

Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-22-2003

Reported in : AIR2003All375

Judge : Tarun Chatterjee, C.J. and ;Vineet Saran, J.

Acts : [Constitution of India](#) - Articles 14 and 226; Mines and Minerals (Regulation and Development) Act, 1957 - Sections 15; Uttar Pradesh Minor Mineral (Concession) Rules, 1963 - Rule 27

Appeal No. : C.M.W.P. No. 232 of 2003

Appellant : Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C. Misra, ;Prakash Dwivedi, ;Somesh Khare, ;Milan Banerjee and ;Vikram Nath, Advs. and ;Arvind Kumar Srivastava, S.C.

Advocate for Pet/Ap. : W.H. Khan, Adv.

Disposition : Petition dismissed

Judgement :

Vineet Saran, J.

1. By the consent of the parties, this writ application was treated on the list of 10-4-2003. Arguments were heard and judgment reserved.
2. In this writ application, we have heard Sri W.H. Khan, learned counsel for the writ petitioner for the S.C. Misra, learned Advocate General appearing for the State -- respondents No. 1, 2 and 3, Sri Rakesh Dwivedi , learned Senior Counsel assisted by Sri Somesh Khare, appearing for private respondents No. 4, 5 and 6, Sri Milan Banerjee, learned Senior Counsel assisted by Sri Vikram Nath and Sri Arvind Kumar Srivastava, appearing for added private respondents No. 7, 8 and 9.
3. Affidavits between the parties have been exchanged.
4. This writ application has been filed challenging the auction notice dated 21-11-2002, the auction held on 30th December, 2002 as well as the provisional acceptance of bids of the private respondents. The writ petitioners have also sought for a direction to the effect that the State respondents should issue a fresh notice in accordance with Rule 27 of U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as 'the rule of 1963') and allow the writ petitioners to participate in the said auction.
5. Before we proceed further we take up a preliminary objection raised by the respondents as to the question whether the writ petition should be rejected on the ground of suppression of material facts. According to the learned counsel for the respondents, since the writ petitioners had moved two writ petitions before filing of this writ application for quashing the auction noticed dated 21st Nov. 2002 and the auction held on 30th Dec. 2002, one in this Court and another before the Lucknow Bench, on the self same cause of action, which fact was not stated in the present writ application, this Court must hold that this writ application should be thrown out on the ground of suppression of material facts. This submission of the learned counsel for the respondents was disputed by Mr. Khan, learned counsel for the writ petitioners. According to Mr. Khan, learned counsel appearing for the writ petitioners the first writ application, though prepared and filed, was returned back to the writ petitioners therefore. It could not be said to be a writ application which had actually been filed before the Court for its consideration and, as such, the same, should be ignored. With regard to the second writ application, the same was

filed on behalf of an individual who may have been a partner of the petitioner No. 1 firm, but he had challenged the auction proceedings in an individual capacity. With regard to the instant writ application. Mr. Khan submitted that this is the first writ application on behalf of the writ petitioners as the earlier writ application presented on 27th Dec. 2002 on behalf of the present writ petitioners had been returned back. Accordingly, Mr. Khan submitted that the writ petition could not be rejected on the ground of suppression of material facts.

6. After hearing the learned counsel for the parties and after going through the materials, on record, we are of the view that this application must be rejected on the ground of suppression of material facts.

7. From a perusal of the records, it appears that the first writ application was filed by the present writ petitioners on 27th Dec. 2002 during winter vacations but since the then Acting Chief Justice was not convinced about its urgency for entertaining the same during the vacations, the same was returned back to the writ petitioners (during the course of arguments Sri W.H. Khan, learned counsel for the petitioners passed on a copy of the said writ petition which was returned back to him by the Registry on 27th Dec. 2002, which has now become a part of the record). It appears from the record that when the writ application was returned back to the writ petitioners, one of the partners of the petitioner No. 1 firm rushed to the Lucknow Bench and on the same facts and grounds as also through the same counsel, filed a writ application being writ petition No. 761 (M/B) of 2002, Brijesh Singh v. State of U.P. It also appears that practically the matter was decided on merit and a detailed order dated 30th Dec. 2002 was passed, refusing to grant any interim order in the said writ application. Since no interim order was granted the petitioners writ application on 3rd January, 2003 in which an interim order has been passed on 6th January, 2003.

