

(2002) 05 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 2497 of 2002

Suday Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Citation : (2002) 3 PLJR 169

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Rama Shankar Pradhan, for the Appellant; Ram Janam Ojha, K.P. Yadav and Suresh Kumar for Respondent Nos. 1 to 5 and B.P Verma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to cancel the appointment of Respondent No. 6 (Sanjay Kumar Chandra) as collection agent for collection of market fee and ground rent for the Belaganj Bazar, and appoint the same to the Petitioner, being the person with the highest offer, failing which it may be re-auctioned.

2. Respondent No. 5 (Market Secretary, Agricultural Produce Market Committee, Gaya), issued a notice dated 5.1.2002, (Annexure 1), that auction shall be held for appointment of collection agent for Belaganj Bazar for the period 2002-2003 (apart from various other markets not relevant in the present context) which, inter alia, stated that the auction shall be held on 21.1.2002 at 11.30 A.M. in the office of the Bazar Samiti, Chandauli, Gaya, failing which on 28.2.2002, and still failing which on 31.1.2002. It also stated that the persons desirous of participation in the auction shall have to deposit 10% of the predetermined minimum guarantee/reserve jama in cash before the auction. According to the writ petition, the Petitioner had appeared before Respondent No. 5 on 21.1.2002 at 10.30 A.M. intending to deposit 10% of the aforesaid amount with the request that he may be permitted to participate in the bid, vide his letter dt. 21.1.2002

(Annexure 2). The Petitioner thereafter submitted an application dated 21.1.2002 (Annexure 3) before the Commissioner of Magadh Division that he intended to deposit the aforesaid 10% amount the same day at 1.0.30 A.M., but the auction had already taken place at 10.30 A.M. instead of 11.30 A.M. The application further stated that he was prepared to take the bid for a sum of Rs. 6 lacs. No action was taken on this letter, presumably because the Commissioner is no authority under the Agricultural Produce Market Act (hereinafter referred to as the Act) and the Rules there under. It appears from the counter affidavit of Respondent Nos. 2 to 5 (the authorities under the Act) that four persons including the Petitioner and Respondent No. 7 (Ashok Kumar Sharma) had submitted joint application dated 22.1.2002, (Annexure C) before the Board's Managing Director making a grievance of the manner in which the auction had taken place, and requesting for re-auction. It appears that the matter did not make such headway leading to the present writ petition which was instituted on 14.2.2002. It further appears from the pleadings of the parties that (sic) the offer of Respondent No. 6 was for Rs. 69 lacs whereas the Petitioner intended to offer Rs. 6 lacs. It is further relevant to (sic) state that the Petitioner was the collection agent for the preceding year also. In view of this position, learned Counsel for the Petitioner was permitted to hand over a Demand draft for the sum of Rs. 3 lacs to the learned Counsel for Respondent Nos. 2 to 5 in Court as an interim measure and he has to continue to function as a collection agent until further orders of this Court as per the order dt. 18.3.2002 read with the order dt. 1.5.2002. In the meantime, the Board's Managing Director has enquired into the Petitioner's complaint and has (sic) placed on record his report dated 19.5.2002 which I shall consider at the appropriate place.

3. While assailing the validity of the impugned action, learned Counsel for the Petitioner submits that the advertisement itself stated that the auction shall be held on 21.1.2002 at 11.30 A.M. failing which on the subsequent dates stated therein, and the auction was instead held at 10.30 A.M. Respondent No. 6 (Sanjay Kumar Chandra), who is sought to be appointed as the Collection agent has made the offer of Rs. 2.61 lacs, whereas the Petitioner was required to offer a sum of Rs. 6 lacs. This is obviously a case of gross favouritism. In the submission, the auction took place surreptitiously to help a favorite, which lacks transparency and is, therefore, fit to be set aside.

