

Uday Kumar Singh and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-21-2005

Judge : Nagendra Rai, A.C.J. and S.N. Hussain, J.

Acts : Sales of Goods Act, 1930 - Sections 64; Bihar Minor Minerals Concession Rules, 1972 - Rules 9A and 52; [Constitution of India](#) - Article 14; Indian Penal Code (IPC) - Sections 339 and 503

Appeal No. : LPA Nos. 535, 537, 1003 and 1027 of 2004

Appellant : Uday Kumar Singh and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : A.K. Singh, Special PP, Narendra Prasad, Sr. Adv., Akashdeep and Sanjesh Prasad, Advs. in LPA No. 5355/04, Ganesh Prasad Singh, Sr. Adv., Manish Kumar, Jai Prakash Singh, Advs. and A.K. Singh, Spec

Advocate for Pet/Ap. : Prabhakar Tekriwal, Shashidhar Jha and Rajesh Pratap Singh, Advs. in LPA No. 535/04, S.N. Jha, Sr. Adv., Sandeep Kumar, Alok Kumar Shahi, Archana Shahi and Rajeev Kumar Jha, Advs. in LPA No. 537/04, A

Disposition : Appeal allowed

Prior history : 1. All the four appeals being LPA Nos. 535, 537, 1003 and 1027 of 2004 arise against the common order dated 7.4.2004 passed in CWJC Nos. 1211 of 2004 and 1213 of 2004 by which the learned single Judge has quashed the

order passed by the State Government contained in letter No. 101/M dated 20th January, 2004 issued under the signature of the Deputy Secretary, Mines and Geology Department for holding of the limited reauction for quarry of the three disputed Blocks, namely, Block No. 5-E, 10-J an

Judgement :

1. All the four appeals being LPA Nos. 535, 537, 1003 and 1027 of 2004 arise against the common order dated 7.4.2004 passed in CWJC Nos. 1211 of 2004 and 1213 of 2004 by which the learned single Judge has quashed the order passed by the State Government contained in letter No. 101/M dated 20th January, 2004 issued under the signature of the Deputy Secretary, Mines and Geology Department for holding of the limited reauction for quarry of the three disputed Blocks, namely, Block No. 5-E, 10-J and 3-C situate at villages Amara and Basa of Amara Karbandiya Hills in the district of Rohtas, the resultant effect of which was that the acceptance of the tender in favour of Shree Durga Organisation and another, writ petitioners in CWJC No. 1211 of 2004 and Jai Shankar Construction and another, writ petitioners in CWJC No. 1213 of 2004 for quarry of the aforesaid three Blocks was held to be valid one.

2. LPA No. 535 of 2004 filed by the intervenor Uday Kumar Singh and LPA No. 1003 of 2004 filed by the State of Bihar are against the order passed in CWJC No. 1211 of 2004 and LPA No. 537 of 2004 filed by Vijay Kumar Singh and LPA No. 1027 of 2004 filed by the State of Bihar are against the order passed in CWJC No. 1213 of 2004. CWJC No. 1211 of 2004 relates to the controversy with regard to Block No. 5-E and CWJC No. 1213 of 2004 relates to Block No. 10-J and 3-C.

3. The matter relates to grant of mining lease of stones which is minor minerals in terms of the provisions of the Bihar Minor Minerals Concession Rules, 1972. Rule 9-A of the said Rules came into force with effect from 24th March, 2001 and it provides inter alia, that notwithstanding anything contained in these rules the Government may by notification in Official Gazette direct that any mineral may be leased out or settled by Public auction/tender in the manner prescribed in Rule 52 and Rule 52 contains detailed procedure for holding auction, it is also an admitted position that the period of lease prescribed in five years and the area of settlement

shall not be more than two acres.

4. Accordingly, an advertisement was issued for public auction for stone quarry situate at villages Amara and Basa of Amara Karbandiya Hills in the district of Rohtas for fifteen Blocks. The advertisement provided for deposit of 2% of the Reserved Jama and other details. Three dates of settlement were fixed i.e., 23.8.2003, 27.8.2003 and 30.8.2003. Auction for three Blocks were stayed and for remaining 12 Blocks including three Blocks as stated above was held on 23.8.2003. The writ petitioners-respondents and other persons including the intervenors, who are appellants in LPA Nos. 535 and 537 of 2004, participated in the auction and the writ petitioner of CWJC No. 1211 of 2004, Shree Durga Organisation was the highest bidder with regard to Block No. 5-E and its offer was Rs. 35,01,101/-. Writ petitioner of CWJC No. 1213 of 2004, namely, Jay Shankar Construction was the highest bidder for Block Nos. 10-J and 3-C and its offer was Rs. 62,03,200/- for Block No. 10-J and Rs. 35,52,411/- for Block No. 3-C, However, the amount of offer for some of the Blocks were more than one crore of rupees.