8. We have carefully considered the reliefs claimed in the aforesaid two writ petitions, as well as in the instant, writ application. After perusal of the reliefs claimed in the three writ applications, we are of the firm opinion that for all practical purposes all the three writ petitions were filed on behalf of the same set of petitioners arising out of the same cause of action and containing more or less the

same prayers by the same counsel. For proper appraisal of this aspect of the matter, we consider it necessary that the prayers of all the three writ petitions be noticed and, as such, the same are being reproduced below.

(1) Writ Petition filed on 27-12-2002 Singh v. State of U.P.

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to hold auction proposed on 30-12-2002;

(ii) Issue a Writ, order or direction in the nature of mandamus commanding the respondents to issue a fresh notice under Rule 27 of at least 30 days specifying new date for holding the auction;

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to accept the papers on behalf of the petitioner No. 1 returned back by them to the petitioner No. 2 on 23-12-2002 and allow the petitioner Firm to participate in the auction and when it is held on the basis of the total value of the solvency certificate submitted by its partners.

(iv) Issue a writ, order or direction in the nature of certiorari quashing the order dated 23-12-2002, passed by the respondents on the Notice Board for 15 minutes and the respondents be directed to produce the said order and record before the Court;

(v) Issue any other writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the present case;

(vi) Award costs to the petitioners from the contesting respondents.

(2) Writ Petition No. 7601 fM/B) of 2002 Brijesh Kumar Singh v. State of U.P. (Pending at Lucknow Bench)

(i) Issue a writ order in the nature of certiorari to quash the order dated 2-11-2002 and 28-11-2002 and the notice dated 21-11-2002.

(ii) Issue writ order and direction in the nature of mandamus commanding the respondent not to hold auction proposed on 30-12-2002.

(iii) Issue a fresh notice under Rule 27 of at least 30 days specifying new (dates) of holding the auction.

(iv) issue a mandamus commanding the respondent to accept the earnest money and character certificate of the petitioner and allow him to participate in the auction when it is held.

(3) Writ Petition No. 233 of 2003 Singh 7 others v. State of U.P.

(Instant writ petition)

(i) Issue a writ, order or direction in the nature of certiorari quashing the Government order dated 2-11-2002, notice dated 21-11-2002, auction dated 30-12-2002 and the provisional acceptance of the bids of respondents Nos. 4, 5 and 6 (7, 8 & 9) for Tehsil Banda, Naraini, Attarra respectively; (and order dated 4-1-2003 (Annexure 15)

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to issue a fresh notice and publish the same as provided in Rule 27 of the Rules, 1963 and to allow the petitioners to participate in the auction.

(iii) Issue any other writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the present case.

(iv) Award costs to petitioners from the contesting respondents.

In the facts and circumstances of the case, we are unable to agree with the submissions, of Mr. Khan, From a perusal of the prayers contained in all the three writ applications, we are of the view that all the writ applications virtually contain the same facts and grounds, most of the paragraphs are the same verbatim drafted and filed by the same counsel. It appears to us that the second writ application filed at Lucknow Bench was only a camouflage, as in the first writ application itself, in paragraph 11 it had been stated that five partners of the petitioner firm, which included the name of Brijesh Kumar Singh, had submitted the solvency certificate on behalf of the firm. A perusal of the second writ application would show that it does not indicate that the writ petitioner therein

(Brijesh Kumar Singh) was an applicant in his individual capacity. It is true that there was no mention in that writ petition about the firm 'M/s. Singh and others' but it cannot be said that the writ petitioners were not espousing the cause of the firm. In any view of the matter, after going through the materials on record and after perusing the reliefs claimed in the writ applications, we are firm in our opinion that all the three writ applications were filed virtually on the same facts and grounds and by the same counsel. That apart, we find from paragraph 9 of the instant writ application that it has been asserted that the solvency certificate of Brijesh Kumar Singh (petitioner in the second writ petition filed at Lucknow Bench) had been filed on behalf of the petitioner No. 1 Firm as also the fact that the counsel in all the three writ applications was the same, which has not been denied by Mr. Khan. Interestingly enough . the contents of all the three writ applications are more or less same. Therefore, in our view, the writ petitioners cannot raise this plea that the writ petitioner in the writ application filed before Lucknow Bench of this Court was not espousing the cause of the Firm , which is the writ petitioner No. 1 in the instant writ application as well as in the first writ application. It has been stated in Writ Petition No. 7601 (M.B.) of 2002, which was filed by the other partner of the petitioner No. 1 firm the Lucknow Bench of this Court by its order dated 30-12-2002 had, prima facie, found that there was no infirmity in the notice dated 21-11-2002 and it could not be said that there was non compliance of the proviso to Rule 27. The Bench, thus, categorically refrained from staying the auction scheduled for 30-12-2002. Since the order of the Lucknow Bench of this Court has been passed in a writ application filed by one of the partners of the writ petitioner No. 1 firm, it had a direct bearing on the present writ petition, the relevant portion of the order aforesaid, is being extracted below.'

