

(1987) 03 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3198 of 1986

Kishorilal

APPELLANT

Vs

Municipal Council, Sakti and Others

RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Madhya Pradesh Municipalities Act, 1961 — Section 127, 160

Citation : AIR 1988 MP 31 : (1988) ILR (MP) 412 : (1988) JLJ 393 : (1988) MPLJ 232

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

Bench : Division Bench

Advocate : D.M. Dharmadhikari, R.K. Thakur, for the Appellant; M.L. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

Suryavanshi, J.

This is a petition under Article 226 of the Constitution of India challenging the decision of Municipal Council, Sakti, District Bilaspur (respondent 1), granting the contract for collection of fees on sale of catties from cattle market in favour of respondent 4, instead of the petitioner, the highest bidder in public auction held on 30-5-86.

The material facts relating to this petition are as follows : -

(1) The Municipal Council (respondent 1) u/s 127(I)(viii) of M.P. Municipalities Act, 1961 (for short, Act) has power to impose fees on registration and sale of catties in the Municipal market, and by virtue of powers u/s 160 of the Act it could lease this right by public auction. Accordingly, respondent 1 issued public notice dt. 2-5-1986 (Annexure-A) fixing 30-5-1986 for holding public auction for a period of three years commencing from 1-6-1986 to 31-5-1989.

(ii) Clause 2 of the condition provided that person participating in the auction

shall deposit Rs. 50,000/- as Security deposit or earnest money. The petitioner deposited this sum. Condition No. 26 in the public notice provided that after conclusion of the auction proceedings, "any person" proposing to make a higher bid may deposit half of the amount of highest bid and such offer could be considered. In the public auction held on 30-5-86 the following persons including the petitioners offered their bids :

(a) Kishorilal 14 lacs (Petitioner)

(b) Umesh Kumar 13 lacs 55 thousand,

(c) Jagdish Prasad No bid. (but he had deposited Rs. 50,000/-)

According to the petitioner, being the highest bidder, he was entitled to be awarded the contract, that respondent 4 did not deposit the security amount, nor did he participate in the bid, and, therefore, he was not entitled to apply and outbid the petitioner under condition No. 26; that this condition merely permits only any one of the participants in the auction to offer a higher bid than the highest; that to ensure sincerity of such offer to increase the bid, condition No. 26 further prescribes that half of the sum of highest bid shall be deposited within 24 hours; that such participant in the auction proposing to outbid the highest bidder can claim only re-auction; that Respondent 4 being an "outsider" to the auction proceedings held on 30-5-86, his offer, under condition No. 26, could not be accepted; that, in any case, that condition only provided opportunity to claim re-auction; that in all fairness, the offer made by respondent 4 could not be accepted "secretly", and "without disclosing it to the other participants" so as to afford them an opportunity to increase their offers; that Respondent 4 had not deposited sum within time prescribed; that respondent 4 was selected for awarding contract on his offer of Rs. 1-51 lacs "behind the back of the petitioner" who learnt about the same only when communication dt. 6-6-86 (Annexure B) was sent to previous contractor Jagdish Prasad (one of the bidders) asking him to get refund of the security amount; that the offer by Respondent 4 could not be accepted without disclosing it to the petitioner, being highest bidder, and without re-auction; that petitioner was willing to offer higher bid.

The petitioner approached the Additional Collector (Respondent 3) for intervention u/s 323 of the Act. He granted stay on 13-6-86 (Annexure D), and as interim arrangement, the Council was directed to collect market fees. The State Government only heard the council, and the petitioner's grievance is, that he was not given opportunity though at his instance Addt. Collector had taken up proceedings. The State Govt. on 30-8-86 (Annexure R/E) in exercise of powers u/s 323(2) of the Act, set aside the orders on the ground viz., that contract was in the interest of the revenues of the Council, and that Addl. Collector was not an authorised person u/s 323(1).

The petitioner has, therefore, challenged the action of the Council being in contravention of condition No. 26 and also being unreasonable, unfair, arbitrary and against principles of natural justice, and in violation of Article 14 of the

Constitution. Petitioner's application for Ad Interim writ, opposed by Respondents 1 and 4, was rejected on 17-11-86.

