(1997) 02 AHC CK 0042

In the Allahabad High Court

Case No : Writ Petition No''s. 735 (MB) and 3269 (MB) of 1996

Rajesh Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 11(2)

Citation : (1997) 02 AHC CK 0042

Hon'ble Judges : S.H.A. Raza, J;I.P. Vasishth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.P. Vasishth, J.—Excise auctions for Lakhimpur Kheri and Hardoi for the year 1996-97 are the subject-matter of dispute in these two writ petitions and since common questions of fact and law are involved therein, therefore, the parties argued them together and we propose to dispose them off by the instant common order.

2. The propagation was that Writ Petition No. 709 (MB) of 1996 Rajesh Singh v. State of U.P. and Writ Petition No. 728 (MB) of 1996 Chandrajeet Singh v. State of U.P. were instituted in this Court seeking relief for participation in the excise auctions scheduled to be held at Hardoi and Lakhimpur Kheri on 11.3.1996. They were disposed off by a Division Bench of this Court on 8.3.1996 with a direction to the Respondents to permit the Petitioners'' participation on issuance of the necessary half-tickets in the event of their fulfilling requirements under the rules and deposit of the appropriate fee.

3. Accordingly, the writ Petitioners and their partners obtained the hall-tickets and approached the respective Pandals at Lakhimpur Kheri and Hardoi on the appointed day, but to their amazement, were prevented from entering the auction Pandal by the local authorities, so much so that they were not even permitted to meet the Collector to lodge a formal protest. Feeling aggrieved,

they immediately sent telegrams to the Excise Secretary and the Excise Commissioner apprising them of the high-handedness to which they were subjected. It was followed by their immediate visit to the office of the Excise Commissioner with a written application and an offer to submit bank-drafts worth Rs. 1,25,000.00 for Lakhimpur Kheri and Rs. 1,15,15,000 for Hardoi. As the Excise Commissioner was not available in the office, so the applications were handed over to the Additional Excise Commissioner who, however, refused to accept the bank-drafts. The Petitioners apprised the Additional Commissioner that because they were prevented from participating in the auctions, therefore, there was imperative need for re-holding the public auctions. They further offered the forfeiture of their above said draft money in case the proposed highest bid was found less than 20% higher than the earlier settled amount in the impugned auctions.

4. It was further averred that as the Additional Excise Commissioner refused to accept the bank-drafts, therefore, Writ Petition No. 815 (MB) of 1996 was filed in the court to assail the auctions. On 18.3.96 the said writ petition was disposed off finally by a Division Bench of this Court with a direction to the Petitioners to file a detailed representation of their grievance before the Excise Commissioner who was supposed to dispose off the matter before 28.3.1996. Accordingly, the Petitioners did file the representations before the Excise Commissioner, who in his turn referred them to the Additional Excise Commissioner as the latter exercised his delegated powers.

5. The grievance was that despite being apprised of the local authorities'' high-handedness in the entire episode, the Additional Excise Commissioner Joined the Respondents in the proceedings and refused to intervene; to finally reject the Petitioners'' representations on 27.3.1996. Hence the two petitions for the relief of quashing the orders of the Excise Commissioner dated 27.3.1996 contained in Annexure 5 (Lakhimpur Kheri) attached with Petition No. 3269 (MB) of 1996 of Rajesh Singh and Annexure 7 (Hardoi) attached with Petition No. 735 (MB) of 1996 of Chandrajeet Singh.

6. Both the petitions were resisted by the Respondents. The burden of defence was that even though the Petitioners had the hall-tickets, yet they never attended the auction which were validly conducted at both the places, i.e., Lakhimpur Kheri and Hardoi on 11.3.1996 according to the prefixed schedule. It was contended that since the Petitioners did not approach the "Pandal" to attend the proceedings, therefore, there was no occasion for anybody to prevent their participation; they were rather accused of taking contradictory stands before the Additional Excise Commissioner casting serious aspirations and doubts on their bona fides with regard to the post-auction offer of depositing the security of Rs. 1,25,00,000 in one case and Rs. 1,15,15,000 in the other. It was explained that in both these cases, the finally accepted bids were much higher than the State target of 15% increase over the last year''s revenue; actually It was even higher than the 20% enhancement fixed for the concerned districts; as in the case of

Lakhimpur Kheri it fetched 22.6% over and above the last year''s figure, whereas in the case of Hardoi it was 21.5%.

