
(1999) 04 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3839/99 (O and M)

Neel Kanth and Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 122 PLR 432 : (1999) 3 RCR(Criminal) 190

Hon'ble Judges : V.M. Jain, J;G.C. Garg, J

Bench : Division Bench

Advocate : D.N. Ganeriwala, for the Appellant; S.M. Sharma, D.A.G. for Respondent Nos. 1 to 3 and Mohan Jain and Rakesh Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—Challenge in this petition under Articles 226/227 of the Constitution of India is to the grant of Country Liquor Licence L-14-A and Indian Made Foreign Liquor Licence L-2 to respondent No. 4 in the auction that took place on 8.3.1999, in the sum of Rs. 12.25 crores for the year 1999-2000 in respect of liquor vends of Kundli Group, District Sonapat.

2. Case of the petitioner is that the liquor vends of Sonapat district were auctioned on 8.3.1999 at Panipat by respondent No. 3. Prior to commencement of auction on that date, terms and conditions of auction were announced. Regarding security and instalments, it was stipulated that during 1999-2000, the successful bidder shall have to deposit 16-2/3% of the bid money by way of security. Out of this amount 5% shall be payable at the fall of the hammer and remaining 11-2/3% within 10 days from the date of auction, or 31.3.1999, whichever is earlier. In order to check speculative bidding, the Presiding Officer was authorised to demand 1/3rd of the total bid money in cash or by the bank draft as security at the time of the auction in case the bid exceeds 35% of the reserve price. The petitioner was interested to bid at the auction for Kundli Group. Reserve price for Kundli Group was fixed at 9.90 crores. M/s G.R.K. and

Co. also participated in auction of vends of Kundli Group. Its last bid was Rs. 12.20 crores. Thereafter respondent No. 4, Bhagirath Lal and Co. gave a bid of 12.25 crores. The petitioner raised the amount and gave the bid of Rs. 12.26 crores. As soon as the petitioner gave the bid of 12.26 crores, respondent No. 3 intervened and announced that the bidder giving the bid above Rs. 12.35 crores will have to deposit 1/3rd of the total bid money in cash/bank draft or by way of pay order as security. This announcement was followed by protests by many bidders, as imposition of the condition to deposit 1/3rd of the total bid money beyond the bid of Rs. 12.25 crores was contrary to the policy of the Government and the condition had been imposed arbitrarily. Respondent No. 3 could impose conditions in terms of the announcement as noticed above only, if the bid had gone beyond 35% of the reserve price fixed by the Government for the Kundli Group which, as already noticed, was Rs. 9.90 crores. Case of the petitioner is that the condition of 1/3rd deposit could be imposed in case the bid amount had exceeded Rs. 13,36,50,000/-, Rs. 9.90 crores being the reserve price. Respondent No. 3 imposed the condition arbitrarily when the bid reached Rs. 12.25 crores. Since the petitioner was not in a position to deposit the entire amount as announced, it was not allowed to bid and respondent No. 4 was declared as successful bidder in haste with ulterior motive. Further case of the petitioner is that respondent No. 3 did not watch the interest of the State and he in fact caused loss to the State exchequer by imposing the condition at a point of time which was not the appropriate stage and in fact was against the terms and conditions announced at the time of the auction and the excise policy of the State Government. The petitioner has, therefore, been prejudiced and respondent No. 4 has been favoured.

3. Respondent No. 3 ultimately declared respondent No. 4 as the successful bidder and recommended its case for the grant of licence in its favour, which was ultimately granted on 18.3.1999. A legal notice was served upon respondent No. 2 by a partner of M/s G.R.K. and Co. Hissar. A similar notice dated 12.3.1999 was also served upon respondent No. 2 by the petitioner seeking the necessary relief but the same has not been considered by the said respondent. Copies of notices dated 8.3.1999 and 12.3.1999 are annexed as Annexure P-1 and P-2 respectively, with the writ petition. Not only this, the petitioner gave a telegram dated 17.3.1999 to respondent No. 2 but it has not been duly considered. The petitioner offered to pay 10% over and above the bid of respondent No. 4, i.e., 10% over and above Rs. 12.25 crores. A fax message was also sent in that behalf. The petitioner was ready with 10% of the amount of the proposed offer. He in anticipation got prepared bank drafts also. The respondents have acted in violation of the policy of the State Government in not only imposing the condition of deposit of 1/3rd in cash after the bid of 12.25 crores but they have also erred in grouping the vends as well. The action of respondent No. 3 to declare respondent No. 4 as successful bidder of the country liquor and Indian Made Foreign Liquor vends of the group titled as "Kundli Group" of Sonepat is illegal and liable to be set aside, the condition imposed by respondent No. 3 that the

