
(1976) 04 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 11598 of 1975

Uttarakhand Forest Co., Niranjanpur, Dehradun

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-04-1976

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : AIR 1976 All 464

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : S.C. Khare and V.N. Khare, for the Appellant; A.D. Prabhakar and S.N. Doyal and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—These are two petitions under Article 226 of the Constitution directed against the order of Additional Chief Conservator of Forest, Garhwal, Dehradun, approving the auction sale of forest in favour of those who had offered highest bid at the auction sale held on 8th, 9th and 11th September, 1975.

2. The Government forests of Tehri and Garhwal contain large number of timber trees. Forest department of State Government divides the forests in portions or lots, and puts the same to auction sale. The lessees in whose favour settlement is finally made are permitted to cut and remove the timber. The auction sale is conducted by the Divisional Forest Officer in accordance with the rules published by the Forest Department regulating the conditions of auction sale. The conditions of sale are promulgated each year by the Conservator of Forest, which are given wide publicity to enable the prospective bidders and contractors to know the same before participating in the auction. Auction of forest lots falling in Tehri division and Uttar Kashi division were announced to be held in September, 1975, and for that purpose sale notice was circulated containing conditions of sale for the year 1975-76. Some of the forest contractors decided not to

participate in the auction unless some of the sale conditions which according to them were too onerous were relaxed. They made representation to the Additional Chief Conservator of Forest, Garhwal, Tehri Circle for relaxing the conditions of auction sale, but he did not accept the contractors' representation.

3. On 5th September, 1975, lots of Chakrata division were auctioned but since big contractors boycotted the auction sale, the auction sale was postponed. On 8th September, 1975, lot No. 58 of Uttar Kashi division was put to auction at Narendra Nagar. Bhagat Ram Sharma offered the highest bid of Rs. 3,40,000/-. On 9th September, 1975, lots Nos. 4, 5, and 7 and 11 of Tehri division were put to auction. M/s. Bhalla Forest Company made the highest bid of Rs. 3,51,000.00, 1,79,100.00, 6,500.00 and 2,32,100.00 respectively for the said lots. Similarly M/s. Thapar and Company offered highest bid of Rs. 3,50,000.00 for the lots Nos. 63, to 86 of Uttar Kashi division. Akhilesh Manglik another contractor offered highest bid of Rs. 1,76,100.00 for the lot No. 95. The Divisional Forest Officer, Uttar Kashi Forest Division who conducted the sale knocked down the bids in favour of the aforesaid highest bidders and forwarded the papers to the Additional Chief Conservator of Forest, Tehri Garhwal division for his sanction.

4. On 8th October, 1975, while the matter was pending before- the Additional Chief Conservator, one B. S. Bisht, partner of M/s. B. S. Bisht and Company, a timber contractor, sent a telegram to the Additional Chief Conservator of Forest offering higher bids for the sale of those lots which had been auctioned on 8th, 9th and 11th September, 1975, with a prayer that his bid should be accepted or in the alternative the lots should be re-auctioned. A similar telegram was sent by Bharat Bhushan Batra, one of the partners of M/s. Uttara Khand Forest Company to the Additional Chief Conservator of Forest for the re-auction of lots of forest which had been auctioned on 8th, 9th and 11th September, 1975.

The partners of M/s. Bisht and Company and Uttarkhand Forest Company met the Additional Chief Conservator and held discussions. On 9th October, 1975. the Additional Chief Conservator of Forest addressed two letters, one to M/s. Bisht and Company and the other to M/s. Uttarakhand Forest Company directing them to hand over fixed deposit receipts for a sum of Rs. 70,000.00 and Rupees 3,10,760.00 respectively pledged to the Conservator of Forest, Tehri Circle with an undertaking that in case the re-auction was held and no higher bids were offered and adequate money was not offered, the Forest Department would be free to confiscate the amount of money pledged with it under the fixed deposit receipts. Both the parties viz., M/s. Uttarakhand Forest Company and M/s. Bisht and Company submitted the fixed deposit receipts along with their undertaking.

