

(1991) 07 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6798 of 1991

Vavillapalli Rambabu

APPELLANT

Vs

Merakamodidam Prajaparishad and Others

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika
Abhivrudhi Sameeksha Mandals Act, 1986 — Section 97
Constitution of India, 1950 — Article 226
Panchayat Samithis and Zilla Parishads Rules — Rule 6(3), 6(4)

Citation : (1992) 3 ALT 137

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; The Government Pleader for Panchayat Raj for the Respondent No. 2 and M.S.K. Sastry, for the Respondent

Final Decision : Dismissed

Judgement

Parvatha Rao, J.—This Writ Petition relates to the Shandi rights of Uttaravalli Wednesday Shandi for the year 1991-92. The petitioner herein and another were the bidders at an auction conducted on 28-3-1991 for the said shandi rights pursuant to a notification issued by the 1st respondent which was published in Vizianagaram District Gazette Supplement No. 10/91 dated 28-2-1991. The petitioner's bid for Rs. 18,500/- was the highest in the said auction.

2. The petitioner contends that the 1st respondent is bound to confirm the auction and allow him to have the shandi rights for collection of "Aaseellu" from the vendors in the said Shandi. The 3rd respondent i.e., the Mandal Development Officer of the 1st respondent issued letter No. 16/91/Cdated4-4-1991 stating that collection of Wednesday Shandi Aaseellu from 1 -4-1991 in Uttaravalli Village was given to the petitioner subject to the approval of the general body of the 1st respondent and that if it was not approved by the general body action would be taken in accordance with the Rules. The petitioner states that the general body meeting of the 1st respondent was held on 20-4-1991 and that

though the agenda for the said meeting included the auction of shandi rights of Uttaravalli Village and the confirmation of the auction held on 28-3-1991 as Item No. 10, no resolution was passed on the said Item at the general body meeting held on 20-4-1991 confirming the auction in favour of the petitioner. Apprehending mala fide action on the part of the President of the 1st respondent, the petitioner filed Writ Petition No. 6447 of 1991 before this court for a direction to the respondents herein to abide by the auction held on 28-3-1991 in which he was the highest bidder" and to allow him to collect Aaseellu in respect of Uttaravalli Wednesday Shandi for the year 1991-92. The Writ Petition came up for admission on 26-4-1991, but it was directed to be posted in the second vacation Court for admission.

3. The petitioner states that the 3rd respondent issued proceedings dated 27-4-1991 stating that the general body of the 1st respondent had not accepted confirmation of the said auction held on 28-3-1991 in petitioner's favour and that therefore, re-auction was going to be held. The petitioner states that the respondents refused to confirm the said auction held on 28-3-1991 without any reason and without informing him as to why the auction was to be cancelled. He alleges that the cancellation of the said auction was mala fide and politically motivated. He therefore, filed the present Writ Petition for declaring the action of the respondents in failing to confirm the auction held on 28-3-1991 as arbitrary and illegal and to direct the respondents to allow the petitioner to collect Aaseellu from the hawkers in Uttaravalli Wednesday Shandi for the year 1991 -92. The Writ Petition was admitted on 9-5-1991 and on the same day in W.P.M.P. No. 8464 of 1991 this Court ordered that "all further proceedings including reaction of Uttaravalli Wednesday Shandi pursuant to the proceedings of the 3rd respondent in Rc. No. 6/91/C dated 27-4-1991 be and hereby are stayed, pending further orders" and in W.P.M.P.No. 8465 of 1991 this Court ordered that "the respondents herein be and hereby are directed to allow the petitioner to collect Aaseellu from the hawkers in Uttaravalli Wednesday Shandi, Meraka Modidam Mandal, Vizianagaram district, pending further orders."