5. The bids of the two writ petitioners were accepted. However, it is an admitted position that agreement has not been executed and registered by the parties. It appears that the intervenors, namely, Vijay Kumar Singh and Uday Kumar Singh and others raised objection about the validity of the auction on the ground that by show of muscle power and threat they were not allowed to participate in the auction. They represented the matter before the State Government and then a lot of correspondence was made between the Collector and the Assistant Mining Officer and after a detailed consideration and taking the legal opinion the impugned order dated 20th January, 2004 was passed for holding limited reauction for mining patta from amongst the persons who had objected to it and the writ petitioners, whose bids were accepted. During the pendency of the writ petition, the persons on whose complaint the impugned order was passed were not made party and thereafter they filed an intervention application which was also disposed of by the common order and two of the intervenors who are related to three Blocks, as stated above, filed Letters Patent Appeals apart from the State Government, as stated above.

6. It is to be stated that as the auction was held under the newly amended rule, there was some confusion as to whether auction amount offered by the bidder was royalty and they have to pay after extraction of minor minerals or this is the price of the minerals to be extracted by them. In this connection, the stand of the State Government is that since it was a new system of settlement for stone lease, a direction was sought from the districts as to on what basis and how much the amount of reserved Jama was to be fixed for settlement of mining lease of stone. The Government grouped the districts of State into two on the basis of royalty received from stone, its quality, demand, supply and minimum production of stone so that the business be profitable. Reserve Jama for Group-A was fixed at Rs. 11.50 lakhs and Rs. 7.10 lakhs for Group-B and accordingly the District Magistrates were directed to settle the area by way of auction vide order dated 10.8.2001 (Annexure-A to the supplementary counter affidavit filed on behalf of the State in CWJC No. 1211 of 2004. Thereafter, the settlement was being made on the basis of reserved Jama. Later on, it was felt that fixing of reserved Jama was not correct on technical ground as the Government was under the wrong impression that the auction amount would be the amount of royalty and accordingly decision was taken to refix the reserved Jama on the basis of available quantity of stone in the area. Accordingly, the State Government took a decision that the amount of Reserve Jama will be decided on the basis of quantity of stone in the area to be settled/granted for lease by auction vide Annexure-B to the said supplementary counter affidavit. Committee of technical experts were also constituted to suggest about the reserved Jama of the area on the basis of quantity of stones and also on other circumstances. According to the Government Policy Reserved Jama has been fixed on the consideration of quantity, quality and other circumstances and the auction amount will be the royalty and no further royalty will be required.

7. Learned single Judge allowed the writ applications on three grounds, namely, that Section 64 of the Sales of Goods Act will apply and once the tender was opened and auction was accepted there was concluded contract and the right has accrued in favour of the writ petitioners and the same should not have been cancelled without observing the principles of natural justice. He also came to the conclusion that as the settlement was complete in favour of the writ petitioners-

respondents and the same has not been cancelled, subsequent decision will not affect the validity of the settlement made in their favour. He also held that in terms of the Government policy the State Government was not going to loose anything even if settlement was made for the said amount.

8. Learned counsel appearing for the appellants and the State submitted that the learned single Judge proceeded on wrong assumption that Section 64 of the Sales of Goods Act will apply in this case ignoring the fact that right to quarry of stone is immovable property whereas Sales of Goods Act apply in a case of moveable property and as such Section 64 has no application. It is further submitted that though the bid was accepted but no document was executed and registered and as such no right had accrued in favour of the writ petitioners-respondents and accordingly there was no need of issuance of notice to them and lastly they submitted that some of the persons were deprived to participate in the bid because of muscle power shown by the writ petitioners and there was no fair auction and as such the State in public interest rightly decided to reauction the same as for many Blocks bids were held for more than rupees one crore and the intervenors and others offered Rs. 1 crore for the said Blocks and they were directed to deposit 2% of the offer money for participating in the reauction. In other words, they submitted that in public interest and for preventing loss to the State Government the decision was taken to reauction.

9. Learned counsel appearing for the writ petitioners- respondents combated all the three submissions of the appellants and submitted that the view taken by the learned single Judge is correct one. He submitted that the whole action of the State Government is mala fide and arbitrary. Once the bid has been accepted and they have deposited money, right has been created in their favour and without hearing them decision should not have been taken. He also reiterated that the acceptance of the bid amounts to completion of the contract conferring right on the writ petitioners-respondents which has been taken away without following principle of natural justice.

10. Law is well settled that even in administrative matters the State has to act in a fair and reasonable manner and the State action should not be arbitrary and

irrational. While making a judicial review with regard to contractual matters, the Court cannot go into the merits of the matter and it has only to see as to whether the authority in a decision making process has exceeded his powers, committed patent error of law, violated the rules of natural justice, the decision is unreasonable or there is abuse of the power. However, there are inherent limitations as the Government is the guardian of the finance of the State and is supposed to protect the interest of the State. It has right to refuse the lowest or any other tender. The only requirement is that the authority has to keep in mind the requirement of reasonableness as contained in Article 14 of the [Constitution of India](#). In a classic judgment of *Tata Cellular v. Union of India*, in (1994) 6 SCC 651, the Apex Court in para-94 has stated the principles which are as follows :--

'94. The principles deducible from the above are.--(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.'