The Municipal Council (Respondent 1); in its counter stated, that condition No. 26 confers on any person the right to raise the bid subject to the condition of depositing half of the highest bid amount; that such offer is not restricted to persons bidding at the auction; that on 30-5-86 the President of Administrative Committee conducting auction found the bid inadequate and desired the matter to be placed before the Committee on 31-5-86 (Proceedings Annexure-R-A); that on 31-5-86, Respondent 4 filed an application (Annexure-R-B) stating that auction proceedings being adjourned (Multavi) with the highest bid of Rs. 14,00,000/- his offer is for Rs. 14,51,000/-; that he is depositing half of the amount of highest bid i.e. Rs. seven lacs (Rs. 4,50,000/- by Draft and Rs. 2,50,000/- in cash) which be accepted, and he be informed of the acceptance of the offer; that the Committee meeting however, could not be held on 31-5-86 for want of quorum, hence, on that day, the offer of Respondent No. 4 was accepted, and adjourned to 3-6-86 for final decision by the Committee (Annexure R-C). This was justified in the interest of the council, and was quite in accordance with condition No. 26 of the conditions of auction. The petitioner's contentions therefore, are said to be devoid of any force in law and facts.

According to the return by Respondent No. 4, the auctioneer, under condition No. 3 had authority to accept or not to accept any bid or the highest bid; and to cancel the auction or to re-auction: that the right to accept the final bid was reserved by the Administrative Committee of Respondent 1 as per condition No. 5 which was the only competent body to take decision and to confirm; that there was no "concluded contract" between the petitioner and the Respondent 1, and that as no right or interest has been created in favour of the petitioner; that condition No. 26, itself contemplates a situation like the present one; that if re-auctions are held, as suggested by the petitioner, then there would be no end to it. While denying that the offer was made "secretly" and "behind the back of the petitioner" he stated, that his offer was known to all, and there was no question of disclosing the same to the participants; that petitioner ought to have been vigilant to see if any offer was made within 24 hours, as envisaged under condition No. 26.

Regarding proceedings initiated by the Addl. Collector, it is stated that he had no power to interfere; on merits and also, there was no case for interference (Para 8 of return); that the contract was well within the parameter of law. On setting aside the order, it was communicated to respondent 4 by the respondent 1 (Annexure dt. 26-9-86-R-3). Furthermore, there is no provision for giving a notice of hearing to the petitioner. Furthermore, auction held on 30-5-86. Under Clause 26 of Auction Condition, respondent No. 4 offered a bid of Rs. 14-51 lacs and on the same day he deposited a sum of Rs. 2.5 lacs in cash and 4, 5 lacs by Bank Draft; that the respondent 1, after due consideration, accepted the bid of respondent 4 by resolution dt. 3-6-86, and immediately intimated him and the

petitioner, about it. An agreement to that effect was also executed in his favour on 3-6-86 (Annexure R-I) and he started recovering cattle market fees from 4-6-86. He further denied that the petitioner was ever willing to offer higher amount for the contract. It is also stated that the contract has already been granted in favour of respondent 4 who has made investments and has incurred expenses of about 4 lacs as he has employed persons to manage the market, printed papers and other documents; and has carried out the work from 1-10-86. That, looking to the financial position of the respondent 1, it would be very difficult for it to refund the amount. The allegations pertaining to unfairness, unreasonableness, arbitrariness and illegality have also been denied. Hence it stated that the petition has no merit and is liable to be dismissed.

Thus, it is apparent that all the parties involved in this petition are relying on the conditions in the public notice, for their rival contentions, and in particular, the decision would depend on interpretation thereof (Annexure A dt. 2-5-86). For the sake of convenience, we would particularly refer to conditions Nos. 2, 3, 5 and 26. The condition No. 26 has to be interpreted in context of other conditions.

\\ Matter in Hindi, hence omitted. . . .Ed. \\

First, it is argued, that condition No. 26 is restricted in its application to the actual bidders only because it saddles a mandatory prerequisite financial obligation on bidder to deposit Rs. 50,000/-, when auction is cancelled or closed, the deposits are refunded forthwith. In case of successful bidder, it is retained as earnest money/deposit, to be returned after the period of contract or retained for such liabilities as may arise due to forfeitures, for contraventions in agreement. Thus, when biddings are continuing, an outsider, who has not deposited 50 thousand cannot simply walk in and say this is my offer. To do so, would contravene condition No. 2; and would be discriminatory, so to that extent, we agree with learned counsel Shri Dharmadhikari.

