

Ziauddin Vs. Commissioner and ors.

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Court : Allahabad

Decided On : Dec-03-2002

Reported in : 2003(1)AWC5

Judge : M. Katju and ;K.S. Rakhra, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 21678 of 2002

Appellant : Ziauddin

Respondent : Commissioner and ors.

Advocate for Def. : Deo Raj and ;A.M. Zaidi, Avds. and ;S.C.

Advocate for Pet/Ap. : U.N. Sharma, ;Chandan Sharma and ;Suneet Kumar, Avds.

Judgement :

M. Katju, J.

1. This writ petition has been filled against the impugned order dated 14.5.2002 Annexure-1 to the writ petition.
2. Heard learned counsel for the parties.

3. It has been alleged in the writ petition that the Nagar Palika Parishad, Chandpur, Bijnor in its meeting held on 18.3.2002 decided to hold auction for giving various contracts. The advertisement for the auction was published in the newspaper 'Bijnor Times' and also announced by loudspeaker. Photocopy of the auction notice is Annexure-2 to the writ petition.

4. In paragraph 6 of the writ petition, it is stated that on 26.3.2002 all auctions were held but as far as the auction of the right to collect Tehbazari is concerned, it appears that no auction was held on the basis of the said advertisement or any other advertisement. Hence, the matter was referred to the Nagar Palika Parishad which in its meeting held on 30.3.2002 considered the report of the auctioning officer and scrutinized the various applications and accepted the highest offer of Rs. 12 lacs given by the petitioner. True copy of the proceedings of the Nagar Palika Parishad dated 30.3.2002 is Annexure-4 to the writ petition.

5. It appears that one Vakil Ahmad filed a complaint against this grant of collecting Tehbazari to the petitioner and hence, the impugned order Annexure-1 was passed by the Commissioner. It may be mentioned that the complainant has given an offer of Rs. 14,50,000 for grant of the contract, and the Commissioner passed an order that if the complainant deposits a sum of Rs. 14,50,000 within a week, the contract shall be cancelled and a fresh auction be held for grant of contract for realisation of Tehbazari. If the complainant does not deposit such amount the contract of the petitioner for Rs. 12 lacs shall be continued vide Annexure-1 to the petition.

6. A counter-affidavit has been filed on behalf of the Nagar Palika Parishad, Chandpur. In paragraph 6 of the same, it is stated that on 26.3.2000 all the auctions which had been advertised in 'Bijnor Times' on 22.3.2002 were held e.g. theka of hides and bones of dead animals, theka fee regarding slaughter house, licence fee for cycle and rickshaw etc. However, the auction for grant of theka to collect Tehbazari was not held because nobody came forward for taking such theka and the auction officer felt that there is some deliberate attempt for manipulating the auction of Tehbazari by the contractors of the locality and due to this reason nobody was coming forward for offering any bid: Hence the auction

officer referred the matter to the Nagar Palika Parishad, Chandpur. In the meantime, some contractors came forward to submit their written offer by filing their applications for grant of theka of Tehbazari for the year 2002-2003 and total of four contractors made offers by filing their applications before the Board in the meeting. The names of such contractors are given in paragraph 6 of the counter-affidavit. Hence, the theka in question was given to the petitioner for Rs. 12 lacs which was the highest offer.

7. A counter-affidavit has also been filed on behalf of one Khursheed Anwar who has filed an impleadment application which we have allowed. In paragraph 2 of the said counter-affidavit, it is stated that Khursheed Anwar was a necessary party in the writ petition but he has not been impleaded. He also wanted to participate in the auction for contract of Tehbazari but no auction took place on the spot with the collusion of the respondents and the so-called auction was manipulated. Khursheed Anwar gave an application to the respondent No. 1 who directed the A.D.M., Bijnor to submit his report and on that the impugned order was passed. However, the respondent No. 4 did not allow Khursheed Anwar to deposit the requisite amount. It is alleged in paragraph 10 of the counter-affidavit that the respondent No. 4 the Executive Officer, Nagar Palika Parishad has colluded with the petitioner and hence he did not permit the applicant to deposit Rs. 14,50,000 in pursuance of the impugned order.

8. In our opinion, this writ petition deserves to be allowed on the ground that no auction at all was held in respect of the theka for grant of Tehbazari. In our opinion, all these thekas of public property must be ordinarily granted by advertising in well known newspapers having wide circulation and thereafter holding public auction/public tender so as to comply with Article 14 of the Constitution. This view has been taken in *A. S. Advertising Company v. Nagar Nigam, Meerut*, 2001 (1) AWC 28 : 2001 (1) UPLBEC 125, as well as in *Karan Singh v. State of U. P.*, 2001 (1) AWC 224 : 2001 (1) UPLBEC 128. In these decisions, we have referred to some earlier decisions of the Supreme Court and of this Court.

9. In *Ram and Shyam Company v. State of Haryana and Ors.*, AIR 1985 SC 1147 and *Shri Harminder Singh v. Union of India*. AIR 1986 SC 1527, the Supreme Court held that ordinarily a theka should be granted after advertising it in well known newspapers having wide circulation. In *Haji T. M. Hassan Rawther v. Kerala Financial Corporation*, AIR 1988 SC 157 and *Pashu Shav Chhedan Audyogic Utpadan Sahkari Samiti v. Nagar Palika*, 1990 (1) UPLBEC 687, *Swatantra Bihar Sahkari Avas Samiti v. State of U. P.*, 1992 (1) AWC 167 : 1992 (1) ALR 32. it was held that ordinarily a public auction is the fair way to grant public contracts.

10. In *Ram and Shyam's case* (supra), the Supreme Court held that ordinarily public contracts should not be given by public negotiations. The principles of granting such contracts was laid down by the Supreme Court in *Air India Ltd. v. Cochin International Airport Ltd.* JT 2000 (10) SC 481, and ordinarily these principles should be followed. It has also been held that advertisement in an unknown or little known newspaper would also not be valid vide *A. S. Advertising Co. v. Nagar Nigam*, 2001 (1) AWC 28. In the present case, no good reason has been given for not advertising the theka for grant of Tehbazari. The fact that four persons made offers for the contract in question as stated in paragraph 6 of the counter-affidavit of the Nagar Palika Parishad shows that the version of the respondents that nobody was willing to come forward for taking the theka is not correct. Had the theka been advertised properly in well known newspapers having wide circulation, it may have been that many more persons may have applied and they may have bid for a higher amount.

11. In our opinion, there must be transparency in these matters for grant of contracts otherwise Article 14 of the Constitution will be violated. It is only in rare and exceptional cases that a public contract should be granted without advertising it in well known newspapers and holding public auction/public tender.

12. Since in the present case, there was no proper advertisement or proper auction for grant of the theka to the petitioner we hold that such grant was in fact illegal and it is quashed. The petition is allowed. The impugned order dated 14.5.2002 is also set aside. The respondents are directed to re-advertise the theka

for Tehbazari in well known newspapers having wide circulation and thereafter hold public auction/public tender. The petitioner is restrained from operating the theka in question. Till a fresh auction is held in accordance with the aforementioned directions, the District Magistrate, Bijnor shall through his subordinate officers operate the theka as an interim measure till the regular grant of contract to somebody after proper advertisement and public auction/public tender. We further direct that the auction be held after advertising it at the earliest.

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