Thereupon the Additional Chief Conservator of Forest issued orders for the re-auction of those lots and fixed 10th and 11th November, 1975, for the re-auction. Notices for the re-auction of the said lots were also published. But before the re-auction could take place the Additional Chief Conservator of Forest issued telegraphic orders to the Divisional Forest Officer, Uttar Kashi Division on 29-10-1975, informing him that the bids of those who had made the highest

offers for the lots 58, 59, 103 to 106, 94 and 95 of Uttar Kasi Division and lots Nos. 4, 5, 7 and 11 of Tehri Forest Division were accepted by him and the subsequent offers made by M/s. Uttarkhand Forest Company and M/s. B. S. Bisht Company were not acceptable to the Administration. The two companies lodged their protest with the Additional Chief Conservator and insisted that re-auction be held, but their objections were ignored. Aggrieved the Uttarkhand Forest Company and M/s. B. S. Bisht Company have filed these two petitions challenging the order of the Additional Chief Conservator of Forest dated 29-10-1975.

5. Learned counsel for the petitioners urged that once the Additional Chief Conservator of Forest had accepted the petitioner's offer and disapproved the bid of the respondents and fixed date for re-auction, the State Government had no jurisdiction to issue any direction, to the Additional Chief Conservator for accepting the respondents' bids. It was further urged that the Additional Chief Conservator was the appropriate authority to sanction the contract and his discretion could not be controlled by the State Government. While considering this question it must be borne in mind that the trees which were the subject-matter of the auction sale are the property of the State Government. No citizen has any right in those trees. It is open to the State Government to let out its property to any person in the manner it may consider profitable and suitable subject to the statutory requirements, if any.

The Additional Chief Conservator is a subordinate authority to the State Government. In administrative matters it is always open to the State Government to issue directions for the guidance of the subordinate authorities. In the matter of approval of bids the Additional Chief Conservator was acting in administrative manner, he was not performing any quasi-judicial function. The State Government could legally issue direction to him or advise him in the matter of approval of bids for the auction sale of forest, as he was dealing with the State's property on behalf of the State Government. Admittedly none of the two petitioners made any bid at the auction held on 8th, 9th and 11th September, 1975, even though they had notice of the auction sale. The respondents accepted the onerous conditions placed by the Forest Department and made the highest bid at the auction sale. The Divisional Forest Officer who conducted the sale had submitted papers to the Additional Chief Conservator with the recommendation that their bids be approved.

Normally the Additional Chief Conservator of Forest would have approved the respondents bids unless he was of the opinion that the bids offered by them were inadequate for the property which was promised to be let out to them. The Additional Chief Conservator was, however, persuaded by the petitioners to hold re-auction, and orders were issued for the re-auction of the lots for which respondents had offered highest bids. This was unjustified. The respondents who had made highest bids were not given any opportunity to raise their bids. The petitioners' offer for raising the bid was accepted by the Additional Chief

Conservator without affording any opportunity to the respondents. Moreover, if the proposal to re-auction the lots was carried out, prospective bidders could certainly have apprehension that there was no sanctity for any auction sale held by a public officer or authority as any person could later on offer higher bid to undo the proceedings of the auction sale.

If this method is allowed, to prevail, citizens are bound to lose faith in the Government auction and doors for favouritism and corruption would be opened. This could of course be not conducive to public interest. It appears that this matter was brought to the notice of the State Government. The Additional Chief Conservator of Forest discussed this matter with the Government and after discussion it was realised that the sanctity of the widely publicised public auctions should be preserved and therefore it was not proper or desirable to consider the higher offers received subsequent to the close of auction. This was a policy decision which was taken at the discussion held by the Additional Chief Conservator with the State Government and in order to implement that policy he issued orders for the acceptance of the respondents' bids and for cancellation of the re-auction. I find no illegality in the order of the Additional Chief Conservator of Forest.

6. Learned counsel urged that Rule 149-A of the Forest Manual confers statutory power on the Chief Conservator of Forest to sanction the bids and offers and to execute contracts in relation to forest sale on behalf of the State Government. The State Government has no power or jurisdiction to issue any direction or to override the discretion of the Chief Conservator of Forest and the Additional Chief Conservator of Forest. Since the impugned order was passed by the Additional Chief Conservator under the direction of the State Government, the order is rendered illegal. I do not find any merit in the contention. In the first place Rule 149-A does not lay down any procedure regulating the powers of Chief Conservator in conducting auction sale or accepting bids made at the auction sale. Rule 149-A merely designates authorities empowered by the State Government to execute contracts and assurances of property on behalf of the State Government.

