

Saheb Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-25-2005

Judge : Mridula Mishra, J.

Acts : [Constitution of India](#) - Articles 14 and 19(1)

Appeal No. : CWJC No. 3898 of 2005

Appellant : Saheb Kumar

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Judgement :

Mridula Mishra, J.

1. Heard the counsel for the petitioner, respondent No. 8 and the State.
2. Dispute relates to the settlement of Maulana Mazharul Haque Bus Stand, Siwan, which is property of Siwan Municipality. Petitioner's grievance is that this bus stand has been settled with respondent No. 8 by respondents 5, 6 and 7 vide their order, dated 16.3.2005, without giving any public notice and without affording opportunity of participating in the bid to the interested person. It has also been alleged that on the telephonic direction of the District Magistrate, Siwan, in violation of Articles 14 and 19(1)(g) of the [Constitution of India](#), settlement has

been made in favour of respondent No. 8.

3. Petitioner's case is that he is interested in taking the settlement of bus stand for the year 2005-2006 as the settlement for the year 2004-2005 was made in his favour. For 2005-2006, Settlement, Executive Officer, Nagar Parishad, Siwan, had issued public notice, dated 11.3.2005, for auction of Maulana Mazharul Haque Bus Stand, Siwan. Three dates of auction were fixed, i.e., 16.3.2005, 19.3.2005 and 20.3.2005. It was made clear in the notice that if auction did not take place on 16.3.2005 then it would take place on 19.3.2005 and in case it did not take place on 19.3.2005 then auction will be held on 21.3.2005. The Nagar Parishad in its meeting, dated 16.3.2005, changed the date of auction. The resolution was taken that auction will take place on 21.3.2005, in case it did not take place on 21.3.2005 then on 23.3.2005. In any case if it will not take place on 23.3.2005 then it will be held on 28.3.2005. Reserve price for settlement was fixed at Rs. 30,25,000/-. A notice of this resolution was issued on 17.3.2005. The District Magistrate, Siwan, directed the Executive Officer to issue a public notice on 15.3.2005 which was not pasted at all conspicuous places and also not published in any of the local newspaper. Interested person like petitioner and Ors. who intended to participate in the auction had no knowledge about the change in the auction date, in an arbitrary and illegal manner without proper public notice, settlement was made in favour of respondent No. 8 for the year 2005-2006. It has also been stated by the petitioner that the settlement was made in violation of the direction of this Court in CWJC No. 5013 of 2004, as such, the order of settlement is illegal and it must be quashed.

4. Respondents No. 4 to 7 have filed a counter-affidavit supporting the case of the Respondent No. 8 has also filed a counter-affidavit stating that the petitioner has suppressed many relevant facts in order to mislead the Court, settlement of the bus stand was made in favour of the petitioner for the period 2004-2005 and the bid was not held openly. Respondent No. 6 and other interested persons were not allowed to participate in the bid. In a most arbitrary, manner the settlement was made in favour of the petitioner. The settlement was made in favour of the petitioner at a lesser bid amount then the bid amount fixed for settlement. Respondent No. 8 was ready to offer higher amount for settlement but it was

ignored. In this circumstance he preferred CWJC No. 5013 of 2004, notice was issued to the petitioner of the present writ application and finally the matter was decided with a direction that for two months settlement should be made in favour of respondent No. 8 as he offered rupees six lacs for the months of February and March, 2005. Respondent No. 5, thereafter, approached the Municipal Authority but the Municipal Authority, who are in conspiracy with the petitioner, did not take any action and two months period expired on 31st March, 2005. In this circumstance a notice for fresh settlement was issued on 11.3.2005 for the year 2005-2006. The notice was sent to press for publication in the newspaper but due to unavoidable circumstances the date of the settlement was changed and again it was decided that the auction will take place on the original date, i.e., 16.3.2005. Notice of this decision was served on the petitioner as well as other interested/applicants. It was also sent to press for publication in the newspaper. The petitioner was fully aware about the auction but he did not participate in the auction. Respondent No. 8 being the highest bidder, the bus stand was settled with him at the bid amount of rupees thirty-six lacs and he has already deposited the amount. Since the settlement has been stayed by this Court, as such, possession of the bus stand has not been handed over to respondent No. 8.

5. Considering the fact that the date of auction initially was fixed on 16.3.2005 but it was changed to 19.3.2005 and again it was preponed to 16.3.2005, there is much force in the submission made by the petitioner that the notice of auction was not duly and widely circulated. It was not sent for its publication in the press, due to which, applicants interested in participating in the auction, had no knowledge and they were prevented from participating in the auction. Respondent No. 8 was the single bidder and settlement was made in his favour which cannot be held to be proper.

6. In this view of the matter, the order, dated 16.3.2005, (Annexure-4) issued by respondents 3, 5 and 6 directing for settlement of Maulana Mazharul Haque Bus Stand, Siwan, in favour of respondent No. 8 is quashed. Respondent No. 7 is directed to fix some date for auction of the bus stand, general notice should be circulated widely as well as published in the local newspaper and the auction should be made on the date fixed in the meeting hall of the Siwan Collectorate in

accordance with law. The District Magistrate, Siwan, Superintendent of Police, Siwan, and the Sub-Divisional Officer, Siwan, are directed to provide sufficient police force on the date and time of auction.

7. With these observation and direction, this application is allowed.

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