But then, it does not mean opportunity to outbid the highest bid, on conditions, (i) depositing half of the amount of highest bid, (ii) and within 24 hours be restricted to the class of actual bidders. The object is to induct even outsiders at certain stage when auction is "finally declared closed". A highest bidder, looking to the very nature of proceedings in public auction, cannot offer a bid against himself. Therefore, some other person has to be there. The expression Yadi Koyee Agey Boly Lagana Chahey, in condition No. 26 in our view, means any person not only the bidders. In other conditions of publication there are references to the "bidders" but condition No. 26 says "Antim Boly Neelam Karwahi Samapt Ho Jane Par Yadi Koyee Boli Lagana Chahey To" and therefore, it presupposes a stage when auction proceedings are "Samapt" after the declaration of highest bid. Word Boli (Bid) is used here as a general term with reference to Yadi Koyee. Condition No. 26 is incorporated to further safeguard financial interest of council. Situations may arise where biddings due to syndicates and riggings may not reach the highest price. Condition No. 26 provides a "remedy, provided the auction proceedings are Samapt and in that

event so-called strangers to auction proceedings could enter with an offer higher than declared highest bid. The genuineness of such offer is ensured by requirement to deposit 50 p.c. of the highest bid. The time limit appears to be a check to ensure that proceedings, once started, do not unnecessarily drag on. Once the auction proceedings are "closed" a different class of bidders could participate. Therefore, there is no reason why even the highest bidder, in the changed stage be excluded from consideration. Thus, it means, that Any Person could offer on twin terms prescribed in condition No. 26. In instant case only Respondent No. 4 was the only person, but we can visualize situations having more number of such competition. Therefore, condition No. 26 is not strictly limited to the category of actual bidders under condition No. 2, and besides them, strangers could participate in manner prescribed in changed stage.

Secondly, it was submitted that having once started with public auction that could not be converted into private negotiation. Shri Jaiswal learned counsel for Respondent No. 4 referred to Section 160(1) of the Act, which permits "public auction or private contract". Condition No. 3 confers unfettered discretionary powers on auction officer to accept or reject any bid, highest or lowest, to cancel or adjourn the auction proceedings, or to order re-auction. The singular limitation is that acceptance of the last bid requires ratification by Administrative Committee. The Annexure RI-A filed by Respondent 1 proceedings sheet of auction held on 30-5-86 recorded :

| Matter in Hindi, hence omitted - Ed.]

(i) In our view, the auction-officer is clothed with all powers to meet different exigencies that may arise, in or during auction; therefore, proceedings could proceed in any manner as long as these were consistent with Rules, and satisfied the criterion of being "fair" and "reasonable", and same policy, if any, involved. According to Shri Dharmadhikari the above Annexure RI-A shows that proceedings for that day were only adjourned i.e. Sthagit and not finally closed i.e. Samapt as required under condition No. 26. Even the application by respondent 4 Annexure R 1-B dt. 31-5-86 uses the word Multawt. The word Sthagit also occurs in proceedings Annexure R 1-C dt. 31-5-86. Thus, the auction-proceedings on 30-5-86 were adjourned for consideration of Administrative Committee, with a note that petitioners' bid is inadequate. The Committee could have taken any of the various decisions possible, including, acceptance of highest bid, and as fact that alone required their ratification because other decisions were already within the competence of auction officer, which he neither takes nor recommends any. On the contrary, auction officer on 30-5-86 ordered to deposit the security deposits of all the bidders totalling Rs. 1.50 lacs to remain deposited till the final decision by Administrative Committee, and further tells the bidders that they would be communicated the decision. It is argued, that in the totality of those circumstances, a reasonable bidder would entertain hopes and impression that the highest bid is for consideration since auction proceedings were neither "closed" nor "cancelled" which even auction

officer could do; or there could be re-auctioned.

(ii) On the other hand, Shri Jaiswal learned counsel urged, that "petitioner with open eyes entered into the auction", and being aware of condition No. 26, he should have been vigilant to see whether anyone is forthcoming within 24 hours with higher bid. But we find, that petitioner was not informed either on 31-5-86 or even on adjourned date 3-6-86 by auction-officer Shri B. P. Verma or Administrative Committee, respectively, that a higher bid is under consideration and chapter of auction is closed. Proceedings dt. 31-5-86 (Annexure RI-C) record that respondent 4 has filed an application as per condition No. 26. and there is a marginal endorsement on his application Annexure R 1-B, that it has been submitted within time and amount of 7 lacs be deposited. The application was accepted on 31-5-86 and ordered to be placed for consideration before Committee. The proceedings of Committee, subsequently filed by Respondent 4, Annexure R 2 indicate that the income of Municipality for the last three years was Rs. 13,83,202/-. the highest offer in auction was Rs. 14 lacs whereas Respondent No. 4's offer for Rs. 14,51,000/- accepted by Sabhapati is ratified. It also states, auction proceedings were submitted for final decision but meanwhile, application was received from Respondent No. 4 which is in financial interest of Municipality. While (at that stage) ordering for return of deposits of bidders it was further ordered, that after our agreement and security etc. Respondent 4 be handed over charge of market on 4-6-86 It was unanimous resolution.