4. As it happened, on the day the present writ Petition was presented i.e., on 6-5-1991 itself, the said shandi rights were re-auctioned and the 4th respondent's bid for Rs. 25,500/- was the highest at the said re-auction. The 4th respondent filed W.P.M.P.No. 9585 of 1991 for impleading himself as the 4th respondent in the present Writ Petition and the same was ordered on 15-6-1991 and that is how he became the 4th respondent in this Writ Petition. In his affidavit, he states that he was permitted to collect market fee pending approval by the general body of the 1st respondent as per the order given by the 3rd respondent and that he collected the fees on 8-5-1991. He contends that the petitioner came to this Court suppressing the material facts and obtained expert interim orders. According to him, the general body of the 1st respondent rejected the petitioner's bid and directed that re-auction should be conducted and accordingly re-auction was conducted on 6-5-1991 and he was the highest bidder for a sum of Rs. 25,500/-. He states that the re-auction was notified in all

the papers and that all the formalities for holding re-auction were complied with. He states that his bid was recommended for approval by the general body of the 1st respondent and that before it could be approved the petitioner obtained interim orders from this Court. According to him, the 1st respondent got full right to accept or reject any bid without assigning any reasons as per the auction conditions and in view of the cancellation of the auction held on 28-3-1991 the petitioner has no subsisting right to collect the Aaseellu. The 4th respondent also filed W.V.M.P.Nos. 779 and 778 of 1991 for vacating the interim orders of this Court in W.P.M.P.Nos. 8464 and 8465 of 1991 dated 9-5-1991. As the matter had to be decided one way or the other, the Writ Petition itself was posted for final hearing.

5. The 3rd respondent in his counter affidavit states that prior to 28-3-1991 the auction of the said Shandi rights was postponed three times and that in the auction conducted on 28-3-1991 two bidders participated including the petitioner herein. He states that though the petitioner's bid for Rs. 18,500/- was the higher of the two, the other bid being for Rs. 18,450/-, the general body of the 1st respondent at its meeting held on 20-4-1991 resolved to conduct re-auction as the bid amount was low. He states that the allegation of the petitioner that no resolution was passed in respect of the auction of the said shandi rights at the said meeting held on 20-4-1991 is not correct. He states that fresh notification for re-auction was issued in the news papers. According to him, it was published in "Andhra Bhoomi" on 30-4-1991 and a copy of the auction notice dated 27-4-1991 was issued to the petitioner to enable him to participate in the re-auction if he was so willing and in the said notice the reason for re-auction was also mentioned.

He states that at the re-auction conducted on 6-5-1991, three bidders participated and that the 4th respondent's bid for Rs. 25,500/- was the highest. The 3rd respondent also states that the cancellation of the auction held on 28-3-1991 and the holding of the re-auction on 6-5-1991 was only with a view to get a more profitable bid so that the 1st respondent is not put to loss. According to him the contract was not awarded to the petitioner and therefore he had no right to continue the collection of Aaseellu. He also states that as per Condition 14 of the auction notice published in the Vizianagaram District Gazette Supplement No. 10/91 dated 28-2-1991 the 1st respondent may direct re-auction if the amount fetched at the auction was not enough and in that even the deposit amounts would be returned to the bidder whose bid was recommended for acceptance. The 3rd respondent also states that no political motives whatsoever were involved in the decision taken by the 1st respondent to cancel the previous auction and in directing re-auction and that the allegations of the petitioner in that regard are without any basis.

6. The learned counsel for the petitioner contends that the 1st respondent had no authority to cancel the auction of the said shandi rights held on 28-3-1991 and that the 1st respondent was bound to accept his bid. In support of his

contention, the learned counsel for the petitioner relies on Rule 6 of the Rules relating to receipts in Panchayat Samithis and Zilla Parishads (hereinafter referred to as "the Rules") made u/s 69(1) of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 in G.O.Ms.No. 178 dated 31-1-1962. The relevant portions of the said Rule is as follows-

"6. Fees from markets: (1) Where the right to collect fees in respect of the use of any market is proposed to be leased out by the Panchayat Samithi or Zilla Parishad, the President of the Panchayat Samithi or the Chairman of the Zilla Parishad shall get prepared preliminary notice setting forth the following conditions and terms subject to which the lease will be granted, namely:-

