(2002) 05 PAT CK 0097

In the Patna High Court

Case No : C.W.J.C. No. 3683 of 2002

Rakesh Kumar — APPELLANT

Vs

The Managing Director, Bihar Agricultural Marketing Board and Others — RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Citation : (2002) 3 PLJR 264

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; S.K. Saraf for Respondent Nos. 1 to 5, M/s. Ram Janam Ojha and Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to cancel the settlement made in favour of respondent no. 6 (Kamlesh Kumar), appointing him as collection agent in terms of the Bihar Agricultural Produce Marketing Act read with the Rules thereunder for collection of market fee and ground rent for Koch Bazar, district Gaya, and for the consequential directions. Respondent no. 4 (the Agricultural Produce Market Committee, Gaya) had published an advertisement (Annexure-1), whereby it was announced that auction shall be held on 21.1.02, failing which on 28.1.02, still failing which on 31.1.02 for appointment of collection agent to collect market fee and ground rent for the Koch Bazar, apart from various other markets/ Hat not relevant in the present context. The bid took place on 21.1.02 on which date the offer of one Ashok Kumar was of Rs. 7.50 lacs and that of respondent no. 6 (Kamlesh Kumar) was of Rs. 3.31 lacs. Ashok Kumar did not deposit the requisite amount and did not complete the formalities which gave way to respondent no. 6 who has completed the formalities. The petitioner submitted his application dt. 21.1.02 (Annexure 2) to the Chairman of the Market Committee that he was prepared to offer a sum of Rs. 5.05 lacs and, therefore, he may be appointed as the collection agent, his offer being next to Ashok Kumar. Responding to the petitioner''s said letter dt. 21.1.02 (Annexure-2), respondent no. 5 (the Market Secretary, Agricultural Produce Market Committee, Gaya), sent his letter dt. 22.1.02 (Annexure-3), to the petitioner, informing him that re-auction is possible provided he deposits Rs. 2,52,500/- within twenty-four hours, being half of the amount offered by him failing which the offer will be made to respondent no. 6, the second highest bidder. Accordingly, the petitioner deposited a sum of Rs. 2,52,500/- on 22.1.02, as is evidenced by the money receipts marked Annexure 4 and 5. This was followed by the petitioner''s complaint dt. 29.1.02 (Annexure-6), addressed to the Director (Vigilance), complaining that his bid of Rs. 5,05,000/- made at the auction held on 21.1.02 was not recorded in the bid sheet. He has in any case deposited half of the amount of his offer and should, therefore. be appointed as the collection agent. One Nagendra Kumar also submitted his complaint dt. 29.1.02 to the Board''s Director of Vigilance and the Managing Director, photo copies of which are marked Annexures 7 and 8 respectively, wherein it was stated that he had participated in the 3rd round of bid and made an offer of Rs. 5.01 lacs but the same has not been recorded in the bid sheet. This was followed by the impugned order dt.''1.3.02 (Annexure-9), from the Board''s Managing Director to the Secretary, Market Committee, that respondent no. 6 should be appointed as the collection agent, his bid being the second highest. Hence the present writ petition.

2. While assailing the validity of the impugned order, learned counsel for the petitioner submits that his offer of Rs. 5.05 lacs was the second highest, but it has not been recorded in the bid sheet because of a complete misconception as to the bid sheet because of a complete misconception as to the procedure to be adopted in this behalf. The petitioner, therefore, submits that his offer being the second highest, he should be appointed as the collection agent. He relies on the judgment of the Supreme Court reported in Ram and Shyam Company Vs. State of Haryana and Others, , as well as Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

3. Learned counsel for respondents nos. 1 to 5 has placed his counter affidavit and supported the impugned auction. Learned counsel for respondent no. 6 has submitted that the petitioner did not participate in the bid and is, therefore, disqualified from challenging the selection process. He further submits that the petitioner and the said Nagendra Kumar are in collusion and are trying to create monopoly in their favour.

4. Let it be recorded at this stage itself that respondent no. 6 has during the course of arguments raised his offer to Rs. 5,05,500/-, in response to which the petitioner has raised his offer to Rs. 5,11,000/-. In fact, the case was adjourned at the instance of Mr. Ram Janam Ojha appearing for respondent no. 6 to seek instructions and has made the said offer on instructions.

5. I have carefully considered the submissions of the learned counsel for the parties. It appears from the bid sheet (Annexure 1/1 to the counter affidavit of

respondent nos. 1 to 5) that the petitioner as well as Nagendra Kumar had deposited the security amount of Rs. 30,105/- each, and were present at the time of auction. They have also recorded their signatures, but does not record any bid by them. The columns relating to them read as follows:

It appears to me from a perusal of the materials before me aided by oral submissions of the learned counsel for the parties that the auction on 21.1.02 had taken place in three rounds. The petitioner and Nagendra Kumar did not participate in the first round of auction. Three other persons, namely, Ashok Kumar, respondent no. 6 and one Akhilesh Kumar, participated in the bid. Ashok Kumar made the offer of Rs. 3,22,000/-, and respondent no. 6 made the offer of Rs. 3,21,000/-. The third person, namely, Akhilesh Kumar, participated in the first two rounds but did not participate in the 3rd round and, therefore, his case is not being discussed. The aforesaid offers were unacceptable to the Market Committee and, therefore, they decided to hold a second bid soon thereafter. The offer of Ashok Kumar was Rs. 3,26,000/-, and that of respondent no. 6 was of Rs. 3,25,000/-. The petitioner and Nagendra Kumar did not participate in the second round also. The said offers were unacceptable to the Market Committee and, therefore, they decided to hold the 3rd round of auction soon thereafter. The offer of Ashok Kumar was of Rs. 7,51,000/-, and that of respondent no. 6 (Kamlesh Kumar) was Rs. 3,31,000/-. Neither the petitioner nor Nagendra Kumar seem to have made any offer. It is significant to state that their signatures are recorded in the columns meant for the same in the bid sheet which, to my mind, appears to suggest that they were present during the course of auction but did not make any offer which conclusion is reinforced by the content and tenor of the aforesaid letters dt. 21.1.2002 (Annexure 2), and the letter dt. 22.1.2002 (Annexure 3), making no reference to the petitioner''s alleged offer of Rs. 5.05 lacs during the course of auction as well as the statement made in the counter affidavit of respondent nos. 1 to 5 discussed hereinbelow. As stated hereinabove, the bid-sheet records that the offer of Ashok Kumar was the highest and was accordingly directed to deposit the requisite amount, which he failed to deposit leading to appointment of respondent no. 6 as the collection agent. Paragraphs 7 to 9 of the counter affidavit of respondent nos. 2 to 5 are relevant in the present context and set out hereinbelow for the facility of quick reference:

"7. That altogether 5 persons participated in the said bid they were as follows:-

1. Kamlesh Kumar

2. Ashok Kumar

3. Akhilesh Kumar

4. Nagendra Kumar

5. Rakesh Kumar

8. That the security money of Nagendra Kumar and Rakesh Kumar was also accepted on their request.

9. That participant of SI. No. 4 & 5, i.e. Nagendra Kumar and Rakesh Kumar respectively entered in fray after completion of two round of bid. In the third round Mr. Kamlesh Kumar (Si. No. 1) offered Rs. 3,31,000/- then Mr. Ashok Kumar of SI. No. 2 offered Rs. 7, 51, 000/-. After the offer made by Ashok Kumar in open bid for Rs. 7,51,000/-participant of Sl. No. 3, 4 & 5 Sri Akhilesh Kumar, Nagendra Kumar, Rakesh Kumar did not offer any amount in the bid and they finally dropped. Hence, the highest bidder Ashok Kumar was ordered to deposit Rs. 7, 51, 000/- in the office of the Market Committee."

It appears to me from the aforesaid statements made in the counter affidavit that the petitioner had made his belated appearance at the time of third round of the bid, but did not make any offer presumably because of a much higher offer of Rs. 7,51,000/- of Ashok Kumar. That explains the signature of the petitioner and Nagendra Kumar on the bid sheet. Furthermore, neither the petitioner nor respondent no. 6 state in their letters dt. 21.1.2002 (Annexure 2), and dt. 22.1.2002 (Annexure 3), that the petitioner had made any offer at the third round of the bid. On the contrary, the said letter dt. 22.1.2002 (Annexure 3) says that in case the petitioner deposits half of the amount offered by him within twenty-four hours, then a re-auction may be possible. I, therefore, reach the conclusion that the petitioner did not make any offer during the course of the auction.

6. I must at this stage deal with the two judgments cited by teamed counsel for the petitioner. In the case of Ram & Shyam Co. vs. State of Haryana (supra), the highest bid of "A" at an auction for grant of a mining lease was accepted by the presiding officer, but the Government refused to confirm the sale. The Supreme Court held that a unilateral offer secretly made, not correlated to any reserved price made by "B" after making false statement in the letter, was accepted without giving any opportunity to "A" either to raise the bid or to point out the falsity of the allegations made by B in the letter as also the inadequacy of his bid. "A" suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair-play in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competition. Acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their truth, which has not undertaken, would certainly amount to arbitrary action in the matter of distribution of State largesse which is impermissible. It is thus obvious that instead of supporting the petitioner''s case, the judgment supports the case of the respondents. In the present case also, the petitioner''s offer made after the auction was not made known to respondent no. 6 to raise his bid.

6.1 In the case of Food Corporation of India vs. Kamdhenu Cattle Food Industries (supra), the amount quoted by the highest tenderer was found inadequate. The respondents resorted to negotiations with all tenderers. Offer of a significantly higher amount was made during the course of negotiations than that quoted by the highest tenderer. Acceptance of the same was upheld by the Supreme Court. It was held that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to alt the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significantly higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good. It is thus obvious the facts of that case stood on a different footing. In that case, the offers were inadequate and unacceptable to the respondents. Therefore, they decided to negotiate with all the participants in a transparent manner. In the present case, on the other hand, the second highest bid of respondent no. 6 was accepted after the person making the highest offer refused to respond. Furthermore, the petitioner''s offer was never made known to respondent no. 6, let alone the question of negotiation with all the participants in the auction.

7. This, however, this does not conclude matters. In view of the detailed facts and circumstances attendant on this case, I could have considered the option of setting aside the settlement in favour of respondent no. 6, and order for re-auction inter alia, or the reason that the petitioner was called upon by the Secretary of the Market Committee to deposit half of the amount of his offer vide letter dt. 22.1.02 (Anexure-3), which he did deposit the same day, and also for the reason that his offer of Rs. 5,05,000/- is significantly higher than that of Rs. 3,31,000/- of respondent no. 6. As held by the Supreme Court, procuring the highest price is in public interest since the amount so collected goes to the public fund. However, I desist from taking this step for the development which has taken place during the course of arguments before me and indicated hereinabove, namely, respondent no. 6 has agreed to take the settlement for a sum of Rs. 5,05,000/-. The enhanced offer of the petitioner for Rs. 5,11,000/- is only notion-ally higher, had not participated in the auction and, therefore, I decline to exercise my discretion in favour of the petitioner. In that view of the matter, this writ petitioner is hereby dismissed with the direction that the settlement shall continue to be in favour of respondent no. 6 but for the amount

of Rs. 5,05,000/- which shall be deposited by him in accordance with the direction of the respondent authorities.

