(1984) 03 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1258 of 1984

S.S. Bhatia and Company APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 30-03-1984

Acts Referred:
Madhya Pradesh Excise Act, 1915 — Section 62(f)

Citation : (1984) JLJ 374 : (1984) MPLJ 353

Hon'ble Judges : G.L. Oza, C.J;C.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.L. Saxena, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, C.J.

This is a petition filed by the petitioner challenging the auction of a group of 24 shops in Raipur held on 15th January 1984. The petitioner by this petition has sought the cancellation of the acceptance of the bid of respondent No. 7 and in substance has sought the relief of re-auction on the ground that the petitioner was not permitted to offer bids and bids offered by him were not recorded.

The petitioner is a firm constituted under the Indian Partnership Act and in response to the notification issued by the Collector, Raipur, for auction which was notified to be held on 15th and 16th January 1984, the petitioner firm had deposited the earnest money Rs. 15,50,000 in the name of the petitioner firm. This petition pertains to the auction of 24 country liquor shops in Raipur and adjoining areas as indicated in the auction notice. It is alleged by the petitioner that the petitioner firm had deposited the earnest money but as the date of auction i.e. 15th January 1984 was a Sunday it was not possible for the petitioner to produce the registration certificate of the firm and on that count he was not permitted to offer the bids. Surjit Singh Bhatia who was one of the partners of the firm was present in person. It is also alleged that he made a request that if the firm is not permitted to offer bids because of the technical defect of non-production of registration certificate, the petitioner should be permitted to offer the bid in person and the earnest money deposited in the name of the firm be either treated as earnest money deposited by him personally or the amount be refunded so that he may deposit it in his individual name immediately but according to the petitioner this was not done and even his request for postponement of the auction to the next day, i.e. 16th January 1984 was also not accepted and the bid of respondent No. 7 who was the only person offering the bid was accepted at Rs. 1,40,00,000 and the petitioner was not permitted when he was prepared to offer a higher bid i.e. Rs. 1,51,00,000. It is alleged by the petitioner that in so doing, the authorities not only did not permit the petitioner to offer the bid which was higher than that of respondent No. 7 and by doing so they also caused a loss of revenue to the tune of Rs. 11,00,000 which was a substantial sum. It is also alleged by the petitioner that immediately thereafter he submitted an application to the Commissioner of Excise, which was dated 18th January 1984, wherein he drew the attention of the Commissioner that by not allowing the petitioner to offer the bids the authorities have caused loss to the revenue and it is alleged by the petitioner that he received a letter from the Commissioner of Excise on 30th January 1984 enquiring whether the petitioner is prepared to offer a bid of 10% more than the bid of Rs. 1,40,00,000 which was accepted, and whether he is prepared to deposit 1/3rd of his offer in advance. According to the petitioner, by his letter dated 8th February 1984 he replied that he was prepared to offer a bid of 10% above Rs. 1,40,00,000 and is also prepared to deposit 1/3rd amount but according to the petitioner thereafter he did not hear anything from the Excise Commissioner and if the Excise Commissioner had directed him to deposit the amount, he would have deposited it. It was, therefore, contended by the petitioner that he was not permitted to offer bids in spite of the fact that earnest money was deposited and even when the Commissioner was prepared to consider his offer and the petitioner had expressed his willingness, still the Commissioner did not issue any further directions for depositing the 1/3rd amount.

The material facts are not in dispute. It is not disputed that the earnest money Rs. 15,50,000 was deposited in the name of the petitioner, a partnership concern.

It is not in dispute that Surjit Singh Bhatia personally had not deposited in his own name any earnest money.

It is also not in dispute that the petitioner firm could not produce the registration certificate of the firm.