'This is a question of fact whether any notice has been placed on the notice board on 23rd Dec. 2002 or not because assertion of the petitioner is that notice was put on the notice board only for a period of 15 minutes and then taken out. However, the record of the District Magistrate will show an order of such notice in his file, if any. At this stage we are only concerned with the auction which is going to be held today. As far as compliance of Rule 27 of the above Rule is concerned prima facie we find that from the perusal of the notice dated 21-11-2002 is concerned, it clearly indicates that left over auction would be held on 30-12-2002, therefore, it

cannot be said that there is no compliance of Rule 27 proviso.

9. One of the prayers in the writ petition is that a writ in the nature of mandamus be issued commanding the respondents to accept the earnest money and allow him to participate in the auction when it is held. For this prayer we are of the considered opinion that the petitioner has approached this Court so late and at this stage no interim mandamus can be issue as the auction is going to be held today.

Since the validity of the two Government orders dated 2-11-2002 and 28-11-2002 which are under challenge has been upheld by this Court, accordingly, writ petition so far as two Government Orders are concerned is dismissed.

(Emphasis, supplied)

For the rest of the prayer we permit the learned Chief Standing Counsel to file counter affidavit within a period of two weeks. Three days thereafter is allowed for filing rejoinder affidavit. List thereafter. Copy of this order be given today, if possible to the learned counsel for the petitioner on payment of usual charges.

Sd/- Jagdish Bhalla, J.

Sd/- P.K. Chaterji, J.'

From a perusal of the aforesaid order of the Lucknow Bench, it appears to us that the grounds and facts, on which the auction is being challenged in this writ application had already been raised and considered by the Lucknow Bench and for the same cause of action and prayer, the firm and another have approached this Court again as they failed to obtain a stay order in their favour from the Lucknow Bench of this Court.

10. In view of the discussions made hereinabove, we are of the view that the writ petitioners are guilty of filing petitions repeatedly for the same cause of action and made repeated attempts to obtain some interim orders in their favour. Accordingly, in our opinion this amounts to gross abuse of the process of law as well as of the Court. Thus, on the preliminary issue itself, we hold that this writ application should not, at all be entertained and, therefore, should be rejected at the threshold.

11. Even on the merits of this writ application, we do not find any reason to grant any relief to the writ petitioners. Reasons are as follows :--

Mr. Khan, appearing on behalf of the writ petitioners, had before us, taken three grounds for setting aside the auction in question. First, since the auction was stayed in another Writ Application No. 54048 of 2002, Ram Prakash Gupta v. Director, Bhu Tatva, Evam Khaikaram, U.P. Lucknow, the auction on a subsequent date i.e. on 30th Dec. 2002 could not have been held.

12. We have carefully considered and perused the interim order passed in the writ application filed by some other person being Writ Petition No. 54084 of 2002. It appears to us that the said writ application was filed only in respect of the auction scheduled for 23rd Dec. 2002 and not for subsequent auction scheduled for 30th Dec. 2002. The change in the said writ application was on the ground that the notice of 30 days had not been completed before the auction scheduled for 23-12-2002. Curiously enough, the question of thirty days' notice period having not been completed for the auction scheduled for 30-12-2002, was not, at all, raised in that writ application.