person bidding above Rs. 12.25 crores would have to deposit 1/3rd of the total amount, being illegal and the bid of the petitioner of Rs. 12.26 crores having not been accepted. The condition imposed was against the terms of auction as this condition could be imposed only if the bid exceeded 35% of the reserve price. It is also brought out that in respect of certain other groups, the condition of 1/3rd deposit was not imposed though the increase in auction in respect of those groups was as high as 82%, 53% and 42%. Hence this petition challenging the action of the official respondents in granting licence in favour of respondent No. 4, and refusing to consider the offer of the petitioner of 10% over and above the amount for which the licence has been granted in favour of respondent No. 4.

4. Written statement has been filed by respondent No. 3 on behalf of respondents 1 to 3. Another written statement has been filed on behalf of respondent No. 4. Case of respondents 1 to 3 is that the highest bid of Rs. 12.25 crores of Kundli Group was given by respondent No. 4 and the same was accepted and approved by respondent No. 2 on 17.3.1999 vide order Annexure R-1. No bid beyond Rs. 12.25 crores was given by any one including the petitioner. Had any one given the bid over and above Rs. 12.25 crores, the same would have been accepted. The petitioner could have objected to the imposition of the condition of 1/3rd deposit in cash at the spot, a condition imposed on bids beyond Rs. 12.25 crores. The proceedings were video taped and the video cassette is available with the answering respondents and shall be produced in Court if required. Representation of the petitioner, Annexure P-2 dated 12.3.1999 was delivered by hand in the office of respondent No. 2 on 15.3.1999 by Anil Kumar claiming himself to be a partner of the petitioner-firm. He pleaded that the petitioner is ready to offer 10% more than the highest bid of Rs. 12.25 crores of respondent No. 4 for the Kundli Group. Anil Kumar was advised by respondent No. 2 to tender a draft of Rs. 3.267 crores i.e. 10% of Rs. 12.25 crores plus 1/6th of Rs. 12.25 crores, by 4 P.M. on 16.3.1999 as refundable security but the requisite drafts were not deposited by the petitioner. On 16.3.1999, Mohinder Singh, Ram Kumar Malik, Devinder Singh and Devender Malik claiming themselves to be the partners of the petitioner-firm appeared before respondent No. 2 in connection with notice Annexure P-2. A request was made to extend the time to deposit the bank drafts of Rs. 3.267 crores upto 1 P.M. on 17.3.1999. They assured respondent No. 2 that they would tender the amount of refundable security in the office of the Deputy Excise and Taxation Commissioner (I/E), Sonapat either by way of bank drafts or in cash. The Deputy Excise and Taxation Commissioner, Sonapat by his fax message Annexure R-2 informed respondent No. 2 that the petitioner firm is willing to deposit only 10% of the highest bid of Rs. 12.25 crores and it has refused to deposit 1/6th of the highest bid of Rs. 12.25 crores. Respondent No. 2 after waiting for the deposit of the bank drafts till 3 P.M. on 17.3.1999, ignored the notice of the petitioner, Annexure P-2 and approved the bid of Rs. 12.25 crores of respondent No. 4. The petitioner, however, sent a fax message Annexure P-4 with faxed photo copies of the bank drafts. This could not be considered in the absence of the original bank