(a) If the period of lease does not exceed one year - (i) the lessee shall, within one week of the date of the confirmation of the lease in his favour, deposit a sum which together with the security referred to in Rule 11 would make up one-fourth of the total of the lease amount. This sum shall ordinarily be adjusted towards the instalments of the least amount due for the last three months of the year, but it may be adjusted towards any instalment of the lease amount overdue from the lessee and towards the loss, if any, sustained by resale or departmental management, and

xxx xxx xxx xxx xxx xxx (c) The lease deed shall ordinarily be executed and registered within fifteen days of the date of the confirmation of the lease by the Panchayat Samithi or Zilla Parishad and no person shall be allowed to exercise his rights as a lessee until he has executed the lease deed.

xxx xxx xxx xxx xxx xxx

(3) The president of the Panchayat Samithi or the Chairman of the Zilla Parishad, or a person, duly authorised by him shall conduct the auction and a list of the bids at the auction shall be placed before the Panchayat Samithi or Zilla Parishad. The Panchayat Samithi or Zilla Parishad shall determine which of the bids of the auction should be accepted. Where the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted shall be recorded in writing.

(4) In exceptional cases where sales in public auction have proved unsuccessful on at least two occasions, owing to the want of bidders or to strong combination among them or to any other reason, the president of the Panchayat Samithi or the Chairman of the Zilla Parishad may, with the previous sanction of the District Collector in case of Panchayat Samithi, and Government in case of Zilla Parishads invite sealed tenders for the lease, and place the tenders received before the Panchayat Samithi or Zilla Parishad. The Panchayat Samithi or Zilla Parishad shall determine which of the tenders shall be accepted. Where the tender accepted is not highest tender, the reason for rejecting the tender or tenders higher than the one accepted shall be recorded in writing.

(5) The Panchayat Samithi or Zilla Parishad shall then enter into a written

contract with the person whose bid or tender has been accepted in accordance with the terms and conditions of the preliminary notice".

The learned counsel for the petitioner particularly refers to the words " the Panchayat Samithi or Zilla Parishad shall determine which of the bids of the auction should be accepted" in Sub-rule (3) of the said Rule 6 and contends that the Panchayat Samithi i.e., now the Mandal Praja Parishad, has to accept one of the bids, and cannot refuse to accept any of the bids at the auction held and direct re-auction.

7. The learned Government Pleader has not questioned the applicability of the said Rule to the auction in question held by the 1st respondent Mandala Praja Parishad. Section 97 of the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika Abhivrudhi Mandals Act, 1986 (Act No. 31 of 1986) repealed the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 and provides that on such repeal the provisions of Section 8 and Section 18 of the Andhra Pradesh General Clauses Act, 1891, shall apply. Section 18 of the Andhra Pradesh General Clauses Act, 1891 provides inter alia that where an Act repeals and re-enacts, with or without modification, all or any of the provisions of the former Act, Rules made under the provisions so repealed shall be deemed, so far as the same are consistent with the provisions so re-enacted, to have been respectively made under the provisions so re-enacted. u/s 98 of Act 31 of 1986, Panchayat Samithis were abolished and all rights vesting in a Panchayat Samithi and all liabilities against it shall devolve on the Mandala Praja Parishad concerned. Section 92 of Act 31 of 1986 providing for the power to make Rules is in part materia with Section 69 of Act 35 of 1959 under which the Rules were made. If the Rules are to be deemed as Rules made u/s 92 of Act 31 of 1986 by virtue of Section 18 of the Andhra Pradesh General Clauses Act, then they have to be adapted by substituting Mandala Praja Parishad wherever Panchayat Samithi occurs and I proceed to deal with the contentions of the learned counsel for the petitioner assuming that the adapted Rule 6 of the Rules applies to the auction in question because the learned Government Pleader did not dispute the applicability of the Rules.