13. In any view of the matter, we are of the view that the interim order of stay granted in another writ application, namely, in writ application No. 54048 of 2002 Ram Prakash Gupta v. Director, Bhu Tatva Evam Khaikaram, U.P. Lucknow cannot be said to be operative insofar as the instant case is concerned. After going through the interim order passed in the aforesaid writ application and after hearing the learned counsel for parties, we are of the view that there could not be any impediment for the authorities to proceed with the auction in respect of the area for which the writ petitioners had sought to participate.

14. Secondly, it was urged that the composite notice for holding the auction in question on 23rd Dec. 2002 and, thereafter if necessary, on 30th Dec. 2002 was not permissible in view of the mandatory provision of Rule 27 of the Rules of 1963. In our view this submission is devoid of any merit. To appreciate the second submission of Mr. Khan, we feel it necessary to reproduce Rule 27 of the Rules of 1963 which runs as under :

'27. Procedure for grant of lease by auction in respect of an area or areas declared under Sub-rule (1) of Rule 23 as area for grant of lease by auction the following shall be the procedure :-- (a) the District Officer or the Committee authorised by the State Government under Rule 71 hereinafter referred to as the auction, shall at least thirty days before the date of auction, give notice in the manner given below indicating the date time and place of auction :

Provided that where for any reason the auction is not completed a fresh auction may be held after giving a shorter notice of at least seven days;

(i) Copies of a notice shall be put up on the Notice Board at the office of the District Officer and at some convenient place close to the area;

(ii) a copy of the notice shall be sent to the Gaon Sabha or any other local authority in whose jurisdiction the area is situate,

(iii) the notice for general information shall be given by beat of drum in the locality where the area is situate ; and

(b) The District Officer may appoint any officer subordinate to him as the Presiding Officer for the auction.

(c) The details of the area or areas and the terms and conditions of lease shall be read out to the intending bidders at the time of auction.

(d) Any person intending to bid shall deposit rupees two thousand with the Presiding Officer in advance as earnest money.

(e) On completion of auction, the result shall be announced and the provisionally selected bidder shall immediately deposit 25 per cent of the amount of bid as security for execution of the lease deed, and the observation of terms and conditions of the lease and an equal amount as first instalment of royalty. The bid shall not be treated as accepted unless the State Government or the District Officer or the Committee, as the case may be, accepts it.

(ii) The selected, bidder shall before the execution of lease deed produce solvency certificate issued by a competent Revenue Officer, and permanent address.

(f) The earnest money shall be refunded at the end of the auction except that which was deposited by the provisionally selected bidder, in whose case it will be adjusted towards security.

(g) The Presiding Officer shall submit papers to the District Officer to the Committee, as the case may be.

15. From a plain reading of Rule 27 of the Rules of 1963 it is clear to us that the District Officer or the Committee authorized by the State Government under Rule 71 shall at least thirty days before the date of auction, give notice in the prescribed manner indicating the date time and place of the auction. From this provision namely Rule 27 of the Rule of 1963 it does not appear that the authorities are not entitled to state in the notice two dates for holding the auction. The requirement is that the authorities shall give notice at least thirty days before the date of the auction in the prescribed manner indicating the date, time and place of the auction. Therefore, we are unable to accept the contention of Mr. Khan that the composite notice for holding the auction on 23rd Dec. 2002 and thereafter if necessary on 30th Dec. 2002 was not issued in accordance with the Rule 27 of the Rules of 1963 which is a mandatory provision.

16. Thirdly, it was contended by Mr. Khan that the mandatory provisions of 7 days notice as contemplated under the proviso to Rule 27(a) of the Rules of 1963 was not duly complied with in view of the fact that between 23rd Dec. 2002 and 30th Dec. 2002 seven clear days notice was not found to have been given by the authorities. Accordingly, Mr. Khan contended that the auction held on 30th Dec. 2002 without following the proviso to Rule 27(a) of the Rules of 1963 was absolutely illegal and without jurisdiction According to Mr. Khan since seven days clear notice was not given in the present case and in view of the fact the proviso to Rule 27(a) of the Rules of 1963 is, mandatory in nature it must be held that the auction held on 30th Dec. 2002 was liable to be set aside.