drafts of the requisite amount as the representation of the petitioner had already been considered and filed, the petitioner having failed to deposit the bank drafts of Rs. 3.267 crores upto 1 P.M. on 17.3.1999. A copy of the order passed by respondent No. 3 is annexed as Annexure R-3 with the written statement. The allegations regarding auction conditions and the demand of 1/3rd amount in the event of bid going beyond 35% of the reserve price, have not been disputed and are rather admitted in para 3 of the written statement. It is also admitted in para 5 of the written statement that the reserve price of Kundli Group was Rs. 9.90 crores. In paras 5 to 13 of the written statement, it is further admitted that condition of deposit of 1/3rd of total amount was imposed by respondent No. 3 prospectively and not after the petitioner gave the bid of Rs. 12.26 crores. The case set up is that the petitioner never gave the bid of Rs. 12.26 crores. However, the answering respondent imposed the condition of deposit of 1/3rd cash of the bid money just after the bid of Rs. 12.25 crores. It is conceded in the written statement that it was a technical mistake on the part of the officials conducting the auction and that the mistake was bona fide and inadvertent. In other words, the stand is that the condition of deposit of 1/3rd cash was wrongly imposed when the bid reached Rs. 12.25 crores. In fact, it could have been imposed only after the bid had gone beyond 35% of the reserve price i.e. Rs. 13.36 crores. Further case of the answering respondents is that the petitioner failed to deposit the necessary bank drafts within the stipulated period which was extended twice on its request. The official respondents not only produced but also played the video cassette of the auction proceedings in court in support of the version as noticed above.

5. Case of respondent No. 4 in its written statement is that the successful bidder is required to deposit by way of security an amount equivalent to 16-2/3% of the annual licence both for country and the Indian Made Foreign Liquor vends. In case of increase beyond 35% of the reserve price, in order to check speculative bidding, the Presiding Officer could demand 1/3rd of the total money in cash or by way of bank drafts or pay order as security at the time of the auction. The auction has been conducted as per the conditions of auction and no illegality was committed by the official respondents. The bid in favour of respondent No. 4 has already been approved and it has already deposited the total security amount and the function of the liquor vends has started. The writ petition, therefore, deserves to be dismissed on merits and on the ground of delay and laches.

6. Learned counsel for the petitioner submitted that as per the conditions of auction, the authorities conducting the auction could insist upon for deposit of 1/3rd amount in cash or by way of bank drafts only in case where the bid exceeded 35% of the reserve price. In the present case, the reserve price was Rs. 9.90 crores and by adding 35% thereof, it comes to a total of Rs. 13.36 crores. The officers conducting the auction could not thus direct the persons taking part in the auction proceedings to deposit 1/3rd of the amount in cash till such time the bid reached the stage of Rs. 13.36 crores. In the present case the officers conducting the auction imposed the condition of deposit of 1/3rd when the bid

reached the stage of Rs. 12.25 crores only. The official respondents imposed the condition of 1/3rd deposit with a view to debar the petitioner and others to give higher bid and to ensure that respondent No. 4 turns out to be the highest bidder. Counsel further submitted that the petitioner moved a representation dated 12.3.1999 offering a bid of 10% over and above the highest bid of Rs. 12.25 crores. Not only this, the petitioner even offered to have the contract at Rs. 13.50 crores. The petitioner approached the respondents but the respondents instead of requiring it to pay only 5% of the amount of bid, directed it to deposit the entire amount offered by it over and above the bid of Rs. 12.25 crores besides an amount equivalent to 16-2/3% of the bid amount of Rs. 12.26 crores. The condition imposed by respondent No. 2 for conducting re-auction and to allot the vends of Kundli Group in favour of respondent No. 4 was illegal. The petitioner was at all times ready and willing to deposit 10% of the bid amount offered by it i.e. Rs. 1.35 crores and it had the requisite bank drafts for this amount in its possession but the authorities ignored the offer of the petitioner, and illegally confirmed the bid of respondent No. 4 for an amount of Rs. 12.25 crores. According to the learned counsel, the action of the respondents in confirming the bid of Rs. 12.25 crores is illegal and deserves to be quashed.

