

(1981) 08 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 861 of 1981

Sri Kasinath Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-08-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Orissa Grama Panchayat Rules, 1968 — Rule 87

Citation : (1981) 52 CLT 386

Hon'ble Judges : P.K. Mohanti, J;J.K. Mohanty, J

Bench : Division Bench

Advocate : S. Misra, S.K. Nayak 1, C.P. Mahapatra, R.K. Nayak and S.K. Nayak 2, for the Appellant; Addl Standing Counsel for O.Ps. 1 to 3, G. Rath and N.C. Panigrahi for O.P. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—In the writ application under Article 226 of the Constitution of India the Petitioner seeks issuance of a writ of mandamus or any other suitable writ quashing the settlement by negotiation of a ferry in favour of O.P. No. 5 Dhaneswar Nayak.

2. The ferry in question lies within the jurisdiction of Panchutikri Grama Panchayat under Bansagada Police Station in the district of Balasore. It was transferred by the Government of Orissa in the Revenue Department in favour of the Grama Panchayat for maintenance and management. The ferry was put to auction for the year 1981-82 first on 24-2-1981. There were three bidders at the auction. The highest bid amount of Rs. 5,000/- offered by the Petitioner was not accepted by the B.D.O. as it did not reach the minimum bid of Rs. 8,385/- fixed by the Sub-Divisional Officer, Bhadrak. The ferry was re-auctioned on 17-3-1981. The highest bid amount of Rs. 4,000/- ordered by the Petitioner was also not accepted as it did not reach the minimum bid. It was again put to auction on 27-3-1981. The highest bid amount offered by one Basanta Kumar Biswal was

Rs. 5250/- which was also not accepted on the self- same ground. Thereafter on the recommendation of the B.D.O., the ferry was settled by negotiation for Rs. 5500/- in favour of opposite party No. 5 on 21-4-1981 under orders of the S.D.O., Bhadrak. The Petitioner challenges the order of settlement by negotiation on the ground that it is violative of the provisions of Rule 87(h) of the Orissa Grama Panchayats Rules, 1968. It is contended that when the bid was inadequate the concerned authorities were required to direct that the ferry should be either re-auctioned or managed directly by the Grama Panchayat and that they had no jurisdiction to settle the same by private negotiation.

3. In the counter filed by opposite parties 1 to 3 it is contended that the Petitioner has no enforceable right to challenge the order of settlement. It is also contended that though the ferry was put to auction thrice the highest bid did not reach the off-set price and that the Grama Panchayat being unable to manage the ferry directly due to want of boat and staff, it was settled by negotiation for Rs. 5,500/- in favour of opposite party No. 5.

4. The proviso to Rule 87(h) of the Orissa Grama Panchayat Rules runs as follows:

Provided that the Sub-Divisional Officer or the Block Development Officer as the case may be, may if the bid is inadequate or he receives a report that no bidders were forthcoming direct that the property be either re-auctioned or managed directly by the Grama Panchayat for a period to be specified by him.

5. A writ of mandamus can issue only for the enforcement of a fundamental or a statutory right. The ferry was put to auction thrice, but the highest bid offered at the auction did not reach the off-set price. On the third occasion one Basanta Kumar Biswal was the highest bidder and the Petitioner was the second highest. By merely giving bids at the auction a bidder does not acquire any vested right. Public auctions are held to get the best possible price. There is no infringement of Article 14 if the Government tries to get the best possible price for its valuable rights. There is no reason why the State should not have the right to settle its property by negotiation so long as such activity does not encroach upon the rights of others or is contrary to law. The price fetched by negotiation is more than that offered at the auction. The ferry was repeatedly put to auction but the highest bid did not reach the off set price. The B.D.O. who was holding the auction complied with the terms of the proviso to Rule 87(h) by directing re auction of the ferry on two occasions. The opposite parties have stated in their counter affidavit and have also produced the report of the B.D.O. to show that the Grama Panchayat was unable to manage the ferry due to want of boat and staff. This averment has not been controverted. As the off set price was not reached despite repeated auction and as the Grama Panchayat was unable "to manage the ferry the authorities were free to have recourse to other methods of settlement. The Petitioner has no enforceable right to challenge the settlement by negotiation in favour of opposite parties No. S.

6. There is, therefore, no merit in this writ application and it is accordingly

dismissed, but in the circumstances without any order as to costs.

J.K. Mohanty, J.

7. I agree.