17. Before we take up the aforesaid question for decision, let us take up one short submission of Mr. Khan to the effect that even thirty days notice was not given following the Rule 27 of the Rules of 1963 as the notice was published in the news paper on 7th Dec. 2002 and the, auction was held on 30th Dec. 2002, it must be

held that such auction was held before the expiry of thirty days in violation of mandatory provision of Rule 27 of the Rules of 1963 and accordingly the auction held on 30th Dec. 2002 must be held to be illegal, invalid and without jurisdiction. So far as this submission of Mr. Khan is concerned, again we are of the view that it is not an argument of substance. It has been admitted by the writ petitioners in the first paragraph of the writ application that a notice dated 21 Nov. 2002 for holding auction was published in the news papers on 7th Dec. 2002. In paragraph 5 of the Counter-affidavit filed on behalf of the State Government it has been stated that the said notice was first published in four daily newspapers on 22nd Nov. 2002 and the same notice was only republished on 7th Dec. 2002. Since notice was duly published on 22nd Nov. 2002 which was republished on 22nd Nov. 2002 and the auction was thereafter held on 30th Dec. 2002 it clearly indicates that more than thirty days notice was given by the authorities for holding the auction, in question. The publication of the notice in the newspapers on 22nd Nov. 2002 has not been denied in the rejoinder affidavit filed by the writ petitioners but it has merely been reiterated that the period of thirty days had not been completed from the date of publication on 7th Dec. 2002. Therefore, in our view, no exception could be taken by Mr. Khan for alleged violation of the mandatory provision of Rule 27(a) of the Rules of 1963. In our view, the subsequent publication made on 7th Dec. 2002 was for giving wider publicity and would not invalidate the auction proceedings on the ground of any such provisions of the Rules when by publication of notice for the time on 22nd Nov. 2002, the mandate of the Rules had been duly complied with.

18. It was next contended by Mr. Khan that in view of the mandatory provisions, namely proviso to Rule 27 of the, Rules of 1963 which clearly mandates that seven days notice should be given before holding an auction and in view of the fact that in the present case there was no clear seven days notice, the auction held on 30th Dec. cannot be said to be legal valid and operative in law. In support of his contention Mr. Khan placed reliance in *Prem Nath Sharma v. U.P.* (AIR 1997 SC 2252) : (1997) 4 SCC 552, *Bhiktsi Jaipuria v. Union of India*, AIR 1962 SC 113 and *Rubber House v. Excelsior Neele Industries Pvt. Ltd.*, AIR 1969 SC 1160.

19. In the case of Prem Nath Sharma (supra) the Supreme Court held that specifying a date, which shall not be earlier than thirty days from the date of the notice en-Joined by Sub-rule (1) of Rule 72 of the U.P. Minor Minerals (Concession) Rules 1963 was mandatory and therefore, no application can be accepted by considering the preference under Rule 9(1) before lapses of the period of seven days specified in Rule 72(ii) and, therefore, acceptance of such application must be held bad and illegal. According to Mr; Khan, Rule 27 of the Rules of 1963 contains a mandatory provision, which has not been complied with in letter and spirit and, therefore, the auction held on 30th Dec. 2002 is liable to be quashed. We are unable to accept this contention of Mr. Khan. We have carefully read the notice of the auction by which the auction was scheduled to be held on 30th Dec. 2002. In the notice dated 21st Nov. 2002 it was provided that in case it was not possible to hold auction on 23rd Dec. 2002 the same would be held and completed on 30th Dec. 2002 and as such it cannot be said that the notice in question for holding the auction could be said to be in violation of the proviso to Rule 27 of the Rules of 1963. In view of the fact that on 23rd Dec. 2002 no auction was at all held and in fact the auction was held only on one date i.e. on 30th Dec., 2002.

20. In the connection, Mr. Khan submitted that although the auction, was not held on 23rd Dec. 2002 and, therefore, it was really a case of postponement of auction on 23rd Dec. 2002 and accordingly for holding an auction on 30th Dec. 2002 which date should be treated as a fresh auction and, therefore, proviso to Rule 27 of the Rules of 1963 ought to have been complied with. For this purpose, we have already extracted the proviso to Rule 27 of the Rules of 1963 herein earlier and we have carefully examined this provision in depth. In view of the proviso to the aforesaid Rule, notice of at least seven days, would be required to be given only if a fresh auction is held on account of the postponement of the auction on a particular date. Such is not the situation in the present case as the auction was held on one of the two dates mentioned in the notice itself. Accordingly this submission of learned counsel for the writ petitioners is devoid of any merit and therefore overruled.

