(2003) 01 PAT CK 0112

In the Patna High Court

Case No : C.W.J.C. No. 8842 of 2002

Shyam Babu Prasad — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Citation : (2003) 2 PLJR 158

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : F.A. Khan and D. Nandan, for the Appellant; Shambhu Nath, for State, K.P. Yadav, Suresh Kr. for Market Board, R.B. Mahto, Ajay for Respondent No. 6 and P.C. Yadav, for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The dispute in this case relates to the settlement of certain market(s) called Beldari Chak Pabheri More at Masaurhi in the district of Patna for collection of market fees for the year, 2002-03. The settlement was made in favour of Respondent No. 6 for a sum of Rs. 5,50,000/- on an offer made by him directly to the Managing Director of the Bihar State Agriculture Produce Marketing Board, Patna. When the Petitioner came to learn about the settlement made in favour of Respondent No. 6 for a sum of Rs. 5,50,000/- he made a representation offering Rs. 10,50,000/-, to be paid in one instalment, for the settlement of the market(s) for the period in question. Failing to get any response to his offer, the Petitioner has come to this Court in this writ petition.

2. The facts of the case are simple and without controversy. On 30.3.2002 the Subdivisional Officer-cum-Special Officer, Agriculture Produce Market Committee Masaurhi wrote a letter (Annexure 1) to the Managing Director of the Marketing Board mooting the proposal for making the settlement of the markets by public auction. The Regional Director, Agriculture Marketing by his letter, dated 4.7.2002 addressed to the Marketing Secretary, Agriculture Produce Market Committee, Masaurhi fixed the reserve jama for the markets as Rs. 5 lacs. On

16.7.2002 the Agriculture Secretary of the Market Committee wrote to the Managing Director seeking his permission for holding auction for settlement of the markets. In reply, the Market Secretary received a letter, dated 19.7.2002 from the Managing Director of the Board directing to make settlement of the markets in favour of Respondent No. 6 in case he deposited the settlement amount of Rs. 5,50,000/- as offered by him, in one instalment. On the following day (20.7.2002) the Market Secretary issued a letter stating that the settlement of the markets, for collection of market fees was made in favour of Respondent No. 6 and Parwana was also issued in his favour. (Incidently, it may be noted that the Managing Director of the Board retired from service on 31.8.2002).

3. As soon as the Petitioner came to learn about the settlement of the markets in favour of Respondent No. 6, he made a representation on 27.7.2002 making an offer of Rs. 10,50,000/- to be paid in one instalment. No action, however, was taken on his representation and the Petitioner finally came to this Court in this writ petition.

4. On 2.8.2002 this Court while directing the Respondents to file counter affidavits, passed an interim order that "the toll should be collected by the Market Committee itself."

5. The facts themselves indicate the grossly irregular manner in which the settlement was made in favour of Respondent No. 6. As noted, there was already a proposal for making settlement of the markets by holding public auction and the Marketing Secretary had written to the Managing Director seeking his permission for holding the auction. In reply, the Managing Director directed the Marketing Secretary to make settlement of the markets in favour of Respondent No. 6 on the basis of some offer made by him privately to the Managing Director. Apart from the general principles of equality and fairness in public deals, the guide-lines of the Board as contained in letter No. 8327, dated 27.12.1995 (Annexure 7) provide for making settlement of markets by Holding public auction. it is also evident that the offer of Respondent No. 6 was quite under-valued because the Petitioner made an offer to take the settlement of the market(s) for a sum of Rs. 10,50,000/- but it was disregarded.

6. The State counsel tried to defend the settlement made in favour of Respondent No. 6 by stating that earlier an auction was held on 26.3.2001 but no one took part in that auction and hence, the Managing Director considered it fit and proper to make the settlement in favour of Respondent No. 6 on the offer made by him which was higher than the reserve jama fixed for the markets.

7. I am completely unconvinced by the explanation offered. If the auction scheduled for 26.3.2001 could not take place due to non-participation of any parties, a second auction should have been held and in case there was any law and order problem in holding the auction locally, arrangement could be made for holding the auction in the Board''s office at Patna. If that was mot feasible for any reason, offers could be called for in sealed covers but under no

circumstances a settlement can be justified on the basis of a private and almost clandestine offer being made directly to the Managing Director.

8. Mr. R.B. Mahto, learned Senior Advocate appearing for Respondent No. 6 stated that the Petitioner had no right to maintain this writ petition. Learned Counsel submitted that the Petitioner was a defaulter in payment of settlement fee to the Board/Committee for the previous years and he was also facing some criminal cases.

9. In the rejoinder affidavit all these allegations have been frontally denied by the Petitioner. To my mind, however, the issue whether or not settlement can be made in favour of the Petitioner is besides the point. The entitlement of the Petitioner to take settlement might be considered by the competent authority at the proper time. In so far as this case is concerned, suffice it to note that settlement in favour of Respondent No. 6 was made in a thoroughly irregular manner and this Court finds it impossible to uphold the settlement of the markets in favour of Respondent No. 6.

10. The directions and orders contained in Annexures 4 and 5 are, accordingly, set aside. Respondent No. 6 is restrained from collecting market fee from the markets in question.

11. As the period of settlement is almost over and less than three months remain, the Market Committee may if it so decides continue to collect tolls from the markets in question through its own staff. But in case it decides to make settlement of the markets either for the remaining period of this year or for the next year it must do so in accordance with law, on the basis of a public auction or a general tender notice etc.

12. In the result, this writ petition is allowed to the extent indicated above but with no order as to costs.

