

(1964) 10 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No. 97 of 1964

Sardar Ajitsingh, Forest Contractor

APPELLANT

Vs

Chief Conservator of Forests, M.P. and others

RESPONDENT

Date of Decision : 01-10-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1965) JLJ 161 : (1965) MPLJ 108

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir and V.S. Dabir, for the Appellant; R.J. Bhawe, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This order will also govern the disposal of Misc. Petition No. 98 of 1964.

These are two applications under Article 226 of the Constitution of India by father and son for the issue of a writ of certiorari for quashing an order made by the Chief Conservator of Forests on 21st November 1932 debarring them "from taking forest contracts or acting as an agent to any forest contractor in the whole Madhya Pradesh till the 31st December 1967". The Petitioners also pray that the opponents be restrained from giving effect to the said order and from prohibiting the Petitioners from bidding at various forest auctions that may be held.

The impugned order was made by the Chief Conservator of Forests on a report of the Conservator of Forests, Central Circle, that on a certain day in 1962 when the Deputy Ranger of Bachai, Narsimhapur Range, Shri Jain was on duty and was returning back to his head-quarters the Petitioner Ajitsingh assaulted him; that his father Jawandsingh also joined in the quarrel; and that both of them misbehaved with the Deputy Ranger. After the order under challenge was passed, both the Petitioners wanted to offer bids at a forest auction held at Narsimhapur

by the Divisional Forest Officer on 22nd July 1963; but the Divisional Forest Officer prohibited them from bidding at the auction because of the order dated 21st November 1962 of the Chief Conservator of Forests. The Petitioners contend that the Chief Conservator of Forests had no power to make the order that he did against them and to prohibit them from bidding at any public auction of the sale of State forests; that the reservation of power to any Officer of the Forest Department to debar any person from bidding at a public auction is an unreasonable restriction on the rights of a citizen and is calculated to promote mala fide and arbitrary action resulting in loss to the State by elimination of competition substantially or wholly; that the impugned order was passed without giving them an opportunity of hearing and thus violated rules of natural justice. They further aver that the complaint made by the Deputy Ranger that he had been assaulted by them had no foundation in fact; and that it was fabricated because the Petitioners refused to pay illegal gratification demanded by the Deputy Ranger and consequently the order passed by the Chief Conservator of Forests on 21st November 1962 was mala fide.

In the return filed by the opponents opposing the petitions it has been stated that the Chief Conservator of Forests acted within his rights in debarring the applicants from bidding at any forest auction or taking any forest contract that the Petitioners have no fundamental or inherent right to bid at any public auction; and that the forest property being State property, the State is free to select persons with whom it shall or shall not enter into a contract. The allegations about corrupt motive on the part of the Deputy Ranger and mala fides in the making of the impugned order have been denied; and it has been said that the Petitioners were debarred wholly because of their misconduct in assaulting the Deputy Ranger and in misbehaving with him. It has been admitted that the Petitioners were not given any hearing before the order under challenge was made; but it has been added that none was necessary as the action taken against the applicants was an administrative action.

In our opinion, both these petitions are devoid of any merit and must be dismissed. In so far as the impugned order rules out till 31st December 1967 the two Petitioners in the matter of giving of forest contracts, the order cannot be challenged for the simple reason that though the Petitioners have undoubtedly a fundamental right to carry on a trade or business, they have no fundamental right to insist upon the Government or any other individual doing business with them or entering into contracts with them. The Government, like a private individual, has complete freedom and right to decide for itself whether it shall or shall not enter into a contract with a particular person. The Petitioners cannot, therefore, claim any protection under Article 14 or Article 19 of the Constitution. This is now settled by the decision of the Supreme Court in *C.K. Achuthan Vs. The State of Kerala and Others*, where it has been observed that "it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfill contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot

claim the protection of Article 14, because the choice of the person to fulfill a particular contract must be left to the Government." The same view has been expressed in *A. Vedachala Mudaliar Vs. Divisional Engineer, Highways, Saidapet, Madras* and *Another, , Kannappa v. District Forest Officer* I L R 1959 Mad. 5 : A I R 1958 Mad. 572 and *K. Bhaskaran Vs. State of Kerala*, . There is thus no infringement of any fundamental right of the Petitioners by the order of the Chief Conservator of Forest that till 31st December 1967 no forest contract would be given to them.