21. There is another aspect of the matter. It is now settled that the basic question that is to be considered by the Court in cases of auction is to see whether the authorities conducted the same with fairness or not and also if a prejudice is caused to one of the auctioneers by holding such auction. The Apex Court in *A-One Granites v. State of U.P.*, (2001) 3 SCC 537 : (AIR 2001 SC 1203), held that the object of having such provisions is transparency in the matter of grant of mining lease and restrict any underhand dealing with the minerals by the authority. In the Instant case, after going through the averments made in the writ application and the rejoinder affidavit, we are unable to find any specific allegation of mala fide attributed to any of the respondents for which the auction could be held to be arbitrary, illegal and without Jurisdiction. So far as prejudice caused to the writ petitioners is concerned, we also do not find from the materials on record that any prejudice- was caused except that the offer of the private respondent was accepted by the authorities. In *Graphite India Ltd. v. Durgapur Projects Ltd.* , (1999) 7 SCC 645 : (AIR 1999 SC 3289) and *Netai Bag v. State of West Bengal* (2000) 8 SCC 262 : (AIR 2000 SC 3313), it has been held by the Apex Court that mere technicalities, even if there was any, should not be considered by the Court as to frustrate the very purpose of auction, as long as there is no injustice done or prejudice caused to any of the parties. At this stage, we may also keep on record that In this case, no argument was advanced on behalf of the writ petitioners that any prejudice was caused to them because of subsequent date of auction i.e. Dec. 30, 2002 was notified in the notice dated 21st Nov. 2002. Such being the position and in view of the discussions made hereinabove, we are unable to accept the third contention of Mr. Khan and accordingly is overruled.

22. It was lastly contended by Mr. Khan that the writ petitioners were prevented from participating in the auction proceedings, although the writ petitioner No. 2, in his capacity as Managing Partner of the writ petitioner No. 1 firm, had filed papers of the firm with all necessary documents including the solvency certificate and, therefore, the writ petitioners not having been allowed in participating in the auction proceedings, the auction proceedings must be held to be illegal and without jurisdiction. On this count also the submission of Mr. Khan is not at all acceptable. In paragraph 14 of the writ application, it has been stated that when the first writ petition was not entertained on 27-12-2002, the writ petition No. 2

again on 30-12-2002 submitted before the Presiding Officer, the solvency certificate of Brijesh Kumar, Aman Singh, Maiya Deen Shyam Kishore Singh, Raj Kishore Singh and Ghanshyam Singh, which were returned by the Mines Clerk on 23-12-2002. Mr. Khan then, submitted that the writ petitioner No. 2 was issued a pass to enter the auction hall but was not allowed to participate in the auction, without giving any order, in writing, and he was told that some adverse report had been received against Ghanshyam Singh and Raj Kishore Singh, the partners of the firm, Therefore, Mr. Khan submitted that it must be held that the writ petitioner No. 2 was not allowed to participate in the auction either on behalf of the firm or in his personal capacity. From a perusal of the records, we do not find that any document has been filed by the writ petitioners in support of their contention that all the papers as required in the auction notice, had been filed by the petitioner No. 1 firm or the petitioner No. 2 within the date specified or even later. The auction notice is Annexure 2 to the writ application in which it has been clearly stated that those who want to participate in the auction were required to furnish the requisite papers by 20th Dec. 2002. Since neither the writ petitioners furnished the said documents nor completed the formalities as required in the notice and that being the position, it is not open to them to challenge the auction notice, by way of moving this writ application in this Court. That apart, on careful reading of the notice, it is clear to us that in the said notice two conditions have been specified with regard to solvency certificate as well as character certificate by 20th Dec. 2002 and also regarding the deposit of earnest money of Rs. 25,000 before the Nazir, Sadar, Collectorate, Banda. It is not in dispute that furnishing the solvency certificate as well as character certificate and also deposit of earnest money were mandatory in nature and non compliance of the same, will be fatal. From a perusal of the documents available on record, we find that nowhere in the writ application it is stated that solvency certificate or character certificate was submitted and the earnest money was deposited as required in the aforesaid notice within the time or even thereafter. In this connection, we have also carefully examined the partnership deed which has been filed as Annexure 7 to the writ application. A perusal of the partnership deed reveals that the partnership was formed on 18th Dec. 2002 and registered on 19-12-2002, i.e. a day before the last date of depositing the earnest money and for completing the necessary formalities for

participating in the auction. From the above, it is crystal clear that the partnership firm was formed at a very late stage only for the purpose of participating in the said auction. No attempt was made to file any of the requisite documents in the said notice, either by the writ petitioner No. 1 firm, or by writ petitioner No. 2 within the stipulated time, i.e. 20th Dec. 2002.

