(1994) 02 AHC CK 0094

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22318 of 1992

Manindra Nath Upadhya APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Citation : (1994) 3 AWC 1621

Hon'ble Judges : R.B. Mehrotra, J;Anshuman Singh, J

Bench : Division Bench

Advocate : Shitala Prasad Pandey, for the Appellant;

Final Decision : Disposed Of

Judgement

R.B. Mehrotra, J.—By a public notice published in the newspaper it was advertised that right to collect toll tax over the bridge, situate at 56 Kms/239, Jalalpur, district Jaunpur over river Sal will be auctioned on 25th of April 1990. The Petitioner participated in the aforesaid auction which was held on 25th of April. 1990. The Petitioner was the highest bidder and his bid was to the tune of Rs. 41,09 lacs. The Petitioner''s bid was finally accepted by the Commissioner on 19th to July. 1990 in accordance with the terms aid conditions of the auction notice, the Petitioner deposited 14th of the total amount of the bid en 23rd of July, 1990. The Petitioner''s case is that he gave an application to the competent authority for assessment of the stamp duty for executing the agreement and stamp duty was assessed at Rs. 6,42,062.05.

2. Aggrieved by the aforesaid assessment, the Petitioner filed a writ petition in this Court and on 1Oth of January, 1991, this Court passed an interim order in the said writ petition that the orders, dated 15th of November 1990, 17th of November, 1990 and 31st of December, 1990 a e to remian stayed during the pendency of the writ petition and the Petitioner was permitted to pay stamp duty in accordance with the decision of the Full Bench of the Court in Case of Board or Revenue v. Mulk Raj and Ors.

3. On 11th of January, 1991, the Petitioner claims of have given an application turn to the Executive Engineer, National High way No. 1,-PWD Varanasi that the Petitioner, is submitting the necessary stamps for registration of the agreement of lease in accordance with the interim order passed by the High Court The Respondents, however, according to the Petitioner did not permit the Petitioner to carry on his contract inspite of submission of necessary stamp duty The Petitioner continued to approach the authorities concerned seeking permission to start collection of toll tax on 28th of April, 1992 after a lapse of one year the Execute Engineer, National High way No. 1, PWD. Varanasi informed that auction, of, right to collect toll tax, on National Highway No. 56 at Kms. 1990 the bid was accepted on 19th of July. 1990. The contractor objected to the payment of the stamp duty and thereafter obtained an interim order from the High Court. The lease could not be registered and in between by a notification dated 19th of February 1992 the scheduled rate for collecting the toll tax has been increased, Respondent No. 3 recommended in the aforesaid circumstances, that a fresh auction be held and necessary permission on may be given for the same. WMJ permission,

4. On behalf of the Commission, Varanasi vide latter dated 14th of May 1992 addressed to the Executive Engineer, National Highway No. 1 PWD Varanasi the Senior Administrative Officer of the Commissioner informed that since two years have lapsed from the date of action for colleting toll was given, the Commissioner has decided to cancel the bid of the Petitioner and has further decided that a fresh auction be held for collecting the toll over the aforesaid bridge.

5. Aggrieved by the aforesaid order, the Petitioner has; filed the present writ petition. In response to the notice issue by this Court, counter affidavit have been flied on behalf of Respondents No. 2 and 3.

6. Before considering the submission made by the Petitioner, it is necessary to notice the conditions of auction on the basis of which the Petitioner is claiming his right to collect toll tax in pursuance of the bid made in his favour for colleting the toll tax over the bridged in for the year 1990-91.

Condition NO. 1 of the auction notice provided that the auction is being made for the year 1990-91 and this period will begin from the date the contract is given for realisation of the toll tax.

Condition No. ''7'' of the auction notice provided that the highest bidder on acceptance of his bid will be required to deposit 1/4th amount of the auction bid in the form of F.D.K. Demand Draft, Call Deposit of a Nationalised/Scheduled Bank or N.S.C. which will be pledged with the Executive Engineer, National Highway No. 1. PWD Varanasi In case of default, the Executive Engineer will forfeit the earnest money deposited by the bidder.

Condition No. ''10'' provided that on receiving information of the acceptance of the bid, the contractor will have to deposit with in seven days the amount equivalent to three month''s instalment with the Executive Engineer, National Highway No. 1 PWD Varanasi.

Condition No. 16 provided that the toll tax will be realised 24 hours in accordance with the prescribed Rules and in accordance with the rates as amended from time to time by the State Government. If for future, rates of toll tax are increased, the amount to be recovered from the contractor in installments will be proportionately increased.

Condition No. 17 provided that after countersigning the lease by the Commissioner. Varanasi it will be required to be registered within seven days on stamp papers of proper valuation. The entire expenses of execution and registration of the lease will have to be born by the contractor and the original lease will his deposited with the Executive Engineer, Highway No. 1, PWD Varanasi.

Condition No ''18'' contemplated that the conditions of the bid will be valid only till 3 months and a conditional bid will not be consumed. In case the bridge it exempted from realisation of toll tax by the Central Government with in the period of the lease, the contractor will no, be entitled to get any damages on the said count.

7. We have heard learned Counsel for the Petitioner Sri S.P. Pandey and the learned Standing Counsel.

8. Since counter and rejoinder affidavits have been exchanged between the parties the writ petition is being decided at the admission stage under the Rules of the Court, with the consent of the parties.