The order dated 21st November 1962 of the Chief Conservator of Forests has also no doubt the effect of prohibiting the Petitioners from bidding at any auction of the forest contracts and was so regarded by the Divisional Forest Officer, Narsimhapur, when he prohibited the applicants from bidding at a forest auction held on 22nd July 1963. Even viewed as an order prohibiting the Petitioners from bidding at any auction, the order is unassailable. It is not the contention of the Petitioners that the holding of forest auctions is regulated by the Indian Forest Act, 1927, or any Rules made there under, and that the exclusion of the Petitioners from forest auctions is contrary to the said Act or any Rules. The Forest Act or the Rules made there under do not contain any provision casting an obligation on the Forest Department to sell the forest produce or goods by public auction. The Forest Contract Rules made by the State Government do not say anything as to how the forest produce or goods are to be disposed of. But a practice exists in the Forest Department to sell forest goods by auction. For the conduct of auctions of forest produce executive instructions have been issued by the Government, and they are to be found at pages 134 to 140 of Volume II of the Forest Manual. Thus, in the matter of holding a forest auction the Government's freedom is not restricted by any statutory rules and Regulations. It has the same rights and liberty, which a private person has while holding an auction of his property in accordance with the general law governing the sale of property by auction.

Now, the usual meaning of "auction" is a public sale to the highest bidder where any or all persons who choose are permitted to attend and offer bids. The essence of an auction is competitive bidding. As has been stated in *Black's Law Dictionary*, "the word "public" does not add anything to the force of the expression "public auction" since auction itself imports publicity;" and that if there can be such a thing as a private auction, it must be one where only certain persons, or a certain class of persons, are permitted to be present or to offer bids. When an auction is held, it is subject to the conditions of the auction notified before the bids commence, and any person making a bid at the auction does nothing more than make an offer subject to the conditions of the auction made known to the bidders. The conditions of auction may reserve to the auctioneer the power to refuse to accept the bid of any person or persons, or the power to reject the highest bid and to accept a lower bid, or the power to exclude altogether or disqualify any person from bidding. When the auction is held subject to such conditions, the person who makes the highest bid can have

no cause for complaining that the auction was illegal if his bid is not accepted. The bid he makes is subject to the condition that the auctioneer may not accept the highest bid; and he cannot, therefore, contend that when he offered his bid there was any contract between him and the other party that the goods would be sold to him if his bid was the highest. Likewise, the person who has been precluded from bidding can make no grievance for the simple reason that a person has no fundamental or inherent right to bid at any auction. Such conditions may detract from the essential characteristic of an auction which lies in free, unrestricted and competitive bidding; but none-the-less an auction sale held subject to the conditions indicated above cannot be said to be illegal. The question whether the Petitioners' exclusion from bidding at any particular auction held subject to certain conditions was legal or justified is not before us for consideration. But it must be said that if an auction of forest produce is held on the standard conditions enumerated at pages 138 and 139 of Volume II of the Forest Manual, then it would appear that the Divisional Forest Officer has the power to exclude any person from bidding at the auction. Condition No. 3 says that "the Divisional Forest Officer shall also have power to refuse the bid of any bidder, absolutely and without reason given." Another condition namely, condition No. 6 is:

The Divisional Forest Officer shall not be bound to accept the highest or any bid, and he shall have power to accept any bid he selects notwithstanding the readiness of other bidders to pay a higher figure.

It will be seen that whereas condition No. 3 gives to the Divisional Forest Officer the power "to refuse the bid of any bidder", that is, the power to prevent any person from bidding and thus refuse to countenance at all any bid from him, the other condition gives him the power to refuse to accept the highest or any bid or / and to accept a lower bid. Learned Counsel referred us to paragraph 37 of the executive instructions at page 134 of Volume II of the Forest Manual which provides that "the Chief Conservator shall maintain a list of defaulters in his office" and that "no forest contract should be given to any person whose name appears on the current list of defaulters." It was suggested that the only ground on which a person could be debarred from bidding was his being a defaulter. We do not agree. No doubt, according to paragraph 37 a forest contract cannot be given to a person whose name has been included in the list of defaulters; but that does not in any way control the wide discretion given by condition No. 3 to the Divisional Forest Officer to refuse the bid of any bidder and to prohibit him from bidding. If a forest auction is held on the above conditions, then clearly it is open to the authority holding the sale to exclude any person from bidding.