4. Learned Counsel for Respondent No. submits that the Petitioner has offered an (sic) realistic amount of Rs. 6 lacs because (sic) he is engaging himself in extortion. Higher (sic) revenue cannot be achieved with the aid of (sic) extortion. In order to substantiate the submission he has invited my attention to the enquiry report dated 19.5.2002 submitted by the Managing Director (Annexure E to the second supplementary counter affidavit of Respondent Nos. 2 to 5) that the Petitioner was appointed the collection agent for the preceding year for a sum of Rs. 2,58,800/- and it has been found in the enquiry report that he could collect only Rs. 76,256.10/- resulting in a loss of Rs. 1,80,541.90p. which explains the higher bid for the current year which is possible only with the aid of extortion. He

further invites my attention to the report bearing No. 396, dated 22.4.2002 (Annexure D to the supplementary counter affidavit of Respondent Nos. 2 to 5), addressed to Respondent No. 5, informing the latter of the extortion of higher amount without grant of receipt taking place, inter alia, in Belaganj Market Committee. He next submits that the Petitioner did not make an offer of Rs. 6 lacs prior to the institution of the writ petition and, therefore, there was no occasion for enquiry. He lastly submits that in the event of re-auction, the same should be held expeditiously so that Respondent No. 6 does not suffer any more. He submits that he has deposited the entire bid amount and he has been deprived of the fruits of the settlement.

5. Learned Counsel for Respondent Nos. 2 to 5 submits that the Managing Director had conducted the enquiry in view of the Petitioner's application dated 22.1.2002 (Annexure C), jointly submitted by four persons including the Petitioner and Respondent No. 7, to the Mg. Director complaining of the manner in which the auction had taken place. He further submits that the Managing Director in his enquiry report dated 19.5.2002 (Annexure E) recommended that in view of the doubts created about reliability of the auction in question and also in view of the higher offers made by the Petitioner and Respondent No. 7, a fresh auction may be held. He next submits that whenever there would be a complaint about extortion the Respondent authorities shall promptly take action in accordance with law. He submits that Respondent No. 6 is right in his submission that there enhanced revenue must not be achieved with the aid of extortion. He lastly submits that they are prepared to hold the re-auction within a period of three weeks from today, and the Petitioner or the Market Committee may be directed to collect market fee as an interim measure.

6. Mr. Ram Balak Mahto, learned Counsel for Respondent No. 7, has supported the stand taken by the Petitioner as well as by Respondent Nos. 2 to 5.

7. Before I go into the merits of the present case, I would like to express myself in view of the pattern of litigation coming up before this Court of the present nature. It is being complained in diverse writ petitions that wide spread publicity is not being given to the proposed auction to help favorites. Secondly, while intending bidders keep on standing outside, the auction takes place in the room surreptitiously and quite often earlier than scheduled. I have invariably found in all such cases that the writ Petitioners have offered before this Court significantly higher amounts than the person in whose favor the hammer was struck down. I have further observed that allegations are quite often being made against the Committees headed by the Sub Divisional Officer, and the favorites generally belong to a particular class of persons. These issues were briefly indicated in my orders dated 18.3.2002 and 1.5.2002, and the parties had been directed to suggest remedial measures to this Court at the time of disposal of the present writ petition. The same have been placed on record and have been discussed at length during the course of oral arguments which I propose to deal with herein below in order to provide transparency to the sei(sic) process regarding

appointment of the election agent.

8. Law is well settled that source livelihood and the employment opportunities offered by the Government, govt. mental agencies and its instrumental are a national wealth, and every citizen should have unrestricted right of Access the same. This is possible only if the source of livelihood and the employment opportunities are given wide publicity and the Election process is transparent. The immersion created in the mind of the Court the basis of the pattern of litigation comes up before this Court seems to be a continuation of this basic constitutional theme the allegations indicated in the preceding paragraph hereinabove appear to be in a large number of cases. In that matter, I hereby direct the Board a Managing Director to adopt the following remedial measures, apart from any they deem fit and proper, to be enforced over State uniformly to attain the aforesaid constitutional goal:

I. The proposed appointment should be given wide publicity, inter alia, including in view that large number of uncultured and rustic villagers might apply the same. Putting it up on the notice board may not be adequate.