9. Petitioner''s counsel has mainly submitted that the Petitioner participated in the auction after complying with the necessary formalities prescribed under the auction notice. Petitioner''s bid being the highest having been accepted by the Commissioner, the Petitioner complied with all other conditions contemplated to in the auction notice within the stipulated period and as Such the Petitioner acquired a right to get the contract for collecting the toll tax for a period of one year from the date he is given charge of the bridge for collecting toll. In the impugned order, the Commissioner has committed a manifest error in refusing to permit the Petitioner to operate the contract merely en the basis that the period of two years have lapsed from the date the auction was held. Petitioner cannot be blamed for the said delay and the delay if any, was caused due to the inability of the Respondents in emitting the Petitioner to operate the contact Tift Petitioner was entitled under the terms of the auction to collect the toll tax for a period of one year from the date he was given charge of the bridge for collecting toll. Since the Petitioner had not been given such charge, the period of contract for which the auction was made, is to start from the date the Petitioner give charges of the bridge for collecting the toll. Petitioner''s counsel has further submitted that an amount of Rs. 10,27,500/- bad been deposited by the Petitioner with the Respondent No. 3 as far back at on 23rd of July, 1990. The said amount is still

lying in deposit of the Respondents. The Respondents have never informed the Petitioner that the Petitioner can take back his deposit. In the aforesaid circumstances, the Petitioner''s right to collect the toll on the basis of acceptance of his bid on 19th of July, 1990 by the Commissioner still subsists. The Petitioner''s counsel has contended that as far as the enhancement in the rates of toll is concerned, the conditions of the auction itself contemplate that if the rates of toll is enhanced, the contractor will be liable to pay the proportionate enhancement in the bid. The Petitioner is ready to comply with the aforesaid condition and even on the said ground, there is no justification for not permitting the Petitioner to collect, the toll for a period of one year on the basis of acceptance of his bid.

10. The question which is involved for consideration in the present writ petition is as to whether the Petitioner has any subsisting right to collect the toll on the basis of the auction held on 25th of April 1990 year the bridge in question for which the Petitioner''s bid was accepted on 19th of July, 1990.

11. A close scrutiny of the conditions of the auction shows that the auction was made for the year 1990-91 from the date the contract is given to the contractor. The language of the condition No. 1 is material for purposes of analysing the said condition. The question is as to on what dale the contact, was given to the contractor. The Commissioner accepted the bid of the Petitioner on 19th of July, 1990. Immediately on acceptance of the bid, the contract was granted to the Petitioner the period of one year was to begin from the date the contract was granted to the Petitioner. Actual taking over the charge of the bridge for collecting toll or actual giving over the charge of the bridge for collecting toll is irrelevant for the purposes of determining the period of the contract The submission of the Petitioner that the period of the contract was to begin per one year from the date the connector takes over tie charge of the bridle is based on misconstruction of Condition No. 1.

12. Further scrutiny of the Conditions of the auction show that after acceptance of the bid by the Commissioner, the contractor is required to complete all the formalities required to be completed by Conditions No. 10 and 17. On the record of this case, it is not disputed that the Petitioner has complied with Conditions No. 10. But the record also establishes that the Petitioner did not comply with Condition No. ''17'' and admittedly he did not submit the lease for registration on the requisite stamp papers with in seven days of the counter-signing of the lease by the Commissioner, Varanasi According to Condition No. ''13'', the bid of the Petitioner was valid only for a period of three months. The Petitioner has to blame himself for not submitting the lease on requisite stamp papers for registration within seven days of the countersigning of the lease by the Commissioner. The Petitioner has challenged the assessment of stamp duty on his agreement in the High Court in the month of January. 1999 i.e., after a lapse of almost five months. The Petitioner did not comply with the requirement of Condition No. ''17'' within the stipulated period of 7 days and the necessary

stamp papers for registration of the lease was submitted by the Petitioner with the order of the High Court for 11th of January, 1991.

13. On the basis of the scrutiny of the aforesaid conditions of the auction, we are not inclined to accept the Petitioner''s (submission that the Petitioner has any subsisting right at present en the basis of the acceptances of his bid in the present matter for the year 1990-91 to collect toll tell tax over the bridge in question now after a lapse of four years.

14. However, on the basis of the averments made in the writ petition and on the bastes of the statement made in the counter-affidavit, it is also clear that the Respondents are also responsible for not taking any decision in the matter after submission of necessary stamp papers by the Petitioner on 11th of January, 1991. If the Respondents for any reason were of the view that the Petitioner has lost his right to collect the toll tax, due to lapse of time, the Respondents should have informed the Petitioner accordingly, within a reasonable period and should have further informed the Petitioner that the Petitioner can take back his security and earnest money. There is absolutely no justification for the Respondents to have not taken appropriate decision in the matter expeditiously and thereby unnecessarily withholding the Petitioner''s earnest money and security deposit to the tune of Rs. 10,27. 500/-. No explanation worth the name has been given in the counter affidavit as to why the Respondents did not take any decision in the matter within a reasonable period and as to why the Respondents did not inform the Petitioner that since the Petitioner has failed to comply with the submission of the documents within time, the Petitioner is not entitled to collect toll tax on the basis of the acceptance of his bad. We are definitely of the view that the Petitioner is entitled to get back the amount of earnest money and security alongwith interest at the rate of 12% per annum from the date the Petitioner deposited his earnest money end security amount, (ill the said amount is refunded to the Petitioner. We further direct Respondent No. 3 to return earnest money and security alongwith interest at the rate of Rs. 12% per annum within a period of six weeks from the date of the receipt of the certified copy of this order. However, we also make it clear that since we have taken a view that at present the Petitioner has no subsisting right to collect toll on the basis of acceptance of his bid by the Commissioner on 19th July, 1990, the relief claimed by the Petitioner for a direction to Respondent for permitting him to collect the toll tax is being refused. The decision in this petition or any observation made herein it without prejudice to the rights of the parties to claim damages in appropriate proceedings for breach of any contractual obligations.

15. The writ petition is accordingly disposed of with the aforesaid directions. In the circumstances of the case, parties will bear their own costs.

