

(1977) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jur. Case No. 990 of 1976

Rampati Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1978 Patna 131

Hon'ble Judges : Shivanugrah Narain, J;S.K. Jha, J

Bench : Division Bench

Advocate : Jaya Narain and Kapildeo Singh, for the Appellant; Ram Nandan Sahai Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in this application under Article 226 of the Constitution of India has prayed for the issuance of a writ of mandamus or any other appropriate writ or direction to quash the order for fresh auction of lot No. 166 of Kolhan Forest Division and to command the respondents to execute a deed of lease in favour of the petitioner.

2. The facts are short and simple. By a notification published in the Bihar Gazette dated the 3rd Sept., 1975 there was a notice of auction sale of forest coupe under the Kolhan Forest Division for the period 1975-76 ending on the 31st Dec., 1976. In this case we are concerned with only one lot, namely, lot No. 166 corresponding to plot No. 166. A public auction of the coupe of the aforesaid forest division was held in accordance with the notice published in the aforesaid notification from the 10th of Sept., 1975 to the 13th Sept., 1975 and the auction of lot No. 166 is said to have taken place on the 12th Sept., 1975. The average price for which the particular coupe in question had been settled during the last three years was Rupees 60,495 and the reserve price fixed for the year 1975-76 was Rs. 61,900. Six auction-purchasers including the petitioner took part in the auction sale of lot No. 166. The petitioner's bid was the highest being Rs.

65,200. The Divisional Forest Officer, respondent No. 4, who was conducting the auction, knocked down the bid in favour of the petitioner. The petitioner deposited the security money after the aforesaid auction, as was envisaged by the terms in the notification, aforesaid. According to the petitioner's case, on 18th of Sept., 1975, i. e. after six days of the auction, Messrs D.N. Prasad and Company of Manoharpur, which has not been made party to this application, filed an application before the Additional Chief Conservator of Forests, respondent No. 3, to the effect that on the 12th Sept., 1975 at 1.20 p. m. Shri D.N. Prasad representing M/s. D.N. Prasad and Company left the place of auction for the State Bank of India, Chaibassa, because under the notification no bid was to be held during the period from 1.30 p. m. to 2.30 p. m. It was alleged that the auction of lot No. 166 had taken place during that period so that the aforesaid Messrs D.N. Prasad and Company could not participate in the auction. The petitioner asserts that such a petition had been filed on incorrect facts with ulterior motive by the aforesaid D.N. Prasad and Co. since that firm was neither represented by any one nor was, for that matter, Shri D.N. Prasad present at any time during the auction of the concerned lot. All the same, Messrs D.N. Prasad and Company had, in its application to respondent No. 3, offered a minimum price of Rs. 75,000 for the settlement of the aforesaid lot. On 19-11-75, however, it sent another application to the Chief Conservator of Forests, Bihar, respondent No. 2, in which it offered Rs. 85,000 and along with the letter a bank draft of Rs. 10,000 by way of security deposit was also sent to respondent No. 2, which, according to the petitioner's case, was illegally accepted by him. Be that as it may, on the aforesaid application of D.N. Prasad and Co., respondent No. 3 called for a report from respondent No. 5, the Conservator of Forests (wrongly mentioned as Forest Conservator), Southern Circle, Ranchi. Respondent No. 5, in his turn, sent a copy of the letter to the Divisional Forest Officer, respondent No. 4, for his comments. Ultimately, respondent No. 4 reported that the allegations made by the aforesaid M/s. D. N. Prasad & Co. were factually incorrect. This report of respondent No. 4 was duly endorsed to respondent No. 5 who sent the same to respondent No. 3. Ultimately, however, the Additional Chief Conservator of Forests, respondent No. 3, wrote a letter to the State Government in the Forest Department, a copy whereof has been marked Annexure 1 to the application. The entire set of facts as detailed above have been set out in Annexure 1, by which, after reciting all the facts, Government orders were solicited as to whether there should be a re-bid at a fresh auction of the aforesaid lot No. 166 or the bid of the highest bidder (namely, the petitioner) be approved. It was further suggested by respondent No. 3 in that letter that if the Government decided that there should be a fresh auction of that lot the minimum reserve price for the settlement should be fixed at Rupees 85,000. In para. 19 of the writ petition, the petitioner has alleged that he has come to know from a reliable source that the respondent State has passed an order for fresh auction of lot No. 166 under Kolhan Forest Division and as the said order was not available to the petitioner, the same was not being produced in this Court. A prayer was accordingly made for calling up of that order for the purpose of quashing the

same.

