

(2008) 07 JH CK 0181
In the Jharkhand High Court

Purusottam Lal Saroj, Rajiv Kumar, Antique Tie up (P) Ltd.
and Brahmdeo Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2008) 07 JH CK 0181

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Judgement

1. All these writ petitions have been filed by the petitioners challenging the order dated 18.07.2008 as contained in Annexure-4 by which the respondent-state of Jharkhand had passed an order for cancellation of the bids for settlement of liquor for sale by the retailers in six districts, namely, Hazaribagh, Ramgarh, Koderma, Chatra, Garhwa and Palamau on the ground that if the bids of the candidates of the aforementioned districts who are the petitioners herein are accepted, the same would affect the revenue of the State of Jharkhand and in addition it has also been stated in the order that as no offer had been made from the districts of Bokaro, Dhanbad and Ranchi for settlement of liquor for sale by the retailers, the entire bidding process and acceptance of the bids from other districts in the State of Jharkhand by the Deputy Commissioner and approved by the Excise Commissioner shall stand cancelled and a fresh bid would be invited for settlement of the liquor for sale in the entire State of Jharkhand.

2. The petitioners in all these writ petitions are admittedly the successful bidders for sale of liquor through retailers by virtue of a settlement process which took place in between 20-06.2008 to 24.06.2008 and they being the highest bidders, their offer was accepted by the Deputy Commissioner of the concerned district and same was forwarded to the Excise Commissioner for acceptance and approval.

3. It is stated that before the bids could be accepted finally by the Excise Commissioner, who is the final authority for acceptance, the impugned order

dated 18.07.2008 vide Annexure-4 was issued containing the direction indicated here-in-before.

4. Since the petitioners are the successful bidders they obviously feel aggrieved by the order passed by the State of Jharkhand and hence, they have filed the instant writ petition assailing the order.

5. Mr. Indrajit Sinha, representing the petitioners in W.P(C) Nos. 3661, 3718, 3722, 3725 of 2008 first of all assailed the order on the ground that the bids having been accepted by the Deputy Commissioner which was forwarded to the Excise Commissioner for acceptance could not have been cancelled in consultation with the Chief Minister of the State as the Excise Commissioner is the final authority to approve or disapprove the bid which was accepted by the Deputy Commissioner.

The aforesaid contention was instantly controverted by the learned Advocate General and it was submitted that the Deputy Commissioner although is the executing authority for conducting the bid he is merely a delegatee of the State through the Chief Minister and before the consent of the State Government was accorded for acceptance of the bid the same could not have been accepted by the Excise Commissioner who is also a delegatee of the State.

6. We find substance so far as this part of the contention is concerned as the Excise Commissioner admittedly, even according to the Counsel for the petitioners, is an authority of the State and it is the State through the Excise Commissioner which has to accept the bid of the highest bidders (petitioners herein).

Having failed on the aforementioned count, Counsel for the petitioners next submitted that even if it is accepted that the bids could be rejected by the State authority the fact remains that the action of the State being subject to judicial review the respondents are legally bound to explain as to how the highest bids of the bidders having been accepted, could be rejected merely on the ground that three districts of the State of Jharkhand, namely, Bokaro, Dhanbad and Ranchi did not have any takers of the bids as no offer has been made by any one to participate in the tender process which was invited from these three districts also. To clarify this position Counsel for the petitioners has contended that merely because no offer has come forward for acceptance of the bids from the above three districts, the bids conducted/accepted in rest of the districts of the State of Jharkhand could not be cancelled.

7. Prima facie we find substance in the contention of the Counsel for the petitioners as there is no doubt that the discretion, jurisdiction and authority to accept or reject a bid lies within the domain of the State authority including the Excise Commissioner and the Chief Minister through the Deputy Commissioner. But the question is that the decision to cancel the bid of the entire districts of the State of Jharkhand was taken merely on account of the fact that there was no offer from the three districts, namely, Bokaro, Dhanbad and Ranchi. We,

therefore, called upon the learned Advocate General to explain the position on this count. The learned Advocate General although was trying to impress upon the Court that the decision was taken in the interest of generating revenue in the State we do not feel satisfied as, in any case, the State of Jharkhand is free to conduct bidding process in the entire districts of the State except six districts, namely, Hazaribagh, Ramgarh, Koderma, Chatra, Garhwa and Palamau from where the offer by virtue of a bid had been accepted. We are, therefore, prima facie, of the view that these writ petitions require consideration so far as cancellation of the bids of the petitioners is concerned in view of the order dated 18.07.2008.

8. All the writ petitions, therefore, be listed for final disposal at the admission stage on 26.08.2008.

For the interim period we are of the view that the State of Jharkhand shall be free to conduct the process of bidding in all the districts of State of Jharkhand except the six districts, namely, Hazaribagh, Ramgarh, Koderma, Chatra, Garhwa and Palamau from where the offer by virtue of bid was accepted by the Deputy Commissioners the above mentioned six districts. But at the same time, we are conscious of the fact that if the entire bidding process comes to a stand still that would neither be in the interest of the petitioners nor in the interest of the State.

9. Therefore, after due deliberation and with consent of the Counsel representing the contesting parties, we thought it appropriate to direct the petitioners to participate in the bid which will take place shortly in the districts of their choice including the districts where they have participated in the bid earlier on condition that the petitioners shall not have to deposit further amount by way of earnest money for participation in the bid in respect of the districts where their bids have been accepted i.e. Hazaribagh, Ramgarh, Koderma, Chatra, Garhwa and Palamau. Consequently, the petitioners will be at liberty to participate in the tender process and offer their bids for securing the tender as and when it takes place.

10. It is further ordered that after tender process is complete and the same is accepted by the competent authority, no license shall be issued even to the highest bidders till the matter is finally disposed of in respect of aforementioned six districts where the petitioners' tenders had been accepted.

It is implied that any observation that has been made in this order is not conclusive and is purely incidental.