7. The case of the State on the other hand is that the condition of 1/3rd deposit after the bid reached Rs. 12.25 crores was wrongly imposed. In fact it was under misapprehension and the condition was imposed by taking the auction of the last year and by ignoring the condition of auction whereby it was provided that condition of 1/3rd can be insisted upon in case the bid exceeded 35% of the reserve price. It is the further case of the respondents that the petitioner did not give the bid of Rs. 12.26 crores and in case such a bid had been offered it would have been certainly taken note of. The petitioner even did not protest against the auction proceedings till 15.3.1999 when representation Annexure P-2 was presented before respondent No. 2 in person for the first time. The petitioner was still granted the concession and asked to deposit 1/6th of the auction bid i.e. 16-2/3% of Rs. 12.25 crores besides the entire amount offered by it over and above the auction bid of Rs. 12.25 crores i.e. Rs. 3.267 crores either in cash or by way of bank draft. The petitioner was granted time till 4 P.M. on 16.3.1999. Time was extended till 1 P.M. on 17.3.1999, yet the petitioner did not deposit the amount till 3 P.m. on 17.3.1999. Only the drafts were offered to the Deputy Excise and Taxation Commissioner, Sonapat at about 3 P.m. on 17.3.1999 and that too, only in the sum of Rs. 1.35 crores, i.e., 10% of the amount offered by the petitioner. Learned counsel also submitted that the entire auction proceedings were video taped and the video cassette is available in Court and can be displayed to show that the petitioner never offered the bid of Rs. 12.26 crores and the allegation in that behalf is not correct. The bid of respondent No. 4 in the sum of Rs. 12.25 crores was finalised on 17.3.1999 at 4 P.M. after the petitioner failed to deposit the amount of Rs. 3.267 crores. The petitioner was thus offered to have the vends re-auctioned but it failed to deposit the amount. Not only this, the petitioner never objected to the demand of Rs. 3.267 crores

either before respondent No. 2 or before respondent No. 3, by alleging that in fact a lesser amount should have been demanded. Learned State counsel further submitted that in the event of the offer of the petitioner being accepted, it was required to deposit 16-2/3% of the auction amount within 10 days or by 31.3.1999 which is earlier, it was in this view of the matter that the petitioner was asked to deposit 1/6th of the bid amount of respondent No. 4 and the amount over and above 12.25 crores offered by it so as to ensure that in the event of the vends being re-auctioned, the State does not suffer loss as it happened in some other cases. The condition was imposed in order to ensure that the revenue does not suffer. The petitioner having failed to stand by its commitment, is not entitled to the relief prayed for in this writ petition and the writ petition apart on merits, also deserves to be dismissed on the ground of delay and laches, the auction having taken place on 8.3.1999 and the writ petition having been filed on 19.3.1999 and the application having been moved a week after the date of the auction i.e. on 15.3.1999.

8. Mr. Mohan Jain, learned counsel appearing on behalf of the respondent No. 4 by reference to para 3 of the writ petition submitted that the conditions that were announced provided security equivalent to 16-2/3% of the annual licence fee for the country liquor and the Indian Made Foreign Liquor vends. Counsel by reference to the conditions of auction as contained in Annexure R-4/1 submitted that the authorities conducting the auction rightly imposed the condition of 1/3rd cash deposit after the bid reached Rs. 12.25 crores, i.e. 35% of the last year's bid. The department had always taken note of the last year's bid and not of the reserve price. Counsel further submitted that the petitioner never gave bid of Rs. 12.26 crores. It was, however, conceded that condition of 1/3rd deposit was ordered after respondent No. 4 gave the bid of Rs. 12.25 crores. Learned counsel by reference to a decision in State of Punjab Vs. Yoginder Sharma Onkar Rai and Co. and Others, submitted that the petitioner having taken no steps to challenge the auction for a period of seven days, the writ petition deserves to be dismissed on the ground of delay. It was also argued that the official respondents could ask for any deposit in order to ensure that the revenue suffers no loss. Learned counsel also submitted that the auction conditions are binding on the parties and if a person is allowed to offer a higher amount on a later date then such a person can always say that he is ready to pay more and, therefore, the auction is not bonafide. In any case, in this particular case the bid was accepted after affording the petitioner an opportunity to deposit the amount but it failed to do so. Even the drafts were not deposited. Learned counsel by highlighting the contents of details contained in para 2 of Annexure P-4 submitted that a look at the said document goes to show that as many as five drafts in the sum of Rs. 33 lacs were got prepared on 17.3.1999 whereas two drafts in the sum of Rs. 50 lacs were got prepared on 16.3.1999. This clearly goes to show that the petitioner was trying to arrange for an amount of Rs. 3.267 crores as asked by respondent No. 2 but it was unable to arrange the amount and could only arrange 10% of the offer made by it. According to the counsel this also goes to show that the