8. I am of the view that the learned counsel for the petitioner is not right in contending that the 1st respondent was bound to accept one or the other of the bids at the auction held on 28-3-1991 and that it could not be refuse any of the bids and could not direct re-auction. Sub-rule (3) of Rule 6 cannot be read in isolation. Sub-rule (3) only provides that a list of the bids at the auction shall be placed before the Mandala Praja Parishad and that it is the Parishad which should determine which of the bids of the auction should be accepted and if the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted should be recorded in writing. From this it does not follow that the Mandala Praja Parishad cannot reject all the bids. If Sub-rule (3) is to be interpreted as the learned counsel for the petitioner wants it to be interpreted, it would mean that even though the highest bid could be rejected for a very good

reason a bid lower down cannot be rejected for the same reason. That would be arbitrarily restricting the discretion of the Mandala Praja Parishad and would lead to absurd results. The very purpose of holding an auction is to get the maximum amount possible. When the highest bid itself falls for below the expectations, it need not be accepted. It cannot be said that that is not a good reason for not accepting the highest bid. If that is a good reason for not accepting the highest bid, that will be a good reason for not accepting any of the other bids. Sub-rule (4) of Rule 6 makes this obvious when it provides that "in exceptional cases where sales in public auction have proved unsuccessful on at least two occasions, owing to the want of bidders or to strong combination among them or to any other reason....." scaled tenders may be invited. On the facts of the present case. I am satisfied that the decision of the 1st respondent in not accepting any of the bids at the auction held on 28-3-1991 and for holding a fresh auction is justified and not unreasonable. The fact that the subsequently held auction resulted in the highest bid going upto Rs. 25,500/- i.e., about 38% more than the bid of the petitioner establishes that the expectations of the 1st respondent were not belied. In *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, the Supreme Court observed as follows.

"As held by this Court in *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , one of the important purposes of selling the exclusive right to sell liquor in whole-sale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review.

..... Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidder to withdraw their bids - See *Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram*, . By merely giving bids, the bidders had not acquired any vested rights".

In *Ram and Shyam Co. v. State of Haryana*, AIR 1985 Supreme Court 11472 the Supreme Court reiterated the said view after referring to a number of its earlier decisions and held that the Government is under no obligation to accept the highest bid and that no rights accrue to the bidder merely because his bid happened to be the highest.. The Supreme Court also observed that "the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was

inadequate". In *K. Venkatanarayana v. Divisional Forest Officer*, 1991 (II) ALT 103 Sivaraman Nair, J., held as follows-

"Refusal by the State to succumb to profit oriented endeavours of individuals to exclusion of competition from others cannot be termed as arbitrary; nor can it be that a well articulated anxiety to preserve and protect public revenue be considered as an invasion of the rights of persons who would otherwise have earned larger commercial profits if the State and its officers were complacent or foolhardy. On the basis of the observations in the decisions of the Supreme Court referred to above, I am of the opinion that an anxiety to enhance the revenues of the State in Commercial transactions, if it is adequately supported by material, is a sufficiently good reason to refuse to accept the highest bid and throw open the transaction for more effective commercial competition once again".

I am therefore, of the view that this Writ Petition is without any merit.

9. The 3rd respondent in his counter affidavit stated that auction notice for the auction conducted on 6-5-1991 was published in "Andhra Bhoomi" on 30-4-1991 and that a copy of the said auction notice dated 27-4-1991 was issued to the petitioner also to enable him to participate in the re-auction if he was so willing to participate. The said counter affidavit was received by the counsel for the petitioner on 17-6-1991 itself and the learned counsel for the petitioner took time for filing reply on 25-6-1991 and on 2-7-1991, but no reply affidavit was filed by the petitioner. The petitioner could have participated in the said auction held on 6-5-1991 instead of coming to this Court. As rightly pointed out by the learned Government Pleader, Clause 14 of the auction notice published in the Vizianagaram District Gazette No. 10/91 dated 28-2-1991 clearly states that fresh auction may be ordered if the amount bid at the auction was insufficient. The petitioner participated in the auction knowing about the said condition and subject to the said condition. He therefore, cannot be allowed to question the cancellation of the auction held on 28-3-1991 pursuant to the said notice and subject to the said condition.

10. In the circumstances, the Writ Petition is dismissed with costs. Advocate's fee Rs. 350/-.