3. A counter-affidavit has been filed on behalf of the respondents wherein it has not been denied that the State Government has issued such a direction for holding a fresh public auction for the settlement of lot No. 166. As a matter of fact, there is a tacit admission in para. 5 of the counter-affidavit regarding such a direction for fresh auction issued by the State Government. It has, however been submitted in the counter-affidavit that the petitioner had not acquired any legal and valid claim over the coupe since the settlement in favour of the petitioner had not been approved by the competent authority. Under special condition of sale in Part II of the notification referred to above in Clause 13 it had been specifically mentioned that

"Jab tak sakchham padadhikari dwara anusamarpit nahi ho jai tabtak koyi bikri manya nahi samjha jayega." In other words, until there is approval by the competent officer no sale or settlement shall be binding.

4. Learned counsel for the parties agreed before us with reference to a copy of the notification aforesaid that such was a condition expressly stipulated for any settlement to be binding even after the auction. This was one of the special conditions in Part II of the notification which was to govern all cases of settlement of various coupes under that notification. And, the petitioner did know about it. It was also agreed by the learned counsel for the parties that the competent authority on the relevant date was the Chief Conservator of Forests. As a matter of fact, a copy of the Government order as contained in the letter of the Deputy Secretary to the Government in the Forest Department, addressed to the Conservator of Forests numbered A/F-L-268/72/1699-F, dated 1 April, 1972/10 Oct., 1972, was produced before us, which showed that the competent officer to accord sanction or approval to all settlements of forest coupes, whereas the minimum reserve jama for a year is more than Rupees 40,000 and less than Rs. 1,00,000. is the Chief Conservator of Forests. It may also be useful to mention here that a letter dated 14/15th Jan. 1976 was issued by the Joint Secretary to the Government in the Forest Department to the Chief Conservator of Forests, the Additional Chief Conservator of Forests, all Conservators of Forests and all Divisional Forest Officers intimating that Additional Chief Conservator No. 1 was delegated the power to accdrd sanction or approval which had been, under the 1972 order, delegated to the Chief Conservator of Forests.

5. There was a controversy, it seems, as to whether actually the bid was held between 1.30 P. M. and 2.30 p. m. during which period there should not have been a bid or whether the stand taken by D.N. Prasad and Co, was a frivolous one. We, however, proceed upon the assumption that, as reported by the Additional Chief Conservator of Forests in Annexure 1, the allegation made by D.N. Prasad and Co. against respondent No. 4 was factually incorrect.

6. The relief prayed for in the application being essentially for the issuance of a writ of mandamus, it is well settled that the petitioner can succeed only if the

statute imposes a legal duty and the petitioner has a legal right under the statute to enforce its performance. It is also well settled that in order that a mandamus may issue to compel the authority to do something, both a legal statutory right in the party aggrieved and the corresponding statutory obligation on the public authority must exist. It is worthwhile to bear in mind that where questions of pure alleged breach of contract are involved, no writ or order can issue under Article 226 of the Constitution. Without multiplying decisions, a passing reference in this connection may be made to the cases of Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , Dr. Umakant Saran Vs. State of Bihar and Others, , B.K. Sinha Vs. State of Bihar and Others, and Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .

7. With regard to the question as to whether the petitioner has been able to establish a legal right in himself, on the facts before us we do not feel persuaded to hold that he has acquired any such legal right. Mr. Jaya Narain, learned counsel for the petitioner, agreed that there was no express sanction or approval accorded either by the Chief Conservator of Forests, respondent No. 2, or by the Additional Chief Conservator of Forests respondent No. 3 to the settlement in favour of the petitioner. Learned counsel, however, submitted that in view of the letter of respondent No. 3 (Annexure 1) it ought to be held that the Additional Chief Conservator of Forests was seized of the matter and he had applied his mind to the facts of the case. He had also reported that the allegation of D. N. Prasad and Co. with regard to the auction having been held between 1.30 p. m. and 2.30 p.m. was palpably wrong. That being so, we should assume that but for an extraneous matter having intervened in the shape of a frivolous letter from D. N. Prasad and Co. respondent No. 3 must be deemed to have tacitly given his seal of approval to the settlement made in favour of the petitioner, by virtue of his being the highest bidder. We are afraid there is no force in this contention. No question of any tacit approval arises where a sanction by the competent authority is to be accorded; not even a contractual right in favour of the party emerges until a clear approval. Reference in this connection may be made to a decision of the Supreme Court in K.N. Guruswamy Vs. The State of Mysore and Others, . The petitioner, therefore, cannot be held to have acquired any legal right merely by virtue of his being the highest bidder in whose favour the bid was knocked down.

8. Mr. Jaya Narain next contended that in cases like the instant one breach of public duty was involved. In such cases whenever the State or its agents or officers deal with a citizen, either when making a transaction or after making it, acting in exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of certain legal and public duty. Such a wide proposition had been advanced before the Supreme Court in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and the contention was rejected in these terms in paragraph 17:

"If we were to accept this very wide proposition, every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. We do not consider this to be a sound proposition at all."

9. Learned Counsel for the petitioner also submitted that assuming that the competent authority had not accorded sanction so far, even so the interference by the State Government vitiates the due and legal exercise of that power and discretion by the competent authority. The argument is that if the State Government had not intervened in the matter and issued a direction for a fresh auction to be held, from the purport and tenor of the letter (Annexure 1) it appears that the office of the Conservator of Forests was in favour of accepting and according approval to the settlement in favour of the petitioner. Such a submission is again fallacious. As has already been pointed out earlier, the State Government, which is the repository of powers to make settlement of forest produce within the State, has delegated its powers with reference to financial limits to its officers in the forest department. Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. Accepting this, both Supreme Court as well as this Court have laid it down that with the delegation of a principal's power the exercise of the power by the principal itself is not precluded since the principal is not denuded of its powers refer to *Godawari S. Parulekar and Others Vs. State of Maharashtra.*, and *Sangram Singh Jaiswal and Another Vs. The State of Bihar and Others*, It cannot, therefore, be said that the interference by the State Government at the instance of the Additional Chief Conservator of Forests himself in the interest of public revenue was either improper or uncalled for, much less arbitrary or unwarranted.

10. Our attention was also invited to certain averments in the petition and the supplementary affidavit as well as to the petitioner's rejoinder to the counter-affidavit of the respondents wherein certain instances have been given where, if once bid was knocked down in favour of the highest bidder, it was not directed to be reopened at the instance of a third party even though he had offered higher sums of money. This, it was submitted, was a pointer to discrimination against the petitioner attracting the infraction of Article 14 of the Constitution. In the counter-affidavit of the State, however, it has been categorically stated that in all such cases as were referred to by the petitioner the offer was made by third parties without the backing of any security. In such cases, therefore, the authorities did not feel confident that the offers were genuine. In the instant case, however, the offer of Rs. 85,000 by D.N. Prasad and Co. was backed by a security deposit of Rs. 10,000 sufficient to induce confidence. Learned counsel for the petitioner, relying upon a statement in the petitioner's rejoinder to the counter-affidavit, submitted that that security deposit made by D.N. Prasad and Co. had been withdrawn sometime in March, 1977, as is borne out by letter No. 1199 dated 1-3-77 from the Chief Conservator of Forests to Messrs D.N. Prasad

and Co., a copy whereof has been marked as Annexure I to the petitioner's rejoinder. This does not improve the petitioner's case, for, obviously, the settlement has not been decided to be made in favour of D.N. Prasad and Co. The direction by the State Government is for holding re-auction fixing the minimum reserve jama at Rs. 85,000. There was thus obviously no need for the security deposit to remain with the authorities concerned. In any view of the matter, the petitioner cannot successfully claim to establish any inraction of the equality clause engrafted in the Constitution.

11. Having given our due consideration to the matter in all its ramifications, we are constrained to hold that the petitioner has neither been able to establish a legal right in himself nor any breach of any legal or statutory duty on the part of the respondents. The application, therefore, must fail and is dismissed. In the circumstances of the case, however, we shall make no order as to cost.