petitioner never objected to the demand of Rs. 3.267 crores by respondent No. 2 either for offering vends to it or to re-auction the vends. It was also argued that even if there was a violation of the auction conditions, the petitioner is further required to show the prejudice caused to it because of the irregularities, and the petitioner having failed to show any prejudice, is not entitled to the relief prayed for in this petition.

9. After hearing learned counsel for the parties and pursuing the record, we are of the opinion that this petition has no merit and deserves to be dismissed.

10. In the first instance, it deserves to be mentioned that video cassette prepared by the authorities of the auction proceedings relating to the auction of vends of the Kundli Group of Sonapat and some other groups was produced in court. We had the occasion to watch the proceedings as the cassette was ordered to be played on the T.V. Set in the Court. Respondent No. 4 gave the highest bid of Rs. 12.25 crores. One of the partners of the petitioner-firm, who was admittedly present at the time of the auction did not give the bid beyond Rs. 12.25 crores, as alleged in the petition. It is true that the officers conducting the auction had announced that any person offering the bid for an amount higher than Rs. 12.25 crores would be required to deposit 1/3rd of the amount in cash or by way of bank drafts. This fact has been admitted by the respondents that this condition was imposed by the authorities. During the course of watching the proceedings we also noticed that such a condition was announced after respondent No. 4 gave the bid of Rs. 12.25 crores. The petitioner made no representation till 15.3.21999 to the effect that it gave a bid of Rs. 12.26 crores but it was not taken note by the officers conducting the auction. Such a request was made for the first time on 15.3.1999 by moving representation Annexure P-2. To us it appears that it is an after-thought and such a situation has been created in order to take advantage of the announcement made by the officers conducting the auction to the effect that 1/3rd of the amount of bid beyond 12.25 crores is required to be deposited in cash/by bank drafts. In any case, the petitioner was afforded opportunity to have the vends re-auctioned but in order to safeguard the interest of the State, it was required to deposit an amount of Rs. 3.267 crores by the evening of 16.3.1999 which time was later on extended initially upto 1 P.m. on 17.3.1999 and thereafter upto 3 P.M. on the same date. As per the case of the petitioner, it was not possessed of amount of Rs. 3.267 crores and at the most it was in possession of an amount of Rs. 1.35 crores at about 3.P.M. on 17.3.1999 as against the amount of Rs. 3.267 crores. Learned counsel for the petitioner has failed to show by reference to any material on record that the petitioner objected to the demand of Rs. 3.267 crores made by respondent No. 2 for taking a decision to re-auction the vends. The petitioner only submitted that respondent No. 2 could not ask for more than 10% of the amount offered by it and it was ready and willing to deposit that much amount and had the drafts for that amount ready with it, but the learned counsel for the petitioner could not by reference to any rule or policy show that in order to claim re-auction of vends, the person desiring to have the vends re-auctioned was only

required to deposit 10% of the offer made by it.

