

(2004) 04 PAT CK 0051
In the Patna High Court
Case No : CWJC No. 1359 of 2004

Nasriganj Balu Utkhanan Shramik Sahyog Samiti Ltd. and
Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Bihar Minor Mineral Concession Rules, 1972 — Rule 11A, 11F, 12

Citation : (2004) 2 BLJR 997 : (2004) 2 PLJR 850

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ashutosh Ranjan Pandey, for the Appellant; A.K. Singh, Janardan Singh and Vivek Kumar Singh, for the Intervenor- Respondent in I.A. No. 954 of 2004, Akhilesh Kumar, for the Intervenor-Respondent in I.A. No. 2037 of 2004 and Vivek Kumar Singh, for the Intervenor-Respondent in I.A. No. 2036 of 2004, for the Respondent

Judgement

R.M. Prasad, J.—In this writ petition, the petitioners are aggrieved by the action of the District Magistrate, Rohtas and the Assistant Mining Officer, Rohtas (respondent No. 4 and 5 respectively), who, as alleged, in complete violation of the rules recommended for settlement of Amiyawar Balu Ghat with one defaulter even though the petitioner, being the Labour Co-operative Society operating in Nasriganj block of Rohtas district and has preferential right of settlement under Rule 12 of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as "the rules"), offered Rs. 1,00,000/- more than the highest bidder for settlement of Balu Ghat.

2. In short, the relevant facts are that Balu Ghat in question was put on auction on 12.12.2003, 15.12.2003 and 19.12.2003, but none except the petitioners appeared for settlement. They claimed to have deposited 10% of the bid amount on 19.12.2003, which was accepted by the respondents. The respondents again issued an advertisement fixing 30.12.2003, 3.1.2004 and 9.1.2004 for auction of Balu Ghat in question but none appeared. Thereafter, the respondents issued

third advertisement on 20.1.2004 and declared that on each Monday, Wednesday and Saturday bid shall be held. On 24th January, 2004, the respondents held the bid in which one Umesh Yadav made highest offer of. Rs. 65,00,500/- and when the petitioner Society came to know about it they immediately filed a petition before the Collector, Rohtas for settlement with them offering Rs. 66,00,000/- but his office staff refused to give receipt. Thereupon the petitioners sent the application to the Collector, Rohtas as well as to the Chief Secretary, Bihar, Patna offering Rs. 66,00,000/- and stating that they are ready to deposit the amount as per rule, vide Annexure 12 series.

3. It is alleged by the petitioners that the Collector, Rohtas in his report, contained in letter No. 213 dated 26.1.2004 (Annexure 13) sent to the Mines Commissioner, Government of Bihar, Patna, sought for approval for settlement with the highest bidder of Rs. 65,00,500/- by suppressing the request made by the petitioner Co-operative Society for settlement at Rs. 66,00,000/- for the reasons best know to him. It is alleged that the Ghat is going to be settled with Umesh Yadav to whom the District Magistrate had allowed to participate in the bid even without depositing the security deposit. It is further alleged that he had made an offer of Rs. 2.91 crore for all the Ghats of the district and had even signed the bid sheet but subsequently he defaulted and refused to take settlement. It appears that the petitioners, being aggrieved by the action of the respondents Nos. 4 and 5, moved the Commissioner, but he also did not take any steps for settlement with the petitioners and thus they filed the present writ petition.

4. In the counter-affidavit filed on behalf of the respondents it is alleged that on 24th January, 2004 three persons appeared and participated in the bid. It is also alleged that petitioner No. 2 was present in the hall, but he did not participate. It is further stated that nobody was ready to take entire Sone river as a unit and therefore out of them, only four Ghats were settled through auction. Earlier, the reserve jama for Ghats in question was refixed at Rs. 38,50,000/- but considering the potentiality of sand ghat later it was revised and fixed at Rs. 51,70,000/-. One Umesh Prasad emerged as highest bidder to the tune of Rs. 65,00,500/- against the reserve jama of Rs. 51,70,000/-.

5. It is admitted in the counter-affidavit that the petitioners, being the Labour Co-operative Society, deposited 10% as security money on 19.12.2003 amounting to Rs. 3,80,000/-. However, it is alleged that in the application filed by petitioners there is no statement as to whether the members do not own more than 5 acres of agricultural and homestead lands and also that the application did not say that they were ready to take settlement at 20% higher than the auction amount of the previous year. It is further contended that the petitioners filed Revision Case No. 34 of 2003 before the Commissioner, Mines under Rule 45 of the Rules, which is pending. Thus, for the same relief the petitioners are pursuing two remedies; one before this Court and the other before the statutory authority under the Rules.

6. In the rejoinder filed on behalf of the petitioners to the counter-affidavit, it is stated that the statement with regard to presence of the petitioners in the bid on 24.2.2004 is absolutely false. While not disputing that Umesh Yadav gave the highest offer of Rs. 65,00,500/-, it is stated that he was not an eligible person to participate in the bid. It is further alleged that under term No. 13 of the advertisement, contained in Annexure 4, 50% of the bid amount was to be deposited by the said Umesh Yadav on the next working day, but till date he has not deposited this amount. As such, according to the petitioners, his offer should be cancelled and his security deposit must be forfeited. In reply to the statement regarding non-furnishing of the description of land by the petitioners, it is stated that the respondents did not make any demand of affidavit with regard to the agricultural land nor did they demand any clarification over the amount even though the petitioners had categorically informed that they are ready to take settlement which is obviously under Rule 11-C of the Rules.