But from the above it is obvious that after the adjournment of auction proceedings whatever developments followed, were behind the back of all bidders, in particular, the petitioner; and it is said that it was dealt with as if a private matter between Sabhapati and Respondent 4. The petitioner learned from other sources, and forthwith filed a protest petition before collector on 3-6-86. (Annexure P-C) complaining that the proceedings had been behind his back and that he is willing to, offer Rs. 15 lacs; that a re-auction be ordered etc. The orders dt. 13-6-86 (Annexure P-D) by Addl. Collector were set aside by State Govt. (Annexure RI-E) which is different. Incidentally, it appears that Addl. Collector in his proceedings also noted that proceedings were "suspicious".

Thirdly, with reference to what has been stated sub-para of para 13 above, it was submitted that even the amount was not deposited within 24 hours. We do not know at what hour the auction proceedings stood adjourned on 30-5-86 and, at what hour, on the following day, the application together with amount, was actually presented. Time was material. The Annexures do not furnish actual timings, but merely record that it was within time". It appears that Addl. Collector had also noticed this circumstance. But according to Respondent 4 application and deposit were simultaneous action. We think, in the face of specific pleas raised in the petition. Respondent 1 or 4 by producing Original/ Duplicate/Carbon copy of receipts could have dispelled criticisms or suspicions which loom large on this aspect.

That apart, it is evident that what happened within 24 hours of adjournment of

auction proceeding pending for consideration and thereafter was behind the back of petitioner, the highest bidder. Any intimation to him about higher offer from respondent No. 4, we do not think, was against the financial interests of the Municipality. We think that even on pragmatic considerations, based on dictates of reason, besides rules of natural justice, it could have, in all likelihood, bettered, the prospects of higher offers. It would have further provoked the competitive spirit which accelerate offers conducive to public weal, instead, a son of virtually a domestic or private deal, was unilaterally decided, behind the back of petitioner, the highest bidder. To take the view that condition No. 26 does not contemplate such course would be putting a premium on shady and suspicious deals. Not that we say so in this case, but such safeguards are in public interest. Condition No. 26 does not prohibit such intimation to bidders who have already proved their interest while participating in auction.

Paras 5, 7, 12, 12F, of the petition raise pleas about selection of Respondent 4 being behind the back of petitioner and that has been deprived of an opportunity of being heard, but replies by Respondent 1's are evasive by taking shelter behind interpretation of condition No. 26, Thus selection of Respondent 4 and depriving petitioner of his right to offer were acts violative of Article 14.

We may now refer the case law cited, Shri Dharmadhikari relied on K.N. Guruswamy Vs. The State of Mysore and Others, . Therein, the liquor contract was knocked down in favour of A, being the highest bidder, subject to formal confirmation by Dy. Commr. Excise B was present, but did not bid. B directly approached Excise Commissioner, and his higher bid was accepted. The Rules provided for "auction or by such other method as may be notified". The grant of contract to B was held wrong. The writ of mandamus could not be granted because there was no concluded contract; moreover, contract was expiring shortly. In view of para 19 at page 595 it is contended that while resorting to condition 26, the petitioner who was directly ; concerned in the matter should have been informed and afforded an opportunity for a higher offer if he so desired. It was observed : -

"The procedure of tender was not open here because there was no notification and the furtive method adopted of settling a matter of this nature behind the backs of those interested and anxious to complete is unjustified. Apart from all else, that in itself would in this case have resulted in a loss to the State because, as we have said, the mere fact that the appellant has pursued this writ with such vigour shows that he would have bid higher. But deeper considerations are also at stake, namely the elimination of favouritism and nepotism and corruption; not that we suggest that to occurred here, but to permit what has occurred in this case would leave the door wide open to the very evils which the legislature in its wisdom has endeavoured to avoid... ."