11. Learned counsel for the petitioner also could not rebut the contention of the respondents that there is delay in filing this petition. Reference was only made to representation Annexure P-1, dated 8.3.1999 by K.K. Gupta, Advocate. This representation was on behalf of one Prem Kumar Khatri, resident of 2229, Sector 16, Faridabad and a partner of M/s G.R.K. and Co. Hissar, whereas the present petitioner is M/s Neelkanth and Co. Representation Annexure P-1 thus cannot be treated as a representation on behalf of the petitioner. Representation Annexure P-2, though undated was concededly presented before respondent No. 2 on 15.3.1999 for the first time. The matter was considered by respondent No. 2 on that very day in the presence of a representative of the petitioner and an order was passed thereon which was produced before us during the course of hearing of this writ petition. The petitioner was directed to deposit an amount of Rs. 3.267 crores by 4 P.M. on 16.3.1999. Representative of the petitioner again appeared before respondent No. 2 on 16.3.1999 and it was on his request the time was extended upto 1 P.M. on 17.3.1999 so as to enable it to arrange for the bank drafts for the sum demanded. The matter was again considered in detail by respondent No. 2 on 17.3.1999 and a detailed order Annexure R-3 was passed by giving the entire history including the offer made by the petitioner and the order passed by him on 15.3.1999 and 16.3.1999 on the representation of the petitioner. It was thereafter that the bid of respondent No. 4 was approved. It deserves to be noticed that the auction proceedings were required to be confirmed well before 31.3.1999 so as to enable the bidder to arrange the premises and start sale of the liquor w.e.f. 1.4.1999. The petitioner had been afforded opportunity to deposit the amount but it failed to do so despite availing about 48 hours. In this view of the matter the petitioner is not entitled to the relief on the ground of delay and laches, especially when it made no representation for about a week of the conclusion of the auction proceedings. In Yoginder Sharma Onkar Rai's case (supra), even the delay of four days in sending the telegram was considered serious by the Apex Court.

12. The contention of the petitioner that the demand of Rs. 3.267 crores was illegal, again has no merit. This amount was ordered to be deposited by keeping in view the fact that the petitioner was not only to deposit 16-2/3% of the auction bid i.e. Rs. 12.25 crores but the amount offered by it over and above Rs. 12.25 crores. This condition obviously seems to have been imposed to safeguard the interest of the revenue and to avoid pooling amongst the contesting parties in the event of ordering re-auction and offering an amount even below Rs. 12.25 crores. Respondent 1 to 3 have in their written statement brought out the material to show that on some occasions a lesser amount was fetched in re-auction because of pooling etc. and in that case the State suffered a loss. In any case, as already noticed, the petitioner never objected to the demand of Rs. 3.267 crores for ordering re-auction.

13. A reference to the auction conditions goes to show that the officers

conducting the auction could insist upon 1/3rd cash deposit after the bid exceeded 35% of the reserve price. In the present case the officials respondents indeed imposed the conditions of 1/3rd deposit even prior to the bid exceeded 35% of the reserve price. In that behalf we cannot help observing that the action was totally unjustified and the senior officers conducting the proceedings ought to have been more vigilant while announcing this condition and we would expect them to be so in future but this has not in any way vitiated the auction, for more than one reason. Firstly, there was no objection to the imposition of the condition of 1/3rd cash deposit when this condition was "announced. Secondly, the petitioner has failed to show that it gave the bid of Rs. 12.26 crores which according to it was not accepted by the authorities in the absence of 1/3rd cash deposit. In a gathering of hundreds of peoples if such a thing had happened, the petitioner would have raised hue and cry, and in any case its offer would have also been tape recorded along with other proceedings. But neither the petitioner nor any one else raised any objection to the condition being imposed at the stage of 12.25 crores nor it is shown that the petitioner gave a bid of Rs. 12.26 crores. We have ourselves watched the proceedings video taped by the officials respondents and the cassette played on the T.V. in the presence of learned counsel for the parties but none of them pointed out that any objection was ever raised and that there was an offer of Rs. 12.26 crores on behalf of the petitioner. Imposition of this condition in our opinion in no way caused prejudice to the petitioner and thus the petitioner is not entitled to the relief under Article 226 of the Constitution on that score. Observations of the Supreme Court in para 16 of the judgment in *Yoginder Sharma Onkar Rai and Co.*'s case (supra) can be read with advantage in that behalf.

14. Some judgments relied upon by learned counsel appearing on behalf of respondent No. 4 have not been intentionally referred to in this order as the same are not considered relevant for the disposal of the writ petition as the judgments cited by the learned counsel are on the point that auction proceedings are binding and the department can ask for any amount for ordering re-auction.

15. For the reason stated above, we find that this petition has no merit and is dismissed in limine but with no order as to costs. The video cassette produced in this Court marked as Mark "A" is taken on record and is ordered to be preserved for a period of one year unless otherwise ordered by the apex Court in appeal or SLP taken against this order.