
(2000) 02 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6634 of 1991

Lohariya Ram Baroll

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : (2000) 3 RLW 1475 : (2000) 2 WLN 204

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—This writ petition has been preferred for issuing a direction for awarding to the petitioner firm-contract of collection of excess royalty on the terms and conditions of the auction dated 21.3.1991 and in the alternative for writ of mandamus directing the respondents that the money deposited by the firm M/s Lohariya Ram amounting to Rs. 10,67,633/- be returned to the firm with interest @12%.

2. A notification was issued for holding a bid in the Bari and Basori, Tehsil Dholpur for collection of excess royalty for excavation of sand stone in Bari and Basori. Tehsil Dholpur. The auction was held on 21st March, 1991. The petitioner was highest bidder. The notification of auction is dated 28th Jan., 1991 published on 7th Feb., 1991. It is the case of the petitioner that he had participated in the auction through one Loharia Ram, a partner of the firm M/s Lohariya Ram as per the partner-ship deed. His highest auction was at Rs. 51,05,600/- and as per the condition of the auction, he had deposited on behalf of the firm 12.5% of the bid money i.e. 6,39,200/- and advance instalment for one month of Rs. 4,25,467 and obtained a receipt, copy of which is Annex. 4 of the amount of Rs. 10,63,667/-. The contract/agreement was to be signed immediately thereafter. The petitioner was asked to give security bond for the amount of the auction. The partners of the firm had submitted security bond to the Mining Engineer, it is so alleged. However, the Department refused to accept the security bond of the

partner or to approve auction or to get the paper signed on behalf of the partners through M/s Loharia Ram on the ground that the auction was not given by the firm or any partnership-deed in the name of M/s Lohariya Ram was produced at the time of auction and he had given the bid only as an individual and therefore, Lohariya Ram was not entitled to get the paper signed and bid accepted in the name of firm Lohariya Ram. Even though it is stated in the written statement that the Department was prepared to give contract to Lohariya Ram only and also prepared all the documents, but the Department was not prepared to get the agreement signed by it through firm M/s Lohariya Ram.

3. It is the case of the petitioner that he had participated in the auction on behalf of the firm, he had deposited the aforesaid amount on behalf of the partners and non-awarding contract to the petitioner was not justified and the petitioner was entitled not only to the contract but also refund of the amount in the alternative with interest. In the written statement filed by the respondents the facts as stated are admitted. The only defence being taken by the respondents is that vide bid-sheet Annex. R/1, Lohariya Ram had given highest bid in individual capacity and not as a partner of the firm and therefore, firm M/s Lohariya Ram even though in the name of Lohariya was not entitled to get the contract. It is further submitted that the offer was made to Lohariya Ram in individual capacity, but no agreement was entertainable by Lohariya Ram on behalf of the firm.

4. The only question which arises for consideration in the present writ petition is whether the bid was given by Lohariya Ram in individual capacity or on behalf of the partners also. For this purpose Annex. R/1, photo-state copy of the bid-sheet attached with the reply is relevant document. The bid had been given by one Brij Kishore Sharma, Jaswant Singh, Lohariya Ram and one Salim. There is pre-fixing of "Sarva Shri Lohariya Ram on 21.3.1991 on bid papers. On 23.3.1991, an application has been moved by Lohariya Ram attaching with the application a copy of partnership deed. A copy of such partnership deed has also been attached as Annex. 2 to the writ petition. The respondents submitted that Lohariya Ram had never shown any intention at the time of bid that he was participating in the auction on behalf of the partnership firm and, therefore, there was no question of signing any agreement with partnership firm, namely, M/s Lohariya Ram and for the reason that Lohariya Ram had not executed the agreement, therefore, ultimately bid was cancelled vide order dated 4.1.1992, Annex. R/7. The bid is conducted under the Rajasthan Minor Mineral Concession Rules. Rule 34 prescribes procedure for auction. Rule 34 relates to the bid by way of auction. The conditions have also been attached in Annex. 1 wherein it is mentioned that in case the money is not deposited, earnest money is to be forfeited and bid shall be cancelled. In the present case, neither in the bid sheet, nor in Annex. 1, anything has been mentioned in regard to the fact that the bid cannot be made by partners or partnership firm. In the present case, even though there is no bar in participating by partners, nor there is any provision that the bidder is to inform the Auction Officer that he is participating in the bid as partner of the firm. Nothing has been brought on record that the procedure

for auction condition to be adopted in regard to the partnership firm and individual is different or formalities to be completed by both the parties are distinguishable. Immediately within a day or two of the bid held on 21st March, 1991, the petitioner had informed the respondents that he had given bid on behalf of the partnership-firm and agreement be signed on behalf of the partnership firm and security shall also be furnished on behalf of the partnership firm. It is not understandable in such circumstances as to what loss or damage could have been done to the respondents if the agreement of Lohariya Ram would have been entered into with M/s Lohariya Ram. In my opinion, there is no application of mind made by the respondents in refusing to enter into agreement with M/s Lohariya Ram and proposing to enter into agreement with Lohariya Ram only in individual. capacity, specially when there are no such rules" that the formalities to be completed by individual or partnership firm for signing the agreement are different.

5. Apart from above, in the document attached by the respondents which is Annex. R / 1 with the written statement, against the names of the bidders "Sarva Shri" has been prefixed i.e. Sarva Shri Brij Kishore and Sarva Shri Jaswant Singh, whose bid was less than the petitioner. Even before the name of petitioner "Sarva Shri" has been prefixed and so is the position in Annex. 4. Whether the record being maintained by the respondents themselves is correct or not, is the matter to be probed into by the respondents. Even though, it is denied that the money was deposited by M/s Lohariya Ram, but existence of Annex. 4 is not denied, which shows that the money had been deposited by Sarva Shri Lohariya Ram. The respondents are bound by their own record.

6. In my opinion, the plea of the respondents cannot be accepted nor there is any legal or justifiable basis for the respondents to say that even if within a day of the bid, the petitioner had produced the partnership deed, but still the respondents were reluctant to execute the agreement with M/s Lohariya Ram, but were prepared to enter into agreement with Lohariya Ram in individual capacity.

7. Even as per Annex. 1, in the case of default, if all the odds were to be held against the petitioner, the respondents could have forfeited the earnest money deposited by the petitioner and not the whole of the amount, but in the present circumstances of the case, I am of the opinion that the respondents, were not justified to act in the manner, they had acted in not entering into agreement with the petitioner, neither there was any basis or legal ground for the respondents to have not entered into agreement with M/s Lohariya Ram when the bid itself was given in the name of "Sarva Shri Lohariya Ram" and amount was also deposited in the name of "Sarva Shri Lohariya Ram" which contemplates that the bid had been given by Lohariya Ram for himself and for others.

8. For the reasons mentioned above, the writ petition is allowed with a direction that the respondents shall refund all the amount so collected from the petitioner which had been illegally retained with interest @ 10% per annum. No order as to

costs.