11. In the light of the settled principle, now it has to be seen as to whether the view taken by the learned single Judge is justified in this case or not. Sales of Goods Act apply only to moveable properties. Right to extract stone is not a moveable property as stone is embedded in earth and it is extracted from earth and thus it is immoveable property and thus the very basis of the conclusion arrived at by the learned single Judge that there was concluded contract is not sustainable in law. Auction was held. No doubt bids of writ petitioners-respondents were accepted but admittedly as it was an immoveable property, unless the document is executed and registered no right accrue to the highest bidder. It is an admitted position that the document was not executed and registered and as such no completed right or concluded contract was there in favour of the writ petitioners-respondents. It is also an admitted position that with regard to the same Blocks more than one crore of rupees has been offered by the bidders. It is also an admitted position that for several Blocks rupees one crore or nearby that was offered by the bidders. The intervenors approached the State Government, who is the guardian of the finance of the State, and complained that they were deprived of participating in the auction because of presence of rowdy elements and musclemen of the writ petitioners and others. This Court cannot close its eyes from the reality and take judicial notice of the fact that in this State for many years fairness in the matter of contract is a matter of dream. It is the musclemen, rangdars and law breakers who get most of the contracts. So, if the State Government having satisfied on the materials found that in the public interest and in the financial interest of the State, reauction is to be held, the same cannot be said to be either arbitrary or for any collateral purposes. Rules of natural justice cannot be kept in straight-jacket and its observance will be insisted upon taking into consideration the facts and circumstances of the case. As concluded contract had not been arrived at, the matter was brought to the notice of the State Government about the revenue loss and that fairness has not been adopted in the matter of contract, in our view, the State Government rightly directed for reauction without even notice to the persons whose highest bid has been accepted. Even assuming for the sake of argument that notice was necessary, even then in a case like this we are of the view that if reauction is held

in public interest and in view of the fact that non-holding of reauction will result in loss to the State, on that ground, decision of the State Government cannot be faulted. The decisions relied upon by the learned counsel for the writ petitioners-respondents before the learned single Judge and before this Court also have no application in the facts of the case. A brief reference will be made to the aforesaid decisions in support of our aforesaid conclusion.

12. In *Ram and Shyam Company v. State of Haryana*, reported in AIR 1985 SC 1147, lease was already granted in favour of a person. Thereafter, lease was granted in favour of another person, who offered more money, without giving opportunity to the previous bidder. The Apex Court held that this was a case of unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in action. Acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their truth would certainly amount to arbitrary action in the matter of distribution of State largesse which is impermissible.

13. Here the case is not the same. No final settlement was made in favour of the writ petitioners. No fresh lease has been granted in favour of the intervenors after cancelling the lease of the writ petitioners. Only fresh opportunity was given to hold a fair auction in public interest.

14. The case of *Beg Raj Singh v. The State of Uttar Pradesh*, reported in 2003 AIR SCW 280, is also not applicable in this case. There according to the Government Policy, settlement was to be made for three years but it was made for one year and extension was granted but the same was cancelled by the State Government because little higher revenue could be earned by the State Government on reauction. The Apex Court held that it was against the earlier policy decision of the State Government. In the present case as stated above, it is not a case of earning little higher revenue, on the other hand, tender for the same Blocks was held for higher amount and the intervenors offered highest amount which was accepted by the State Government in public interest.

15. A Division Bench judgment of this Court in the case of *Ranjeet Kumar v. Union of India*, reported in 2003 (4) PLJR 539, this Court did not cancel the Government

contract on the ground that the writ petitioners were prevented from submitting their tenders. This Court did not consider the effect of said action on the ground that the allegations amounted to criminal intimidation under Sections 339 and 503 of the Indian Penal Code and the writ petitioner should have instituted a FIR. The point involved in the case has not been decided in that case. Institution of criminal case is one thing and taking a decision as to whether earlier bid held in public auction is to be accepted or not is completely different matter. Thus, none of the cases relied upon by the writ petitioners-respondents is relevant in the present case.

16. The learned single Judge was also not right in holding that the Government was not going to loose anything. When royalty amount has been the price of the minerals to be extracted, in that case, if higher amount is offered then the State would be benefited. In this case acceptance of bid for the amount lesser than the amount offered for other Blocks will certainly cause loss to the Government. As stated above, it is well settled that the Government should have fair play in the joints and the Government having considered the entire matter found that reauction should be held, the said decision cannot be said to be arbitrary or without any material. In such a situation, as this Court cannot go into the merits of the matter and the order does not suffer from any other ground, the learned Judge, in our view, was not right in interfering in the matter.

17. Accordingly, the impugned order passed by the learned single Judge is set aside and the State Government is directed to hold the bid in terms of its order.

In the result, all the four appeals are allowed.

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