
(1999) 10 AHC CK 0127

In the Allahabad High Court

Case No : C.M.W.P. No. 26087 of 1999 with 12 other Writ Petitions

Laxmi Viroja Udyog and others

APPELLANT

Vs

Divl. Forest Officer, West Almora and others

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Act, 1927 — Section 51A, 82

Uttar Pradesh Rosin and other Forest Produce (Trade Regulation) Act, 1976 — Section 51A

Citation : AIR 2000 All 146 : (2000) 1 AWC 273

Hon'ble Judges : Palok Basu, J;Ikram-ul-Bari, J

Bench : Division Bench

Advocate : Namwar Singh, Sanjiv Singh and Sudhir Singh, for the Appellant; S.C. and P.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Palok Basu and Ikram-ul-Bari, JJ.—The petitioners in each case were highest bidders in the auction which held on different dates relating to a forest produce known as resin, the disposal of which is governed by the provisions contained in the U. P. Resin and other Forest Produce (Regulation of Trade) Act. 1976. According to the facts emerging in all these petitions, the issue raised is whether the petitioners can be asked to pay the difference between the price which they had bid and not paid for resin and the subsequent sale price which was obtained by the Forest Department for the same produce, now being recovered as arrears of land revenue.

2. When the writ petitions were filed, a Division Bench of this Court called for counter-affidavits and passed an interim order staying the recovery of the amount through the citations from the petitioners. In response to the notices Issued, the State of U. P. and its officials of the Forest Department have filed a counter-affidavit in some of the cases and since the averments made therein are sufficient to deal with all the cases at hand in which rejoinder-affidavit has also

been filed, all the opposite parties were heard together finally as prayed by the learned counsel for the parties. Shri Namwar Singh assisted by Shri Sanjeev Singh, Shri A. N. Singh and Shri M. C. Kandpal, learned counsel for the petitioners have been heard. Shri P. K. Pandey, standing counsel has been heard for the opposite parties.

3. At the very outset, it should be stated that the learned counsel for the petitioners have raised several questions as to the validity of the demand made through the citations issued against all the petitioners. But the principal argument advanced was with regard to the rights of the respondents to recover as arrears of land revenue the difference of the price which was offered by the petitioners and not paid by them, and, the price which the resin actually fetched when purchased by the buyer in the subsequent auction/sale.

4. In order to judge the aforesaid argument, a look must be had of the provisions contained in the Indian Forest Act. Section 82 thereof reads as under :

"82. Recovery of money due to Government.--All money payable to the Government under this Act, or under this Act, or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being, in force as if it were an arrear of land revenue."

5. Necessary amendment has been brought about through Chapter 3 of the U.P. Resin and other Forest Produce (Regulation of Trade) Act. 1976, by adding Section 51A which reads as follows :

"21. Amendment of Act XVI of 1927.--After Chapter VIII of the Indian Forest Act, 1927, as amended in its application to Uttar Pradesh, the following Chapter shall be inserted, namely :

CHAPTER VIIIA

Regulation of manufacture and preparation of articles based on forest produce

51A. Power to regulate manufacture, etc. of articles based on forest produce.--The State Government may make rules :

(a) to provide for the establishment and regulation by licences, permits or otherwise (and the payment of fees therefor) of saw mills and units including factories engaged in the manufacture or preparation of:

(i) katha out of khair tree ;

(ii) resin, turpentine and other products out of resin ;

(iii) plywood and match out of timber ;

(iv) such other preparations based on forest produce as the State Government may, by notification in the official Gazette, from time to time, specify ;

(b) to provide for the regulation by licences, permits or otherwise, of the supply of raw materials relating to the preparations mentioned in clause (a), the payment of fees therefor, the deposit of such sum for due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may by notification in the official Gazettee be specified by the State Government."

It may be noticed that while the State Government has empowered itself with very many authorities yet the provisions of Section 82 of the Indian Forest Act remain untouched.

6. On behalf of the petitioners, it was vehemently argued that on the facts of the instant case, the question of payment of price did not continue after the resin was re-auctioned. The difference which is alleged by the respondents in the bid of the petitioners and the actual price obtained by the respondents for the same goods can at best be termed as damages in common parlance. The argument proceeds that taking recourse to Section 82 is the only way through which a citation can issue and since applicability of the provisions of the Section 82 will not be permissible on the facts of the instant cases the citation must go. Reliance has been placed on four decisions : *Firm Gobardhan Das Kailasnath Vs. Collector of Mirzapur*, ; *State of U. P. v. Deewan Chand* 1973 ALJ 309 ; *Virendra Kumar Vs. State of U.P. and Others*, : *State of Madhya Pradesh and Another Vs. Firm Gobardhan Dass Kailash Nath*, . It may be added that the only other case cited which is reported at 1967 SC 203, has already been considered and dealt with at length in the case of *Virendra Kumar* (supra).