23. From the record, it is also clear that the solvency certificates filed along with the writ application, and claimed to be on behalf of the firm, were by some of the partners of the firm which were all dated 14th Dec. 2002 i.e. prior to the formation of the firm and as such the same could not be used for the purposes of the firm which was formed only on 18th Dec. 2002.

24. As regards the deposit of earnest money, which was a precondition for participating in any auction to show the bona fide of the person, no proof was put forward by the writ petitioner No. 1 firm that the firm had made any such deposit within time or even thereafter. It appears to us that even requisite papers, which were alleged, to have been submitted on behalf of the firm were said to have been tendered only on 23rd Dec. 2002 before the Mines Clerk and not before the competent authority. Even on their own showing the writ petitioner firm had not completed any of the formalities, which were preconditions for participating in the auction as mentioned in the notice dated 21st Nov. 2002. In the writ application it has only been mentioned that the earnest money was deposited by the writ petitioner No. 2 before the Nazir Sadar, Collectorate, Banda. From the materials on record it appears that the receipt, which had been filed, was in the name of Jitendra Singh Writ petitioner No. 2 and not in the name of the firm. Therefore, merely by completing one formality by the writ petitioner No. 2 benefit of the same could not be given to the petitioner firm even though the writ petitioner No. 1 firm or the writ petitioner No. 2 in his individual capacity had not completed any of the other formalities, as required by the notice of the auction. From all these, it appears that it was the partners of the firm who were attempting to individually participate in the auction, and realizing that they could not comply with 'the conditions of either furnishing the solvency certificate or character certificate individually, attempted to form a partnership firm at the penultimate stage.

25. So far as the character certificate as required in the notice of the auction is concerned, we are of the view that the same could not be exempted in the case of a firm. The character of the individuals participating in the auction was necessary to be certified by the competent authority and in case of a firm, of all its partners. In case, filing of character certificate is exempted in the case of a firm, then a group of criminals who could not otherwise be permitted to participate in the auction, would then always form a partnership firm and thus defeat the very purpose of prohibiting persons of criminal background to participate in the auction. Therefore, in our opinion, the writ petitioners did not fulfil the conditions of furnishing the character certificate as required in the notice of auction.

26. Even assuming but not admitting that such certificate could be accepted even then the solvency of the partners of the firm was to be considered as that of the firm by the same standard in which the character in the background of the partners of the firm ought to be taken as that of the firm. Therefore, the character certificate of each individual partner of the firm ought to have been filed in the present case but the same was not done. A perusal of counter affidavit filed by the State respondent Nos. 1, 2 and 3, as well as those filed by the respondent Nos. 5, 7, 8 and 9 clearly demonstrates that most of the partners of the petitioner No. 1 firm have a criminal history. In paragraphs 6 and 7 of the counter affidavit of respondents No. 5, it has been stated that one of the partners, namely, Ghanshyam Singh had Six Criminal cases pending against him and another partner, namely, Raj Ashore Singh had twelve criminal cases pending against him. Details of all these case's, are mentioned in the aforesaid paragraphs. Besides this, it has also been stated that another partner is an accused in a murder case and yet another partner has more than three criminal cases pending and is also an accused under the Prevention of Gangsters Act. It has also been stated that not only in Uttar Pradesh, the partners of the firm were accused in several cases in State of Madhya Pradesh, where they carry on the business of liquor. From the record, it also appears that the Senior Superintendent of Police had submitted a report stating therein that there were large number of separate cases pending against the partners of the petitioner firm as well as the family members of petitioner No. 2. In a Division Bench decision of this Court in Civil Misc. Writ Petition No. 30680 of 1997, Vijay Bhadur v. State of U.P., it has been held that the

State Government would be right in thinking that if the State enters into an agreement contract with a person with criminal background, it would be illegal, immoral and against the public policy. Accordingly, we are of the firm opinion as already discussed above, that the petitioner firm, which was formed in a hurry at the last moment for the purposes of participating in the present auction, could not complete any of the formalities, as required in the notice, and, thus, has no locus standi to file this writ application.

