Commissioner directed the Collector to re-auction the shops, directing respondent No. 4 to deposit 1/3rd of the bid amount by 24-3-1988. Accordingly, the Collector fixed re-auction on 6-4-1988. However, on 30-3-1988, the Excise Commissioner rejected the bid of the petitioner and directed re-auction. The present petition was filed on 1-4-1988 by the petitioner and in the meanwhile the auction to be held on 6-4-1988 was stayed.

The petitioner''s case is that his bid being the highest and having been provisionally accepted by the Collector and forwarded to the Excise Commissioner for his approval, there could be an order of re-auction only under clause 12. Since respondent No. 4 was not a bidder in the auction, he could not have applied for re-auction. Besides, such an application had to be made within 3 days of the auction, by depositing 1/3rd of the bid amount. Neither the application was made within 3 days, nor the 1/3rd bid amount was deposited by respondent No. 4. Therefore, the Excise Commissioner erred in ordering re-auction on his application on 23-3-1988. According to the respondents, since the petitioner''s bid has not been accepted, the petitioner can have no grievance for re-auction, since he is also entitled to participate in re-auction. The dispute arises out of contractual obligations and a writ is not the appropriate remedy. Besides, it was open to the Excise Commissioner under clause 6 of the tender notice to reject any bid without disclosing any reason and order re-auction. In the present case, the Excise Commissioner, by order dated 30-3-1988 found that the bid of the petitioner was inadequate and, therefore, has ordered re-auction in the interest of public revenue. The petitioner is only seeking quashing of re-auctioning of the shops and not quashing of the impugned order of the Excise Commissioner dated 30-3-1988.

The Supreme Court, in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , has held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment It requires that State action must not be arbitrary, but must be based on some rational and relevant principle, which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. Again, in Excise Commissioner and Another Vs. Chander Shekhar and Others, , the Supreme Court held that the Excise Commissioner had set aside the auction of foreign liquor, country liquor and Bhang shops by a single line order, without disclosing whether there was ground, interest of the revenue or any other reason to set aside the auction and, therefore, the auction of the Excise Commissioner was arbitrary in ordering re-auction. In the same volume, in Excise Commissioner of U.P. and Others Vs. Manminder Singh and Others, , the Supreme Court held that -- auction not confirmed -- Excise Commissioner can order re-auction in the interest of the revenue of the State. The same principle has been reiterated in Excise Commissioner Uttar Pradesh Allahabad and Others Vs. Prem Jeet Singh Gujral and Others, , of the same volume. The Supreme Court, in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. In the present case, the Excise Commissioner did not accept the bid of the petitioner, which he could do under clause 6. In a reasoned order dated 30-3-1988, the bid has not been accepted in the interest of public revenue. From the return of respondent No. 4, it appears that 32 liquor shops of Sarangarh group fetched Rs. 29,25,000/- in the year 1987-88 and for this year, the petitioner gave a bid of Rs. 33,01,000/-, showing an increase of 12.8% but in respect of the 15 liquor shops of Raigarh group they were sold for Rs. 44,05,000/- in the year 1987-88, while this year they have fetched Rs. 74,54,000/-, i.e. there is an increase in the revenue of 69.1%. Therefore, there is reason to believe that in case the Sarangarh group of shops are reauctioned again, they may fetch higher price. According to this respondent, he and other bidders could not offer their bid in the auction, as they were otherwise busy in the auction of other country liquor shops. Since the Excise Commissioner exercised power under clause 6 there was no necessity for him for invoking the power under clause 12 for reauctioning the shops. It is true that the Excise Commissioner, by order dated 23-3-1988. had ordered reauction on the application of respondent No. 4, who. was not a bidder in the auction, nor had he deposited 1/3rd of the bid amount, along with the application. That application was wrongly entertained and that too beyond the prescribed limit of auction. As such, no action could have been taken on such an application under clause 12 and the order of the Excise Commissioner on that application dated 23-3-1988, is non est and has to be ignored.

The Supreme Court, in State of M.P. and Others Vs. Nandlal Jaiswal and Others, , had held that the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide. In the present case, there is no allegation that the action of the Excise Commissioner is mala fide. It is true that respondent No. 4 moved an application before the Hon''ble Minister of Excise for reauctioning of the shops and the Minister being the policy maker and head of excise department and the constitutional functionary, he certainly could have entertained such an application and asked the Excise Commissioner to re-examine the matter. On the application being forwarded by the Minister to the Excise Commissioner, he wrongly ordered reauction of the shops, but till that time he had not accepted the petitioner''s bid. The bid was subject to approval of the Excise Commissioner. We are told that there were about 600 shops, which were auctioned and the Excise Commissioner had to scrutinise each and every case and give his approval or disapproval. That is the reason why the petitioner''s bid was not decided till respondent No. 4 moved an application for reauction. By the impugned order, the petitioner''s bid had been rejected. But surprisingly, the petitioner has not amended his petition by seeking quashing of this order. Even if the petitioner was not aware of this order dated 30-3-1988, but this order was produced along with the return. The petitioner has filed a rejoinder to the return, yet the petitioner has not sought quashing of the order dated 30-3-1988. He is only seeking quashing of the reauction of the shops. The petition is based on wrong premises that the reauction has been ordered under clause 12, while it is under clause 6 and it was open to the Excise Commissioner to order reauction, if he found that the bid of the petitioner was not sufficient The petitioner''s only right was to have his offer considered by the Excise Commissioner and not that it being the highest, it should be accepted. The Excise Commissioner had the option to reject the highest bid also. Since the petitioner''s bid was not accepted at any stage, he got no vested right so as to resist the reauction. The Supreme Court, in Guruswami vs. State of Madras, AIR 1954 SC 502, held that the cancellation, though irregular was proper and the appellant obtained no right to the licence by the mere fact that the contract had been knocked down in his favour, the acceptance being subject to sanction. Learned counsel for the petitioner relied on the decision in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , for the proposition that the power to grant or refuse licence was with the Commissioner of Police and not in the State Government and it could only he exercised by the Commissioner at his discretion. Here, the Excise Commissioner has rejected the petitioner''s bid and ordered reauction under clause 6 and his earlier order under clause 12 was invalid. He was not empowered to proceed under clause 12. It was for the Collector to act under that clause. Since no application was made as required under that clause with the necessary deposit there was no question of the Collector taking action under that clause. The earlier order of the Commissioner under clause 12 being non est, so he could pass an order under clause 6. The reason disclosed in the order dated 30-3-1988 was in the interest of public revenue in ordering reauction and that reason is not being sought to be substituted by any other reason.

With the result, the petition fails and is dismissed. In the circumstances of the case, there shall be no order as to costs. The outstanding security amount shall be refunded to the petitioner.