Then Shri Dharmadhikari citing the oft-quoted decision in Ram and Shyam Company Vs. State of Haryana and Others, urged, even though condition No. 26 did not specifically speak of any notice to the highest bidder when 50 p.c. higher

offer had been received, even in such administrative action, the authority must have acted fairly and minimum principles of natural justice should have been observed by giving him an opportunity to bid. At page 1156 it was observed :

"The language ordinarily used in such rules is by public auction or private negotiations. The meaning of the expression "Private negotiations" must take its colour and prescribe its content by the words which precede them. And at any rate disposal of the State property in public interest must be by such method as would grant an opportunity to the public at large to participate in it, the State reserving to itself the right to dispose it of as best subserve the public weal."

The learned counsel Ram Gopal Vs. Nand Lal and Others, ; M.N. Aryamurthy and Another Vs. M.D. Subbaraya Setty (Dead) through L. R. and Others, which relate to construction of deeds. In support of contention that there was no concluded contract between the petitioner and the council, Haridwar Singh Vs. Bagun Sumbrui and Others, was referred. But in this petition, petitioner is not claiming relief on such ground. True, Govt. has power to reject the highest bid and such power is not restricted to its being inadequate. In the case of State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, due to change of policy the Govt. instead of accepting the highest bid gave forest lots to Forest Corporation. This case and some others have been discussed in Ram and Shyam Company Vs. State of Haryana and Others, at pp. 1150-1151, para 11, Shri Jaiswal referred particularly Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, which were cases of concluded contracts with liquor licences. Madanlal Hirala v. State of MR 1966 MPLJ 68 is a decision on Section 323(i) of Act, but here we are not concerned with the legality of the orders passed by the Addl. Collector. In Satprakash Mehra v. State of MP. Govt. 1984 MPLJ 318 invited tenders with a condition that each pump should be approved by agency appointed by UNICEF for quality control and it was held, that impugned condition does not suffer from vice of discrimination, that the decision was not unfair, capricious or arbitrary, and did not outrage the fundamental right of equality under Article 14,

The learned Govt Advocate submitted that condition No. 24 of Public Notice provides an arbitration clause for disputes between the "contractor" and Municipal Council. In the agreement between Respondents 1 and 4 such clause occurs in para 11. Since there was a concluded contract with petitioner this contention is meaningless. On the contrary the learned counsel stated that an appeal to the President of Adm. Committee against his own orders would be "an appeal from casesar to Caesar"s wife".

We feel it necessary to incidentally express that for reasons best known to the respondents 1 and 2, they did not consider desirability of filing an affidavit by Shri B. P. Varma Sabhapati, who appears to be the officer conducting auction proceeding A to Y because the stage was of ratification by committee. The return of respondent I is sworn by Shri Rasul Mahammad C.E.O. who does not even state in affidavit which parts (paras) are based on his "Personal Knowledge" and

which are on information derived from some person or records (Refer : The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . There are no annexures indicating that he was present, though it is likely being C.E.O.

Lastly, the learned counsel Shri Jaiswal submitted that the respondent 4 has already executed agreement on 3-6-86- and started work from 4-6-86. On 17-6-86 Addl. Collector stopped work and when that was set aside, he recommenced on 1-10-86. That he has already paid 4.35 lacs for one year and incurred large expenditure that the offer made by petitioner for 15 lacs was not genuine. We think that these factors should not come in the way for interference. The duration of the contract is for three years up to 31 May 1989. Cattle Market is held twice a week on Wednesdays and Thursdays and is said to be very important source of income.

We are of the view that in such cases principle which meets the tests of reason and relevance cannot be ignored. This is a case where petitioner under shelter or misinterpretation of Condition 26 has been ingeniously deprived of equitable and fair treatment, indeed by insidious ways he appears to have been discriminated, without affording any opportunity of being heard. We may refer to paras 4 and 5 of the decision in Autotronic Elevator Services, Hyderabad Vs. Electrical Engineer (GL) PWD and R and B, Nampally and Others, wherein it has been further observed :

"The rule of law for functional success must run close to the rule of life, therefore, action of the State must be in conformity with the cherished principle of equity enshrined in Article 14 of the Constitution." .

On a careful consideration of the facts of this petition and the case law, this petition is allowed. The impugned contract/agreement dt. 3-6-86, granted by Municipal Council (respondent 1) in favour of respondent 4 for Collection of fees on sale of cattles in cattle jmarket for three years, is quashed with directions, that Municipal Council will take over charge within a week and manage the collection of taxes till it teases out the contract in accordance with law. The respondents 1 to 4 shall bear their costs and pay that of the petitioner. Council's fee Rs. 200/-. The amount of security deposited on 17-2-86 be refunded to the petitioner. Since the contract-by respondent 4 has been quashed respondent 1 shall refund him the dues if any, including excess of Licence Fees.