
(2002) 04 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 3139 of 2002

Shambhu Sharan Jaiswal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Citation : (2002) 04 PAT CK 0013

Judgement

S.K. Katriar, J.—Learned Counsel for the Petitioner is permitted to correct the description of Respondent No. 5.

2. Heard learned Counsel for the parties. This writ petition has been preferred with the prayer to set aside the auction bid which took place on 2.2.2002 for appointment of Collection Agent for the Pagra Vijayipur Mushahari Bazar for the period 2002-2003 by auction conducted by Respondent No. 3 (the SDO-cum-Special Officer, Agriculture Produce Market Committee, Gopalganj). Pursuant to the advertisement dated 16.1.2002 (Annexure 1), Respondent No. 5 (Dipchand Gupta @ Bridhi Chandra Gupta) and two others participated in the bid and the offer of Respondent No. 5 for Rs. 31,600/- has been accepted, being the highest, for collection of market fee with respect to the aforesaid market. It is relevant to state that Rs. 31,600/- was the floor price, commonly known as reserve jama. The other two participants made offer for lesser amounts and, therefore, were disqualified from consideration. According to the terms and conditions of the advertisement, the participants were required to deposit 10% of the reserve jama as well as the character certificate issued by the Anchal Padadhikari, or Prakhanda Padadhikari or Thana Prabhari, in the office of the Market Committee before the bid took place.

3. The Petitioner complains before this Court that he was ready with his offer on 2.2.2002, but the three persons who participated in the bid in collusion with Respondent No. 3 held the auction rather surreptitiously as a result of which the Petitioner, who for the whole day stood waiting outside the chambers of Respondent No. 3 could not participate in the bid for lack of announcement and

knowledge the bid was going to take place. He had promptly submitted his application towards the end of that day before Respondent No. 2 (Collector of the district of Gopalganj) with copies of his character certificate, stating therein that he could not participate in the bid because of the unfair manner in which the same took place. Respondent No. 2 immediately endorsed it to Respondent No. 3 for enquiry and report. It appears from the record that Respondent No. 3 did not take any action and the offer of Respondent No. 5 has become final. His further contention is that his offer is for Rs. 1,25,000/- which shall be deposited in one single instalment which is a much bigger amount than the offer of Respondent No. 5. Learned Counsel for the Petitioner places reliance on a judgment of the Supreme Court reported in M/s. Rajshila Vs. State of Uttar Pradesh and others, in this context.

4. Learned Counsel for Respondent Nos. 3 and 4 opposed the writ petition stating therein that the Petitioner really did not participate in the bid. He submits that after all there is a sanctity of a bid, and an offer made after the bid is over cannot motivate government bodies in the manner as suggested by the Petitioner. Respondent No. 5 has supported the stand taken by Respondent Nos. 3 and 4. He further submits that the Petitioner did not fulfil the terms and conditions of the advertisement, namely, he did not deposit 10% of the floor price nor did he submit the requisite certificate. In his submission, the writ Petitioner is not entitled to any relief in the prerogative writ jurisdiction. He further submits that he is unable to take the settlement for Rs. 1,25,000/-, the amount offered by the Petitioner.

5. Having considered the submissions, it appears to me that the bid did not take place in a fair manner. I do not wish to enter into the details of this aspect of the matter. Suffice it to say that the advertisement in question (Annexure 1) relates to 26 settlements, the present one being serial No. 4. To say the least, it might have got mixed up in the crowd of auction bids that had taken place on the same day. Furthermore, the Petitioner's application protesting the manner in which the auction took place was submitted the same day along with copies of the character certificate and no action has taken place. Thirdly, the difference between the offer of Respondent No. 5 and that of the Petitioner are too wide. In that view of the matter, I hereby set aside the impugned auction held on 2.2.2002 in favour of Respondent No. 5 and direct Respondent Nos. 3 and 4 to readvertise the same and hold the bid within a period of four weeks from today. This writ petition is being allowed on the undertaking given by the Petitioner that his bid amount would not be less than Rs. 1,25,000/-, the entire amount of which shall be deposited in one installment after his bid is accepted, of course after deducting the proportionate amount for the period he would not be able to work. It goes without saying that the candidature of all including that of the Petitioner shall be subject to the terms and conditions stated in the advertisement. As a matter of interim measure until fresh auction takes place, the arrangement as on today shall continue to operate. In view of the submission made by learned Counsel for Respondent Nos. 3 and 4, the Petitioner hereby

agrees to deposit 50% of the aforesaid amount inclusive of 10% of the floor price within a period of one week with Respondent No. 3 by means of a demand draft as an interim measure.

6. Let a copy of this order be handed over to Mr. K.P. Yadav, learned Counsel for Respondent Nos. 3 and 4 promptly.