Shri Dabir, Learned Counsel for the Petitioners, referred us to the observations of the Supreme Court in *K.N. Guruswamy v. The State of Mysore* and *Ors.* (1), emphasizing the necessity and importance of auction sales of fisheries and excise licenses which form lucrative source of revenue to the State being conducted strictly in accordance with the rules governing them so as to eliminate

"favoritism, nepotism and corruption", and said that it was unreasonable to exclude any person from bidding at an auction of the forest produce. The observations of the Supreme Court have a bearing here only in so far as the propriety of an order excluding a person from bidding is concerned. But the propriety of an order placing a person in "black list" is one thing and its legality is another. It is no doubt highly desirable that in order to close the doors to the evils which the Supreme Court pointed in K.N. Guruswamy Vs. The State of Mysore and Others, an auction of Government property should not be with the reservation of rejecting the highest bid, or accepting a lower bid, or excluding any person from bidding; and should be regulated by statutory rules and Regulations and not by executive instructions. But if the Government chooses to give to the authorities responsible for the holding and conduct of auction sales such power and if that power is abused by the authorities then the forum for the redress of a complaint against the abuse of power by the authorities is elsewhere and not here.

It will be pertinent to point out here that it is the "propriety aspect" of an order excluding a person from bidding at an auction of Government property that has been stressed in T.K. Kannappa Gounder Vs. District Forest Officer and Another, . That was a case in which an order of the District Forest Officer, Vellore East, excluding a person from bidding at a forest auction was assailed in the Madras High Court by a petition under Article 226 of the Constitution. Balakrishna Ayyar J. dismissed the application holding that the order did not offend against Article 14 of the Constitution and that it was perfectly open to the authorities to give contracts to whomsoever they pleased. When the matter went up in appeal before a Division Bench of the Madras High Court Learned Counsel appearing for the excluded person attacked the propriety of the order excluding the person from bidding at public auctions conducted by the Forest Department. While dealing with this contention the learned Judges of the Madras High Court, after stating that the interests of the public revenue require that there should ordinarily be no such exclusion of bidders, proceeded to say:

No person can have the fundamental or inherent right to bid at any public auction. But the essence of a public auction is that it should be open to the public and if unlimited power of exclusion of individuals from such an auction is recognized the auction would cease to be a public one. It would, however, be open to the authorities to impose reasonable conditions regarding the receipt and acceptance of bids and the qualifications of the bidders. A usual provision in most of the auctions is that the auctioning authority is not bound to accept the highest or any bid. It would for example be open to the authority to refuse to accept the bids from particular individuals who may be undesirable poachers or persons convicted of forest offences, etc. But such considerations come into play after the public auction is held and not before. The District Forest Officer in the present case has prevented the Appellant absolutely from bidding at auctions long before the auctions could take place. While we agree with BALAKRISHNA AYYAR J., that it is open to the Government to enter into contracts with whomsoever they

please and subject to whatever conditions they may impose, we are unable to hold that that rule can be applied to the case of a public auction held by the Government. In such cases the interests of the public revenue and of the public require that there should be no exclusion of bidders.

It will be noted from the above observations that the learned Judges did not go so far as to lay down that the exclusion of a person from bidding at an auction, which is not governed by the provisions of any statute or the rules made there under, would be illegal. What they said was that "the interest of the public revenue and of the public require that there should be no exclusion of bidders". As we understand this observation, it means that in such cases ordinarily there should be no exclusion of bidders and not that in law there can be no exclusion of bidders. The present case is clearly not a case of a type considered by the Patna High Court in *Jagat Singh Vs. State of Bihar and Others*, , where at a public auction of a ferry regulated by the Bengal Ferries Act, 1885, a person was forbidden by the auctioning authority from bidding at the auction on the ground that his relations were "fighting cases" with the thekedars who held the lease at the time of the auction. It was held that the action of the auctioning authority forbidding the person from bidding was in violation of Section 9 of the Bengal Act.

The contention that the Petitioners were not given any opportunity of hearing before the impugned order was passed against them may be disposed of by saying that the action taken against them is of an administrative nature. It is well settled that rules of natural justice are attracted only when the function is quasi-judicial and not administrative. As pointed out earlier, the impugned order did not in any way affect fundamental or any right of the Petitioners.

In regard to the allegation made by the Petitioners that the Deputy Banger's complaint against them was a false one and was fabricated because of a refusal on their part of a demand made by the Deputy Ranger for illegal gratification, it is sufficient to say that the allegation has been vehemently denied in the returns filed by the Respondents. The matter must therefore end there. There can be no enquiry into the question whether the allegation made by the Petitioners is true and whether the complaint of assault made by the Deputy Banger was true or false.

For these reasons, our conclusion is that these petitions must be and are dismissed with costs. Counsel's fee for both the petitions is fixed at Rs. 150.

The outstanding amount of the security deposit after deduction of costs shall be refunded to the Petitioners.