7. Shri P. K. Pandey, learned standing counsel, on the other hand, stoutly contended that the petitioners cannot escape the liability of the loss which the State Government has suffered because of their illegal and immoral conduct in having offered the highest bid at the auction and then stealthily slipping away from the responsibility of paying that amount and carrying the goods. He was severely critical of the petitioners going back on their own promise and said that on the facts of the present case, this Court should not exercise powers under Article 226 of the Constitution of India and uphold citations issued and direct petitioners to make the payments towards the loss incurred by the State. Apart from the aforesaid advocacy, on the facts, he could not point out any legal basis as to how the difference in the two shall be equated with the term "on account of the price of any forest produce." It may only be added here that there would not have been any difficulty in the present mode of recovery had the forest officials not been advised under whatever circumstances it may have done so, to go in for fresh auction because they could always recover the price which was offered by each of the petitioners at the auction by their individual bids. Once they did not opt for the easy and legal method of recovering the money and went in for auctioning the same goods again, the difference as calculated by the respondents cannot be termed as a due upon the petitioners "on account of the price of any

forest produce."

8. The case of Virendra Kumar (supra) is directly on the point inasmuch as it is a specimen of both the types of demands which could be raised by the State Government. In the cited case, one lot of forest area was sold by auction to the petitioner therein who did not pay the price. But the other two lots which were also sold to him met with the same fate and he did not pay the price of those lots also. While the later two lots were resold to other bidders subsequently, the State Government charged the difference of price from the petitioner therein with regard to the subsequent two lots but since the first lot was not resold, it demanded full auction price from the petitioner with regard to that lot. Failure of the petitioner therein to pay, resulted in issuance of citations for recovering the difference or the shortage in the aforesaid amounts as arrears of land revenue. The Division Bench held that so far as the first lot is concerned, its price amount could always be recovered because it was not resold to anyone but simultaneously held that the difference in the amount offered by the petitioner therein for the two subsequent lots and the actual amount, the said two lots purchased subsequently cannot be termed as "on account of price of any forest produce." The reasons set out in the aforesaid case law are respectfully endorsed.

9. Before parting, it may be mentioned that Shri P. K. Pandey had drawn the attention of the Court to the terms contained in paragraph 17 of the document executed after the petitioners bids were accepted in each of the cases. He wanted to contend that the words. "Koi Muaoja jo ki Khariddar per Mutabik Ikrarnama Haja kiya gaya.....Bakaya rah jaye.....Bakaya malgujari jamin ke wasool karne ke liye mutabik jaij Ho" includes any damages which may be caused to the sellers which shall be payable by the bidders and if not paid can be recovered as arrears of land revenue. There cannot be any doubt that the aforesaid terms will apply to the type of loss which is envisaged in the cited case of Virendra Kumar (supra) through the sale of the first lot but will not cover the type of damages which is applicable in the case of the sale of second lot in the cited decision.

10. Notwithstanding what has been stated, the forfeiture of the bonds was validly done because of non-payment of the remaining amount at the behest of the bidders/petitioners In each case. The standing counsel's argument relating to the forfeiture of the amount deposited has to be upheld as the contract was not accomplished due to non-payment by petitioners. Moreover, compensation or damages could not be assessed by the respondents. It required adjudication by a third authority. Therefore, while citation could not be issued, the respondents can lawfully forfeit the amount deposited at the bid in each case. Consequently, the amount which was deposited by the petitioners as earnest money or advance or security or by whatever name called, shall stand forfeited to the Government or the Forest authorities, as the case may be, and shall not be refundable to the petitioners. It will be open to the State Government to recover the remaining amount by taking recourse to such other legal procedure as may be available. In

such event, the deposit of the aforesaid amounts which has been forfeited shall be adjustable towards the damages, if the claim is decreed. Any observation made in this judgment, shall not be interpretable for or against any of the parties. In any proceedings for recovering the amount if instituted validly and the fact that this writ petition has been pending shall be taken due note of for the purpose of limitation, should that question arise.

11. In view of what is stated above, in the writ petitions, the proclamations issued for sale on Form ZA-72 and proclamation of attachment in Form 6 and all other recovery proceedings against the petitioners arising out of the citation are quashed.

12. The writ petitions stand finally allowed only to that extent. Parties will bear their costs.