This declaration was made by the State Government in exercise of its powers under Sub-section (3) of Section 175 of Government of India Act, 1935, which is referable to Article 299 of the Constitution. u/s 175 of the Government of India Act as well as Article 299 of the Constitution, a binding contract against the State Government cannot arise unless three conditions are satisfied viz., that the contract must be expressed to be made by the Governor, secondly, it must be executed in writing and thirdly the execution should be made by such person as the Governor might authorise. Rule 149-A was framed to fulfil the third condition viz., to prescribe the person authorised to enter into or execute contracts on behalf of the State Government. Rule 149-A merely nominates the authority empowered to enter into contract on behalf of the State Government; it does not lay down any fetter on the exercise of the power of the Chief Conservator or

Additional Chief Conservator.

7. Learned counsel referred to note (3) to Clause 4 of Rule 149-A which was added to the rule by Government order dated December 2, 1949. The note lays down that the power to execute the contract and assurances includes the power of sanctioning them also. It was urged that the note conferred statutory power on the Chief Conservator and Additional Chief Conservator to sanction the contracts, therefore, the State Government has no jurisdiction to override the discretion of the sanctioning authority. No copy of the Government order was placed before the Court and in the absence of the copy of the Government order it is difficult to ascertain the nature of the order and the source of power in exercise of which the directions may have been issued. If the order was not issued in exercise of the powers u/s 175(3) of the Government of India Act, Note (2) has no statutory force and in that event contravention of Note (2) cannot be a valid ground to challenge the impugned order.

Reliance was placed on *Ram Sanahi Singh v. Divisional Forest Officer, Kheri*. 1969 All LJ 579 and *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, to support the contention that Rule 149 has statutory force. It is true that in the case of *Ram Sanahi*, a Division Bench of this Court as well as the Supreme Court proceeded on the assumption that the Divisional Forest Officer who had passed the order cancelling the lease was exercising statutory powers. It is noteworthy that in that case no question relating to the statutory nature of Note (2) to Clause (4) of R. 149-A was raised or decided either by this Court or by the Supreme Court. *Ram Sanahi's* case therefore is no authority for the proposition that Note (2) to Clause 4 of Rule 149-A has statutory force.

8. Since the Supreme Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, proceeded on the assumption that the Divisional Forest Officer was exercising statutory powers, I would examine the petitioner's contention on the assumption that the said Note is statutory in nature. Clause (4) to Rule 149-A, empowers the Chief Conservator and Conservators to execute contracts and other instruments on behalf of the State Government in matters connected with the administration and working of the forest and the business of the forest department generally. Note (2) further empowers the Chief Conservator and the Conservators to sanction contracts; it does not expressly or even by implication contain any direction that the sanctioning authority shall not take into account any policy decision taken by the Government.

Admittedly the sanctioning authority exercises administrative function to sanction contracts on behalf of the State Government, it is well settled that the State Government can issue direction for the guidance of its officers in administrative matters. The State Government has undoubtedly powers to guide the officers specially so in matters relating to disposal of Government property. Delegation of authority on the Chief Conservator to sanction contracts on behalf of the State Government does not take away power of the State Government to lay down policy for the guidance of the officers who are empowered to let out Government

property or to enter into contracts with citizens. It is always permissible to the State Government to lay down policy for the guidance of authorities acting on its behalf. Unless there are some statutory restrictions it is permissible for the State to lay down guiding principles generally or specially for the exercise of delegated powers.

No rule or law has been brought to my notice which places any fetter on the powers of the State Government. In the instant case the State Government did not override the decision of the Additional Chief Conservator; on the other hand, it discussed the matter with the Additional Chief Conservator and explained its policy that in order to maintain the sanctity of auction sale it would not be proper to accept higher bids from the petitioners which were made later on behind the back of those parties who had made highest bids at the open auction sale. The additional Chief Conservator has stated on oath that after the discussion with the State Government, he was satisfied that it was not proper to disapprove the respondents' bids and to hold re-auction at the instance of the petitioners; therefore he issued the impugned order. In view of this statement it is difficult to accept the contention that the sanctioning authority did not exercise his own discretion.