The only controversy is as to whether the petitioner offered any bids which were not recorded and as to whether the petitioner made a request for converting the deposit of Rs. 15,50,000 in his personal name and permit Surjit Singh Bhatia personally to offer the bids. As according to the return filed by the respondents there was no such prayer nor it could have been done as admittedly the earnest money was deposited by the firm and in the name of the firm i.e. the petitioner, and this could not have been treated to be a deposit in the name of Surjit Singh Bhatia, a person who claims to be one of the partners of the firm. It is also disputed that any request for postponement was made and it is also contended that such a request could not have been accepted as the auction although was to proceed on both the days but these were not the only shops and a number of other shops had to be auctioned. Although there have been a petition, a rejoinder and an additional return but the facts stated above are the material facts. It is also not disputed that an application was made by the petitioner to the Commissioner of Excise on 18th January 1984 and that the Commissioner replied on 30th January 1984 but the stand taken in the return is that for re-auction the condition precedent is that 1/3rd amount should have been deposited although the petitioner showed his willingness to deposit the 1/3rd amount but in fact 1/3rd amount was never deposited and, therefore, re-auction could not have been ordered.

It was contended by the Learned Counsel for the petitioner that although the earnest money deposited was in the name of the firm but firm is not a legal person different from the partners. At best it is only a group of persons and, therefore, if the petitioner who was present in person wanted to offer the bids by treating the deposit in his individual name the authorities could not have prohibited or refused to record his bids. It was also contended that the petitioner''s prayer for treating this to be a deposit of Surjit Singh Bhatia in person could have been considered.

It was contended that when the auctions were fixed on 15th and 16th January 1984, 15th being a Sunday, in the interests of revenue the authorities could have postponed the auction to 16th so that the petitioner firm could have produced the certificate of registration of the firm so that the technical defect could have been avoided and the petitioner firm could have been permitted to offer bids which could have given further advantage to the revenue. Learned Counsel for the petitioner contended that under the scheme of the Excise Act the State Government is the sole authority to confer the privilege of sale of liquor to any person and the basic consideration with the State Government should be the revenue and in this view of the matter the authorities on technicalities prevented the petitioner from offering the bids and thereby caused a loss of revenue to the tune of about Rs. 11,00,000. It was also contended by Learned Counsel for the petitioner that his application to the Commissioner was made within three days of the auction and the Commissioner asked the petitioner to offer a bid of 10% above and asked him whether he was prepared to deposit 1/3rd amount and the petitioner accepted the offer of the Excise Commissioner and it was necessary for the Excise Commissioner to direct the petitioner to deposit 1/3rd amount so that re-auction could have been ordered. It was even contended during the course of arguments that the application to the Excise Commissioner could have been treated as an appeal as is provided in the rules and the appeal also has not been decided. Learned Counsel for the petitioner referred to the decisions of their

Lordships of the Supreme Court in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Nashirwar and Others Vs. State of Madhya Pradesh and Others, to contend that although the excise contracts are for sale of liquor which runs contrary to the directive principles of the State Policy but still when the State confers this privilege on a person and the scheme of auction is only a scheme to secure maximum revenue to the State, the State ought to have considered the question of loss of revenue as a material question. It was contended that the proceedings of auction themselves indicate that there was no one else to offer higher bids except respondent No. 7 and the manner in which the auction was hurried depriving the petitioner an opportunity to offer has ultimately resulted in the bid of respondent No. 7 being accepted which was only Rs. 1,40,00,000, and more which could have been secured to the revenue has been lost merely because of the manner in which the auction was conducted and the manner in which the petitioner was kept back. Allegations are also made against the officers of the Excise Department conducting the auction and it is alleged that they conducted the whole matter in the manner in which respondent No. 7 could secure the contract although it is a positive loss of the revenue to the tune of Rs. 11,00,000.

Learned Government Advocate, on the other hand, contended that the conditions of auction which have been laid by the State Government in the exercise of powers u/s 62(f) of the M.P. Excise Act and which have been published in the Gazette dated 6th January 1984 provide the eligibility of a person to offer a bid and they also provide for eligibility of a person to pray for a re-auction. It was contended that there were two conditions necessary to be satisfied before a person could be allowed to offer a bid. The first was the earnest money which admittedly was Rs. 15,50,000 which had to be deposited in advance and if it was a firm, a registration certificate of the firm had to be produced. The second condition to which emphasis has been laid by the learned Government Advocate is that if a person who offers a bid was not the previous contractor then he had to produce a solvency certificate or a revenue record certifying that the person holds agricultural land 2 hectares or odd as is provided in the conditions of auction. It was contended that the petitioner firm which had deposited the earnest money did not produce the registration certificate and, therefore, was not entitled to offer the bid. Even the second condition of producing a solvency certificate or a revenue record showing holding of land was not fulfilled.