7. Although availability of an alternative remedy by way of appeal/revision u/s 11(2) of the U.P. Excise Act was pressed into service as a preliminary objection against the maintainability of the petitions, yet we are not inclined to knock out the Petitioners on the mere technicality of law despite the well-known reluctance of the writ courts to circumvent the common law remedies. The pertinent point is that the issue of excise auctions of Hardoi and Lakhimpur Kheri is engaging the attention of this Court for the last almost one year by way of different petitions and has been the subject-matter of dispute even before the Apex Court. Now when the financial year is almost at its fag end and the matter has been argued on merit at quite some length, therefore, we do not deem it an appropriate proposition to shirk responsibility in deciding the issue once for all.

8. Be that as It may the learned Counsel for the Petitioners was at pains to draw our attention towards Rule 17 of the U.P. Excise Licence (Tender-cum-auction) First Amendment, 1993 with the submission that in the context of Excise Licences, the interest of the State revenue was of paramount importance and in befitting proposition even the highest bid need not be accepted If it had the tendency to jeopardize the State''s interest.

9. With reference to the cases of Ram and Shyam Company Vs. State of Haryana and Others, and M/s. Rajshila Vs. State of Uttar Pradesh and others, , the learned Counsel argued that when a bidder was available to dole out on higher amount of money, it was incumbent upon the authorities to consider his proposition moreso when the auction appears to have been finalised in a questionable manner. The argument was that because the Petitioners were physically restrained from participating to the auction proceedings and are willing to run the risk of forfeiting huge amounts, of Rs. 1,25,00,000 in one case and an almost similar amount in the other case in the event of the fresh bids falling short of 20% higher than the ones accepted finally on 11.3.1996; there was no reason to doubt their bona fides which were further apparent from their consistent pre-auction efforts seeking judicial intervention for participating in the auction proceedings.

10. It goes without saying that the institution of earlier petitions and the court orders thereon was admitted by the Respondents even in their counters. The learned Counsel submitted that had the Petitioners been not serious about participating in the bids, there was no occasion for them to involve themselves In costly litigation before the High Court and block crores of rupees in bank-drafts which might even be forfeited. The further submission was that the Additional Excise Commissioner erred in concluding that this offer was only on account of a business rivalry or suffered from any other mala fides.

11. On a careful scrutiny of the entire available data and hearing the parties, we are not persuaded to sustain the Petitioner''s viewpoint which, as would be

evident from the submissions raised before us. is primarily double-pronged inasmuch as the auctions are impugned firstly on the ground that the Petitioners were physically restrained from participating therein and secondly because the accepted bids were on a lower side thus causing financial loss to the public exchequer.

12. As regards the first charge, suffice to say that there was no specific allegation of any bias, league or collusion between the successful bidders and the local excise authorities. As a matter of fact, the pleadings in both the petitions are of a general and sweeping nature. For no explicable reason, the Petitioners failed to point out any accusing finger at any particular officer or official involved in the process of excise auctions which could show his prejudice against their participation. Similarly neither in the averments nor the affidavits or any other supporting document, it was shown that the successful bidders had any moles to the department to frustrate the Petitioners'' efforts to outbid them.

13. In the court orders dated 8.3.1996 passed in Writ Petition No. 709 (MB) of 1996 (Annexure 1), a provision was made to enable the Petitioners to approach the concerned police authorities for the purpose of security. There was sufficient indication in that order that if the situation so required, they could seek police assistance. But for reasons better known to them, neither of the Petitioners made any such effort. Instead of contacting the police or seeking their assistance for going into the "Auction Pandal", they embarked on the course of sending telegrams to the authorities sitting at Lucknow. No plausible explanation is forthcoming before this Court as to why the local police was not contacted. During the departmental proceedings before the Additional Excise Commissioner, the Petitioners contended that they were illegally detained by the police. Although it was a new and belated propagation, suggestive of some second thoughts; the Excise Commissioner called for the report from the Superintendent of Police and found the complaint to be absolutely baseless.

14. Similarly the Additional Excise Commissioner also got conducted an informal, though detailed, enquiry from the District Magistrate, who referred the case to the Deputy Collector. His report was also indicative of the Petitioner''s stark failure to participate in the auction. Thus the report of both these independent agencies endorsed the views of the Excise Officers that there was no such incident in which the Petitioners could have been restrained or prevented from participation in the auction proceedings.

15. At the risk of repetition, it may be mentioned that there is nothing to indicate the bias or prejudice of any of these independent agencies either in favour of the successful bidders or against the Petitioners. It thus remains a moot, if not altogether disputed, point of fact as to whether or not the Petitioners did go to participate in the proceedings or were physically restrained by unspecified local authorities. For the obvious reasons, a writ court would not hazard into a fact finding enquiry particularly when there is no worthwhile reason to disbelieve the consistent and corroborative reports of independent administrative agencies

relating to different departments.