9. Learned counsel then urged that since the Additional Chief Conservator had accepted the petitioners' offer and since they deposited huge amounts by way of fixed deposit receipts pledging the same in favour of the Addl. Chief Conservator, there existed a concluded contract between the petitioners and the State Government, therefore the Additional Chief Conservator of Forest was not entitled to act against that contract I do not find any merit in the contention There was no concluded contract between the petitioners and the State Government in accordance with the requirement of Article 299 of the Constitution. Admittedly no contract was executed between the petitioners and the Additional Chief Conservator of Forest fulfilling the three requirements of a valid contract between the Government and another person as required by Article 299 of the Constitution.

The petitioner made offer to make the opening bids for a fixed amount of money if the Additional Chief Conservator disapproved the respondents' bids and put the forest lots for re-auction. On the direction of the Additional Chief Conservator, the petitioners pledged fixed deposit receipts in favour of the Additional Chief Conservator with an undertaking that if they fail to make the opening bid for the amounts specified by them in their pledge, it would be open to the Chief Conservator to confiscate the amount under the fixed deposit receipts. On these facts no contract as contemplated by Article 299(1) of the Constitution came into existence.

The contract, if any, was not executed at all in the manner provided in Article 299(1) of the Constitution. The argument that an implied contract may be inferred on the facts and circumstances of the case is misconceived. In K.P. Chowdhary Vs. State of Madhya Pradesh and Others, the Supreme Court laid

down that in the absence of the execution of a contract between the bidder at the auction sale of forest and the Government there could exist no contract between him and the Government. The Supreme Court held that in view of the mandatory terms of Article 299(1) no implied contract could be spelled out between the Government and the forest contractor at the stage of bidding because Article 299 in effect rules out all implied contracts between Government and other persons.

Applying the principles laid down in K. P. Chowdhry's case, if the re-auction was held and the petitioners failed to keep up their promise to make the opening bid for the specified amount promised by them, in that event it would have been difficult for the Additional Chief Conservator to confiscate the money deposited by the petitioners as in that event the petitioners could get away by saying that no contract as required by Article 299 had been concluded, as such the Additional Chief Conservator of Forest was not entitled to confiscate or recover the money from them and for that they could draw support from the principles laid down in K. P. Chowdhry's case. I am, therefore, of the opinion that no valid contract was executed between the petitioners and the State Government in accordance with Article 299 of the Constitution and the Additional Chief Conservator of Forest did not commit breach of any contract.

10. But even on the assumption that the Additional Chief Conservator of Forest had entered into contract with the petitioners to hold re-auction, they are not entitled to any relief. It is well settled that any contract entered into between the parties by concealment of relevant facts or misrepresentation is not a valid contract in the eye of law. One of the conditions of sale for the year 1975-76 as publicised earlier, contained an express provision that no person who may be in arrears of forest dues will be entitled to participate in the auction sale. The highest bid if any of such a person could not be accepted. Sri B. N. Chaturvedi, Additional Chief Conservator, has sworn an affidavit to the effect that the petitioners were defaulters as they were in arrears of the Government dues and against both the petitioners dues of the forest department were outstanding. This, fact was not in the knowledge of Sri Chaturvedi at the time he accepted the petitioners offer and issued direction for re-auction. . He came to know of this fact later on during the discussion held at the Government level and thereupon he realised that the petitioners were not even competent to make bid in accordance with condition No. 3 (kha) of the conditions of sale of Tehri Circle for the year 1975-76. In view of these facts it is clear that the Additional Chief Conservator had accepted the petitioners' offer in ignorance of the petitioners disqualification to make bid at the auction sale. He was therefore justified in revising his orders and in accepting the highest bid of the respondents made at the auction sale held earlier.

11. In view of the above discussion I find no illegality in the impugned orders. The petitioners are not entitled to any relief. In the result the petitions fail and are accordingly dismissed with costs.