(1996) 02 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 4987 of 1996

Vijai Bahadur Singh APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Citation : (1996) 02 AHC CK 0085

Hon'ble Judges : Palok Basu, J and V.P.Goel, J

Final Decision : Dismissed

Judgement

1. Vijay Bahadur Singh has filed this writ petition under Article 225 of the Constitution of India. The prayers contained in this writ petition are basically twofold. First, certiorari is prayed for quashing auction notice dated 12121995. Second, another certiorari for quashing the order dated 2891995 (Annexure II) granting right to the petitioner to realise toll tax only for a period of six months ending with 3131996 and mandamus commanding the respondents to continue the period atleast and until 3131997.

2. When this writ petition was filed, Dr. R. G. Padia, learned counsel for the petitioner was permitted to file supplementary affidavit which he had already filed. He has been heard at sufficient length in support of this writ petition. Sri S. G. Hasnain has also been heard on behalf of opposite parties. It may be stated here that according to the pleadings, the petitioner responded to the advertisement regarding realisation of toll tax in respect of bridge, namely, Dona Nala Bridge, situated at Manahajpur Chiraiyacote Marg, District Azamgarh. Duration shown in an advertisement was 1 1/2 years. It is pleaded that the petitioner''s bid though second, being highest, was accepted because first highest bidder did not respond. Therefore, it is said that vide order dated 2391994 the petitioner was given right to realise the toll tax for a period of 1 1/2 years. It may be mentioned that on the action taken by respondents which is supported by Standing Counsel, this fact is denied and the original order in favour of the petitioner indicates that the period for which ultimately the

petitioner has been asked to realise the toll tax was six months only, i.e., October 1995 to March 1996.

3. There is reference to two other petitions filed by the petitioner in this Court being Writ Petition No. 33811 of 1994 and other one of which number has not been noted in the writ petition but it is said to be of the year 1996. One writ petition was concerning the alleged demand of the respondents for payment of stamp duty whereas second writ petition was with the request to enhance the period. Dr. R. G. Padia said that the petition of 1995 was not related with the controversy of the present writ petition. However, these niceties are not to detain this Court any further. The reason being that the petitioner had never sought any mandamus for a direction for execution of the leasedeed in his favour well within time if he had to execute the leasedeed in pursuance of some alleged order of the Commissioner dated 2391994.

4. In this connection reference has been made in Annexure III to the supplementary affidavit of the petitioner. This happens to be the document which bears the date 2861993. Dr. R. G. Padia, however, said that the aforesaid date carries a typographical error and year should be 1994. For the aforesaid discussion, let it be accepted that the letter is dated 2861994. This letter is allegedly written by Additional Commissioner on behalf of the Commissioner and is addressed to the Executive Engineer. It narrates that Vijai Bahadur Singh''s bid being the highest was accepted by the Commissioner. It further contends a narration that as if the Commissioner has desired that the necessary formalities be completed before 3061994. It further narrates that if the bidder does not complete the formalities within stipulated period, the security deposited be forfeited. This, however, is not the original order of the Commissioner but purports to say that the contents of the order of the Commissioner look like that.

5. If the petitioner could come to the Court on two earlier occasions, it is not understandable why he had not made the prayer of such type which he is making today. The date on which the petitioner had obtained interim order concerning the payment of stamp duty is 21101994 in the writ petition No. 33811 of 1995. I the petitioner was really granted the permission by the Commissioner prior to 20101994 referred to above, the communication must have been addressed to him and it is absolutely ridiculous to think that if such an order had been passed by the Commissioner, the same would been communicated to him. It appears that for this reason though the petitioner made some ancillary prayer, he did not pray for the type of prayer he has made in the writ petition. As per the latest decision of the State Governments as communicated through the G. O. of 1993, the'' Government has required that the auction for realisation of toll tax should necessarily end by 31st March of the subsequent year. This notification narrates that if there was any existing bid before that period for a longer period, it should be brought down lawfully to end with 31st March. Under the circumstances, it is obvious that the petitioner''s bid had not been accepted by the Commissioner prior to the impugned order dated 2891995 (Annexure II to the writ petition)

indicating to the petitioner the validity of the bid for a period of six months ending 31st March, 1996. If the petitioner''s allegations were correct the period of one and a half year would have begun on October 1994 and ended on 3131996. In view of the policy decision of the State Government, the aforesaid directions contained in Annexure II appear to fortify the said decision. Absolute silence on the part of the petitioner in respect of the execution of the leasedeed in his favour causes enough doubt about the validity or the genuineness of the grievances now sought to be raised by the petitioner.

6. Dr. R. G. Padia has placed reliance on a decision of Division Bench dated 291993 in which a direction was issued which was to the effect that the original period of three years as was settled with the petitioner therein was restored and the Commissioner''s direction reducing the said period to one year from three years was quashed on the aforesaid analogy. Learned counsel for the petitioner argued that in the instant case 1 and i years original period advertised should be restored to the petitioner also and he should be permitted to continue the said lease till 31st March, 1997 and it should not be terminated by 31st March, 1996.

7. The aforesaid decision has proceeded on the basis that the Commissioner could either reject the bid in toto or could accept it in toto as if he could not curtail the period which has been mentioned in the advertisement. It may be mentioned here that the petitioner himself has filed the policy decision of the Government which now lays down without any doubt that the period for executing the lease should end by 31st March of the subsequent year. Therefore, as to the prayer of the petitioner that the period be extended till 3131997 is not acceptable. It may be mentioned that Sri S. G. Hasnain has relied upon the decision of a Division Bench of this Court in Munindra Singh Upadhyay v. State of U.P., 1993 UPLBEC 1477, in which it has been held that extension of period granted at the time of auction may not be permissible ordinarily.

8. Keeping in view the particulars laid down in the State Government''s policy decision, the order in favour of the petitioner passed on 28101995 confer the right on the petitioner to realise the toll tax for a period of six months ending with 31st March, 1996.

9. In view of the aforesaid discussions, the said decision is perfectly valid and none of the arguments as placed by the learned counsel for the petitioner are acceptable. Consequently, the writ petition fails and is dismissed.