16. Of course, the Petitioners do appear to have offered security of Rs. 1.29,00.000 in one case and a little lesser amount In the other with the proposition that if the re-auction bids fell short of 20% higher than the earlier accepted bids, they were willing to forfeit this amount to the State. This post-facto offer could be for various reasons and business rivalry might be one of them. Otherwise also, the offer is to be appraised and appreciated in the totality of the situation including the Petitioners* object and wilful failure to participate in the bids.

17. There is a superficial attraction in the Petitioners conduct in sending telegrams to the Excise Commissioner on the very day of auction meaning their inability to participate in the auctions because of the obstruction placed in their way by the local excise authorities; but the interesting part is that in both the cases, the telegrams were sent from Lucknow complaining of identical situations both at Lakhimpur Kheri as well as Hardoi. It is a little amazing as to why such telegrams were not sent from either of these two stations : both of whom are district headquarters; and how come that the incidents bore the imprints of carbon copies. No name or designation of any authority to block the passage of the Petitioners was cited in either of these two telegrams. There was no indication of any league or collusion between the successful bidders and any person or authority in the excise or administrative departments. For Hardoi auction, the indication in the telegram was that the Petitioners were restrained from participating in the auction bids because of the defective hall-tickets, but this ground was given up at the time of making representation to the Excise Commissioner resulting in the passing of the impugned order. Moreover, even in the representation dated 12.3.96 no such ground was projected.

18. Similarly, there is no merit in the Petitioners'' propagated concern about the apprehended loss to the public exchequer because it is common ground that the finally accepted bid was 22.6% higher than the previous year for Lakhimpur Kheri and 21.5% for Hardoi. Even the State target was exceeded inasmuch as it was expected to be only 15% higher than the previous year''s figure. In their bid to give a better performance, the excise authorities of both the districts had increased the target to 20% but still the impugned bids fetched higher amounts. So it was keeping in view all these factors that the Additional Excise Commissioner finally accepted the bids, settled on 11 3.1996. obviously because there was no apprehension of any loss to the public exchequer.

19. Reference at this stage may also be worthwhile to the case of Bishnu Ram Borah and Another Vs. Parag Saikia and Others, , where the Apex Court was pleased to sound a note of caution before interfering in the issue of excise licences granted and affirmed by competent authorities after detailed enquiries of fact. In State of Punjab Vs. Yoginder Sharma Onkar Rai and Co. and Others, despite taking note of their earlier verdict in the matter of M/s. Rajshila Vs. State of Uttar Pradesh and others, , the Hon''ble Judges advised against the temptation

to interfere In the settled auctions for the simple reason that finality of the auction required to be recognised in the interest of exchequer because if auctions were set aside and reactions ordered on less than satisfactory material, the loss to the exchequer could be far greater. In a manner of speaking, there was every apprehension of a bigger mischief taking place than the one sought to be removed. It goes without saying that the term of the disputed licences is at its fag end and it is not denied that the licensees have already paid the entire licence fee for the whole of the year in advance.

20. This Court cannot be obivious of its limitations while sitting in the writ Jurisdiction which relates to the domain of Judicial review rather than exercise of appellate or revisional Jurisdiction, and naturally it would not stroll into the field of appreciation of factual position, particularly of a controversial type unless some perversity or material irregularity in the impugned orders, resulting in the miscarriage of justice, was pointed out, after all this Court has not to act as an Administrative supervisor on the day-to-day working of the Government departments.

21. The concept and philosophy of Judicial review was dealt with at quite some length in two English precedents which have often been quoted with useful reference in a number of Judicial pronouncements by our own summit court. The cases are those of Chief Constable of North Wales Police v. Avons (1982) 3 AWR 141 and Hammersmith F.L.B. Council v. Secretary of State (1990) 3 All ER 589 . The ratio is common that "Judicial Review is not an appeal from decision but a review of the manner in which the decision was made and, therefore, the Court is not entitled on an application for Judicial review to consider whether the decision itself was fair and reasonable." Nearer home, we can usefully refer to the matters of Tata Cellular Vs. Union of India, ; State Bank of India and Others Vs. Samarendra Kishore Endow and Another, ; Jyotendrasinhji Vs. S.I. Tripathi and others, and H. B. Gandhi v. Gopi Nath and Sons .

22. Hence for the reasons recorded above, we find no worthwhile occasion to interfere in the well-considered orders passed by the Additional Excise Commissioner turning down the Petitioners'' representations against the excise auctions for Hardoi and Lakhimpur Kheri held on 11.3.1996. Thus both the petitions must fail and are accordingly dismissed. There will, however, be no order as to costs.