As regards Surjit Singh Bhatia, a person, it was contended that he is not before this Court as this petition has been filed by Surjit Singh Bhatia & Company, a firm. Apart from it, it was contended that as the person Surjit Singh Bhatia had not deposited the earnest money, he could not have been allowed to offer the bids. It was contended that even if this request of Surjit Singh Bhatia, a person and a partner of the firm, is considered, the deposit which was made in the name of the firm could not have been altered or adjusted in the name of a person as that could not be done unless the consent of the other partners was there, not the amount could be withdrawn as the amount could only be refunded to the firm and not to Surjit Singh Bhatia. It was, therefore, contended that so far as Surjit Singh Bhatia, the person, is concerned, he did not fulfil any one of the eligibility clauses entitling him to offer a bid. Under these circumstances, it was contended that the petitioner firm was not eligible as it did not produce the registration certificate nor satisfied the authorities about the requirement of the solvency certificate or the revenue record showing holding of land. Surjit Singh Bhatia personally was not entitled to offer the bid as he had not deposited the earnest money and, therefore, he was not a person eligible to offer the bids nor there is anything to indicate that he satisfied the second condition of the solvency certificate or revenue record showing that he is holding a land as required under the eligibility clauses.

It was contended by the learned Government Advocate that so far as the question of re-auction is concerned, in the conditions of auction published in the Gazette rule 12 pertains to re-auction and the first requirement of a person who applies for re-auction is that he must be a person who had offered the bids. As the petitioner firm or Surjit Singh Bhatia were not entitled to offer the bids and as the bids were not offered, neither the petitioner firm nor Surjit Singh Bhatia were entitled to claim a re-auction as has been provided in Rule 12. It was contended that the second condition which is incorporated in Rule 12 (b) is that the person who claims re-auction has to deposit 1/3rd of the amount of proposed bid along with the application. According to the learned Government Advocate admittedly when the prayer for re-auction was made to the Commissioner, 1/3rd of the proposed bid was not deposited. It was not even deposited when in response to the letter of the Commissioner dated 30th January 1984 the petitioner although expressed his willingness but in fact the 1/3rd amount was never deposited and in such a situation the petitioner was not entitled to claim re-auction as the conditions required under Rule 12 or instructions issued by the State Government were not fulfilled. Learned Government Advocate, therefore, contended that even if these instructions are not statutory rules, still it could not be disputed that they are administrative instructions and were notified long before and the petitioner knew them and, therefore, the authorities were bound to act in accordance with these instructions and could not give a go-by to these conditions advertised and in support of his contention the learned Government Advocate placed reliance on the decision of their Lordships of the Supreme Court in Ramana v. I.A. Authority of India where their Lordships have at length considered the question of the consideration or requirement following the conditions laid down in the notice of auction or tender even though they may not be statutory and have ruled that the authorities are bound to follow them. Learned Government Advocate also placed reliance on the Division Bench decisions in Nanhelal Sahu v. State of Madhya Pradesh and another 4. M.P. No. 2106 of 1983 decided on 31st October 1983 and Pradeep Rajdeep & Company, Gadarwara v. State of M.P. and four others M.P. No. 965 of 1983 decided on 15th April 1983.

Learned Counsel for the petitioner, on the other hand, contended that the instructions published in the Gazette on which reliance is placed by the learned Government Advocate are not rules framed u/s 62(f) of the M.P. Excise Act but are only instructions even if they are issued by the State Government and, therefore, they could not be said to be statutory rules. It was contended that under sections 13, 17 and 27 of the Excise Act it is the power of the State Government to give the privilege of selling liquor and the basic consideration before the State Government is the collection of revenue. It was, therefore, contended that apart from the technicalities of the matter, the petitioner has demonstrated as to how the State has suffered a loss of revenue to the tune of Rs. 11,00,000 and, therefore, it is for the State to consider the question of re-auction.