27. It was lastly contended by Mr. Khan, learned counsel for the writ petitioners that the writ petitioners were ready to offer better price than the one which has been accepted by the State respondents regarding which averments have been made in paragraph 16 of the writ application which is quoted below :

'That the petitioner firm was ready to offer a bid of Rs. 5 Crores, 50 Lacs for all the areas covered by the notice dated 21-11-2002 in respect of Banda District. The petitioner firm is still ready and willing to offer even Rs. 6 Crores for the aforesaid areas. The petitioner firm is ready to deposit one half as required under Rule 27 at any time in this court or where ever this Court directs.'

28. So far as the offer made by the writ petitioners in paragraphs 16 of the writ application, which has been quoted herein above is concerned, we are of the view that according to Clause 8 of the Government order dated 2-11-2002, which is contained in Annexure 4 to the writ application and which has not been challenged by the writ petitioners in this writ application, the lease would be granted for various sectors of the Tahsils, as may be notified. The State Government, in its wisdom, had decided to auction different sectors of the area separately and not the entire area of the district collectively. This could be for the reason that the Government may not have been wanting one, party to monopolise the mines and minerals of the entire district and was desirous that smaller sectors of the total area be auctioned separately so that there may be more persons who could be benefited as leases could then be granted to different persons for different sectors. The same being the policy decision of the State cannot be challenged before this Court in its writ jurisdiction until and unless it is proved that such policy decision was against the public policy and without jurisdiction. Therefore, the offer made for

the entire area collectively, at a much later stage by the writ petitioner firm or writ petitioner No. 2 individually, who had not even completed the, requisite formalities for participation in the auction, cannot be accepted. In our opinion, if such offers were to be accepted, then the very purpose of auction would be defeated and after acceptance of the highest bid, a party who was not even a participant in the auction, would challenge the same by offering a higher bid, which will become a never ending process. The sanctity of the auction proceedings ought to be maintained and as long as it is found that the same has been conducted fairly in accordance with law, without causing any prejudice to any party, the offer of higher amount cannot be permitted to be accepted at a subsequent stage merely for the sake of asking. In any view of the matter, we are of the firm opinion that this writ application cannot be entertained for yet another simple reason that the writ petitioners were not the genuine participants in the auction and had not even complied with the requisite conditions in the notice within the specified period or even thereafter before the actual date of auction.

29. Accordingly, we are of the view that in the facts and circumstances of the instant case the contention of Mr. Khan that the writ petitioners were illegally prevented from participating in the auction held on 30th Dec. 2002 is wholly baseless as they had themselves not completed the requisite formalities as prescribed in the notice and had, at no stage become eligible to participate in the auction. Accordingly, on merits also, this writ application is devoid of any merit and deserves to be dismissed.

30. Before we conclude, another aspect may be considered. On behalf of the subsequently added respondent Nos. 7 to 9, it was contended that they were not properly impleaded as respondents and, therefore, the interim, order dated 6th January, 2003 would not be binding on them. To fortify this contention, it was pleaded that the application for impleading them as respondents was itself presented before the Court on 28-1-2003 and it was also notified in paragraph 8 of the said application that it would be filed in the Registry on 28th January, 2003 and would be listed before the Court on 29th January, 2003 whereas, the order passed on the said application is dated 27-1-2003. As such, the impleadment of the said respondent Nos. 7 to 9 itself has been challenged for which a recall application

has also been filed and it has been urged that since the interim order would not be applicable on them, they should be permitted to excavate the minerals in pursuance of the contract already granted in their favour on the basis of auction of 30th Dec. 2002. Since we have already finally decided the writ application, all these questions as well as the aforesaid applications, pending in this Court including the application of the added respondents for recall of the order, have totally become infructuous and accordingly, they are hereby disposed of as having become infructuous.

31. For the reasons disclosed herein above, this writ application fails and is accordingly dismissed with costs, which we assess at Rs. 5,000/- (Rupees Five Thousand) only. The interim order, if there be any, stands vacated.

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