7. It appears that the three applications for intervention, vide I.A. No. 954, 2037 and 2036 of 2004, have been filed by Umesh Prasad Yadav, Dehri-on-Sone Labourers Co-operative Society Ltd., Dehri-on-Sone and Samaj Kalyan Samiti, Nasriganj respectively to oppose the prayer made in the writ petition.

8. In the IA filed by Umesh Prasad Yadav, it is alleged that the petitioners in collusion with the Mining Officer deposited 10% amount of the bid which should not have been accepted by the Mining Officer, Rohtas because the "Pratibhooti Rashi" had to be deposited over the total amount of bid of more than Rs. 2,91,00,000/-. It is claimed by him that he deposited a Bank draft of Rs. 6,00,000/- as "Pratibhooti Rashi" against the total amount of his offer of Rs. 65,00,500/-. However, the respondent-authorities have not made any such statement in the counter-affidavit filed by them.

9. In I.A. filed by Dehri-on-Sona Labourers Co-operative Society Ltd., it is claimed that the Society consists of poor labourers involved in sand excavation and carriages within the district of Rohtas, including the area of Nasriganj Block, and its members are fully entitled for settlement of Balu Ghat. It is alleged that the petitioners in collusion with the Mining Officer deposited 10% of the bid amount. It is further alleged that there are many co-operative societies in the area interested in preferential treatment under the provisions of the Rules and thus it is submitted that the Collector, Rohtas may issue notices to all the Co-operative Societies to take part in the auction which should be confined to registered societies.

10. In I.A. filed by Samaj Kalyan Samiti, Nasriganj, it is stated that they are engaged in doing business like sand excavation within the area of Nasriganj Block besides other things and their members are fully entitled for settlement of Balu Ghat. They have also alleged that the petitioners in collusion with the Mining Officer deposited 10% of the bid amount relating to Balu Ghat in question. Further, it is vaguely stated that they are ready to take settlement of the Ghat in question and offered an amount slightly higher than that offered by the

petitioners.

11. Learned counsel for the petitioners has contended that all the interlocutory applications have been mala fide just to favour Umesh Prasad Yadav, even though the I.A. filed by Dehri-on-Sone Labourers Co-operative Society Ltd. did not participate and have no preferential right under Rule 11-C as they do not even claim that their members usually worked as labourers in the panchayat or panchayats in which the sand deposits are there in the Balu Ghat in question nor it is claimed that they are residents of panchayat or panchayats for which the Society was formed. It is also not claimed by them that they owned more than five acres of agricultural or homestead land nor have given an undertaking to deposit an amount which is 20% higher than the amount realised as royalty from the same area in the calendar year immediately preceding. It is contended that the intervention application filed by Samaj Kalyan Samiti also suffers from same except that they claim to have performed business like sand excavation and its carriage within the area of Nasriganj Block.

12. Learned counsel for the intervenor of I.A. No. 954 of 2004 submitted that the question for compliance of the requirement under Rule 11-C would only arise when the Co-operative Societies are called upon for settlement under the said provision. In the present case, no action under Rule 11-C has been taken by the Collector. As such, according to the learned counsel, the said intervenors have filed I.A. to oppose the prayer of the writ petitioners so that steps for settlement under Rule 11-C are taken and the intervenors also get the opportunity to participate for settlement in their favour.

13. Mr. Singh, learned counsel for the respondent-Mines Department submitted that Rule 11-C to 11-F are special provisions relating to settlement of sand as minor mineral and there cannot be any dispute that Rule 11-C gives preferential right to the Co-operative Societies on fulfilment of other conditions mentioned therein for settlement of sand. But in view of the law settled by the Division Bench in the case of Satya Murmu Vs. State of Bihar and Others, a proper notice is to be given to all the Co-operative Societies for holding of auction under Rule 11-C so that all eligible Societies could take part in the auction.

14. This Court finds substance in the submission of Mr. Singh. Bare reading of the provisions contained in Rule 11-A and 11-C show that the Collector is to give preference to Co-operative Societies on fulfilment of the conditions mentioned in Rule 11-C only when public auction takes place but nobody appears at the bid. Under such circumstances, if the Society undertakes in writing to deposit an amount which is 20% higher than the amount realised as royalty from the same area in the calendar year immediately preceding, the Collector is to give preference to the Society in the matter of settlement of sand which is considered as minor mineral for which Rules 11-A to 11-F are special provisions.

15. However, in view of the decision of the Division Bench in the case of Satya Murmu v. State of Bihar, (supra), the settlement can be made in favour of the Co-

operative Society under Rule 11-C only after due notice intimating that an auction will be held under Rule 11-C giving preference to Co-operative Societies so that all eligible Co-operative Societies could take part in the auction. This having not been done, the petitioners cannot claim for preferential treatment. 16. However, in view of the offer given by the petitioners, the writ petition is disposed of with a direction to the Collector to hold limited auction under Rule 11-C of the Rules in accordance with the principle enunciated in the Division Bench judgment, referred to above, and proceed with the settlement of the Balu Ghat in question accordingly. Petition disposed of.