As stated earlier, it is not disputed that the petitioner partnership firm although had deposited the earnest money but could not produce the registration certificate and, therefore, admittedly in accordance with the conditions of auction the firm was not entitled to offer bids. Even without going into the controversy as to whether a request was made or not for adjustment or treating the earnest money to be the deposit of Surjit Singh Bhatia personally, it is very clear that when the deposit stands in the name of the firm it could not have been adjusted or treated to be a deposit in the name of a particular person as it is clear that although the partnership firm is not a legal person but it could not be doubted that it means a group of persons and money deposited in the name of a group of persons could not be treated to be deposited in the name of one. It is also clear that it could not have been refunded to Surjit Singh Bhatia. It could only be refunded to the firm and, therefore, the controversy about his request is of no consequence.

It could not also be disputed that so far as Surjit Singh Bhatia personally is concerned, there was no deposit in his own name of the earnest money and, therefore, the question of his being permitted to offer bids also is of no consequence as admittedly in accordance with the conditions of auction a person who had not deposited the earnest money could not be permitted to offer a bid. It is also clear that so far as the conditions of re-auction are concerned as have been stated clearly in Rule 12 of the notification issued by the State Government, the conditions were not satisfied as the petitioner was not the person who offered the bid as he was not eligible and that 1/3rd amount was not deposited as is contemplated under Rule 12 (b).

The material question which emerges is that even if these notifications issued by the State Government are administrative instructions, are the authorities bound to follow them? In Ramana v. I.A. Authority of India after dealing with this matter of the conditions of auction notice at length, their Lordships observed :

It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years'' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the 1st respondent was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondent who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondent. When the 1st respondent entertained the tender of the 4th respondent even though they did not have 5 years'' experience of running a IInd class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years'' experience of running a IInd class restaurant, but who were otherwise competent to run such restaurant and they might also have competed with the 4th respondent for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years'' experience. The action of the 1st respondent in accepting the tender of the 4th respondent, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of the 4th respondent was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action.

Therefore, if the authorities have followed the conditions of auction notified by the State Government in the Gazette and also published in the auction notice long in advance, the petitioner could not make any grievance that the authorities committed any wrong. In fact, the authorities were expected to act in accordance with the conditions laid down by the State Government and the conditions advertised. It also could not be doubted that as the conditions for re-auction as are stated in Rule 12 (a) and (b) are not satisfied, the prayer of the petitioner for re-auction could not be granted either by the Excise Commissioner or by the State Government. An attempt no doubt has been made by the petitioner to indicate that the revenue has suffered a loss, the learned Government Advocate has clearly stated that the matter is still with the State Government and the

State Government may pass appropriate orders but it is plain that the petitioner in this petition cannot seek a direction as discussed earlier either for re-auction or for cancellation of the acceptance of the bid in favour of respondent No. 7.

It was contended that the State Government is the ultimate authority for granting the licence for sale of liquor and it was vigorously contended by Learned Counsel for the petitioner that the State Government which have delegated the powers to various authorities can ultimately take a decision in the interests of revenue to order re-auction. It is, however, open to the State Government in its wisdom to do as they choose although we will like to quote from P.N. Kaushal v. Union of India the following observations:

We have reasoned enough to justify the ways of the Constitution and the law to the consumers of social justice and spirituous potions. The challenge falls and the Writ Petitions Nos. 4108-4109 etc., of 1978 are hereby dismissed with costs (one hearing fee). May we hopefully expect the State to bear true faith and allegience to that constitutional orphan, Article 47 ?

For the reasons stated above, the petition is dismissed. In the circumstances of the case, parties are directed to bear their own costs. Security amount, if deposited, be refunded to the petitioner.