II. As suggested on behalf Respondent Nos. 2 to 5, presence of Chairman of the Committee is necessary at the time of auction. In unavoidable absence of the Chairman the bid has to be conducted by Assistant Director, Regional Director or an officer deputed by the Board to emphasise that the Sub-Divisional Officers in the capacity of Chairman the Marketing Committee must ensure that the auction takes place in proper manner and is not held secretly. I underscore the same in view of the allegations being made in various writ petitions against the Committee headed by the Sub Divisional Officer.

III. The advertisement should, inter alia, state the minimum stipulated amount of reserve price, and should also state that the prescribed earnest amount could be deposited till the date preceding the date of auction. It will be open to Respondent Nos. 2 to 5 to indicate alternative dates and the exact time of auction in the advertisement itself in which case it will be equally open to them to permit deposit of the earnest amount till the preceding date of the extended date of auction. The amount could be deposited in cash or per demand draft. The money receipt acknowledging receipt of the stipulated amount should invariably state the date and the exact time of receipt of the same.

IV. The advertisement/licence should clearly stipulate the terms and conditions which have to be observed by the collection agent failing which it may result in cancellation of the appointment.

V. The auction should not take place in the privacy of chambers or closeted places, and should invariably take place in open spaces like verandahs, in the "maidan (under shamiana), or in a public hall.

VI. The suggestion made by Respondent Nos. 2 to 5 that the Commissioner of the Division, or the District Magistrate, or Deputy Development Commissioner, or

Additional Collector may be involved in the selection process is hereby rejected outright, who are not recognized authorities under the Act. Permitting them to interfere with the selection process would be acting contrary to the scheme of the Act and the Rules and the intention of the Legislature. This does not preclude Respondent Nos. 2 to (sic) in taking help from the district administration to enable them to conduct the election process in a peaceful and orderly manner, rather than allowing them to conduct the selection process itself and be a party to it. The Sub Divisional Officer is a recognized authority in the scheme of the Act and the Rules for limited purpose which would not be allowed to be transgressed.

VII. The selection process shall invariably be subject to final approval of the named authority stated in the advertisement itself, say, for example, the Mg. Director or the Regional Director to be decided by the appropriate authority under the Act and the Rules. Before granting his seal of approval, it shall be the duty of the named authority to consider the objections/complaints submitted before him.

VIII. Let no impression be created in the minds of all concerned including this Court that favorites come from a particular class.

IX. The Department of vigilance should be strengthened.

9. Coming to the facts of the present case, the matter seems to be concluded by the managing Director's report which, inter alia, doubts, the transparency of the impugned auction. In that view of the matter as well as the much higher offers made by the Petitioner and Respondent No. 7, I hereby set aside the impugned advertisement and the auction in so far as Belaganj Bazar is concerned. Respondent Nos. 2 to 5 are hereby directed to hold a fresh auction for the same within a period of three weeks from today after giving wide publicity on the terms and conditions to be determined in accordance with law. As an interim measure, the Petitioner shall continue to operate as the collection agent as per his offer of Rs. 6 lacs for which he has already deposited Rs. 3 lacs with Respondent No. 5. In the event of his failure in the fresh auction, Respondent No. 5 shall be entitled to charge from him @ Rs. 6 lacs per annum Pro Rata for the period he has worked and the balance shall be returned to him. The amount deposited by Respondent No. 6 may be returned to him forthwith whose entitlement to participate in the fresh bid shall be determined by the terms and conditions of the fresh bid.

10. In the result, this writ petition is allowed with the aforesaid directions. Let a copy of this order be handed over to Mr. K.P. Yadav, Advocate.