

(1958) 04 MAD CK 0015
In the Madras High Court

T.K. Kannappa Gounder

APPELLANT

Vs

District Forest Officer and Another

RESPONDENT

Date of Decision : 25-04-1958

Acts Referred:

Citation : AIR 1958 Mad 572 : (1959) ILR (Mad) 5 : (1958) 71 LW 560 : (1958) 2 MLJ 268

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This is an appeal by one T.K. Kannappa Gounder, a forest contractor, against the Judgment of Balakrishna Ayyar,

J., in W.P. No. 40 of 1954, dismissing his application for the issue of a writ of certiorari to quash the order of the District Forest Officer, Vellore

East Division and of the District Collector, North Arcot, who decided to set aside the same.

2. The District Forest Officer, Vellore East, passed an order stating that the appellant was placed in the ""black list"" and that he would not be

allowed to participate in any ""forest sales or allowed to enter into any forest contracts in the division in future"". The appellant appealed against this

order to the District Collector but without success. He then applied to this Court under Article 226 of the Constitution to quash the order of the

District Forest Officer and of the Collector. Balakrishna Ayyar, J., dismissed the application holding that the order in question did not offend

against Article 14 of the Constitution and that it was perfectly open to the authorities to give contracts to whomsoever they pleased. We agree with

the learned Judge that it was a matter entirely for the Government to decide to whom they would sell their properties and with whom they should

enter into a contract. The liberty of the Government in such matters cannot be less than that of any private individual. But Mr. Natesan appearing for the appellant has restricted his case by attacking the propriety of the order placing the appellant in the black list in so far as it excluded him from bidding at public auctions conducted by the forest department. This aspect of the matter does not appear to have been presented to the learned Judge. No provision of any statute or of any rule under any statute is shown to us which obliges the forest department to sell the forest produce, goods, etc., only by public auction. As the writ petition was dismissed in limine we do not have the advantage of any counter-affidavit on behalf of the respondents. In answer to a question from us the learned Additional Government Pleader stated that there exists a practice in the forest department to sell forest goods by public auction. The question, therefore, is whether in a case where public auction is held in regard to sale of Government property either under the provisions of any statute, statutory rule or otherwise it would be open to the Government to exclude certain persons from bidding at such public auctions.

3. The learned advocate for the appellant has referred to a decision of the Patna High Court in Jagat Singh v. State of Bihar AIR 1955 Pat. 583, in support of his contention that where a public auction is held it would not be open to the authorities holding the auction to exclude certain persons from bidding. That was a case where the right to collect tolls for ferries was leased in public auction. u/s 9 of the Bengal Ferries Act the tolls of any public ferry were to be leased by public auction in case the authority decides not to manage the ferry itself. The petitioner in the case was forbidden by the auctioning authority from bidding at the auction. Under the terms of the auction, power was reserved to the auctioning authority to accept or not to accept the highest bid or any bid. The learned Judges held that the mere right in the auctioning authority to refuse to accept the offer of the highest bidder did not entitle it to prevent any person conforming to the terms of the auction from bidding at any public auction conducted by it.

They observe at page 485:

The discretion vested in the Chairman to refuse to accept any bid after the auction is held that does not entitle him to anticipate the results of the auction and to prevent persons who in his wisdom were not desirable from

bidding at all.

The decision reported in *K.N. Guruswamy Vs. The State of Mysore and Others*, , was next relied on. There the contract for the sale of liquor was

auctioned and knocked down in favour of the highest bidder. Another person who was present at the auction but who did not bid made an offer of

the sum in excess of the bid to the officer who accepted the same and granted the licence in his favour; the result was that the highest bid received

at the auction was rejected. The Supreme Court held that the action of the auctioning authority in giving the contract to the second person was

wrong as it was contrary to the rules and ran counter to the policy of the Legislature which did not permit matters of such consequence to the State

Revenue to be dealt with arbitrarily and in the secrecy of an office. The decision in *Sunderlal Rajnath v. M.B. State* AIR 1955 M.B. 161, was next

cited as authority for the contention that the appellant as a citizen of India has a right to carry on any occupation or trade or business under Article

19(1)(g) of the Constitution. We are, however, unable to appreciate how this decision can help the appellant. It is clear that the matter can be

looked at from two points of view: (1) exclusion of a member of the public from bidding at the public auction would undoubtedly be detrimental to

the public revenue as it not merely prevents the particular individual from making his offer but also leaves the other bidders without a rival bidder

who by his participation in the auction would stimulate higher bids. The interests of public revenue therefore require that there should ordinarily be

no such exclusion of bidders and (2) in regard to the individual excluded the exclusion would have the effect of preventing him from purchasing and

doing a lawful trade in the goods and in discriminating against him in favour of other people. No person can have the fundamental or inherent right

to bid at any public auction. But the essence of a public auction is that it should be open to the public and if unlimited power of exclusion of

individuals from such an auction is recognised the auction would cease to be a public one. It would, however, be open to the authorities to impose

reasonable conditions regarding the receipt and acceptance of bids and the qualifications of the bidders. An usual provision in most of the auctions

is that the auctioning authority is not bound to accept the highest or any bid. It would, for example be open to the authority to refuse to accept the

bids from particular individuals who may be undesirable purchasers or persons convicted of forest offences, etc. But such considerations come into play after the public auction is held and not before. The District Forest Officer in the present case has prevented the appellant absolutely from bidding at auction long before the auctions could take place. While we agree with Balakrishna Ayyar, J., that it is open to the Government to enter into contracts with whomsoever they please and subject to whatever conditions they may impose we are unable to hold that that rule can be applied to the case of a public auction held by the Government. In such cases the interests of the public revenue and of the public require that there should be no exclusion of bidders.

4. The order of the District Forest Officer was passed in 1953. It is not the case that the appellant was actually prevented from bidding at any of the public auctions conducted by the department and indeed he appears to have come to this Court even before he was actually hurt. We, therefore, do not think that any writ should issue in the circumstances of the case. We dismiss the appeal but in the circumstances we make no order as to costs.