

**Arun Kumar Vs. Chief Engineer, P.W.D., Bhopal and ors.**

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**Court :** Madhya Pradesh

**Decided On :** May-05-1989

**Reported in :** AIR1989MP288

**Judge :** A.G. Qureshi and ;S.K. Dubey, JJ.

**Acts :** [Tolls Act, 1851](#) - Sections 2; [Constitution of India](#) - Articles 12, 14 and 226

**Appeal No. :** M.P. No. 450 of 1989

**Appellant :** Arun Kumar

**Respondent :** Chief Engineer, P.W.D., Bhopal and ors.

**Advocate for Def. :** Surjit Singh, Govt. Adv.

**Advocate for Pet/Ap. :** R.G. Waghmare, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**A.G. Qureshi, J.**

1. This petition has been filed under Article 226 of the Constitution against the respondents seeking the writ of certiorari, mandamus or prohibition directing the respondents to accept the tender of the petitioner in pursuance of the auction conducted by the respondent 3 on 22-3-89-and restraining the respondents from

reauctioning the right to collect the toll tax for Khajuria Nala bridge.

2. The facts leading to this petition, in short, are that in pursuance to an advertisement published in Nayi Duniya, Indore the respondent No. 3, invited a tender to collect the toll of the bridge constructed over Khajuria Nala at K.M. 64/10 at Ratlam, Gujri Road The toll is to be collected under the [Tolls Act, 1851](#) (hereinafter referred to as the Act). According to the petitioner, the toll is to be collected for recovering the cost, of construction of the bridge. The cost of the construction was estimated at Rs. 38,73,107-The toll tax was to be collected from 1-4-1989 to 1-4-1990 and the auction was to take place on 22-2-1989 at the office of the respondent 3, at 3 p.m. The terms and conditions of the auction are set out in Annexure P1 to the petition, according to which the contractor was to deposit earnest money to take part in the auction in compliance of which the petitioner deposited Rs. 80,0007- as earnest money with the respondent 3. The auction was accordingly conducted in the office of respondent 3, on 22-3-89. The petitioner's bid was Rs. 38,91,0007- which was over the: Government's minimum bid as mentioned in Annexure P1. The petitioner being the highest bidder he was required to deposit 10 per cent of the bid towards security for due j performance of the contract. He, therefore, got a fixed deposit receipt prepared on 27-2- i 89 and submitted in the office of respondent 3, on 1-3-1989. However, the respondent 3, refused to accept the fixed deposit receipt. The petitioner also wanted an agreement to be executed, but the respondent 3, turned down that request of the petitioner also.

3. The petitioner thereafter submitted a letter to the respondent 2, on 1-3-1989 that he is prepared to abide by the additional condition of his contract coming to an end immediately, if a decision pertaining to Shivna bridge is given by the Supreme Court and the circumstances necessitate termination of the contract. The petitioner also submitted a representation to the higher authorities. The grievance of the petitioner is that the respondent 3, without complying with the Rules and Procedures rejected the tender of the petitioner although he was the highest bidder. This was done by respondent 3, so as to re-auction the right to collect the toll tax to favour his favourites. He exceeded his powers by not recommending the tender to the competent authority and suo motu rejecting the highest bid The

respondent No. 3, has now re-advertised the right to collect the toll on the said bridge by publishing an auction notice on 9-3-1989 in Nav-Bharat, Indore, with a fresh condition No. 12, that if the Court stops collection of the toll tax the agreement will be cancelled proportionately. The petitioner had already submitted to the authorities that he is prepared to abide by condition No. 12 Therefore, only for inserting condition No. 12 a re-auction could not be ordered The tender has not been rejected on the ground of loss of revenue or the bid being low. Therefore, the action of the authorities is arbitrary.

4. During the pendency of this writ petition the respondent 2, on 25-3-1989 passed an order rejecting the highest bid of the petitioner. Therefore, by an amendment the petitioner has also challenged this order being arbitrary against the procedure prescribed for holding public auction without application of mind, irrelevant and afterthought. According to the petitioner the new condition inserted was already covered by condition No, 10, of the tender notice Annexure-P1. The insertion of the condition cannot be held to be in public interest or in the interest of revenue. Therefore, the petitioner prays that the order of cancellation of the tender of the petitioner be quashed and the bid of the petitioner being highest should be accepted.

5. The petition has been resisted by the respondents on the ground that according to the M.P. Works Department Manual, 1983 (hereinafter referred to as the manual) , para 9.644(6), Volume I it has been laid down as under:

'The auction of bridge shall be reported as soon as possible by the Presiding Officer to the Executive Engineer with a list of offer received from the bidders. The Executive Engineer shall have the power to sanction a lease when the consideration does not exceed Rs. 15,000/- while a lease exceeding that amount shall be sanctioned by the Superintending Engineer. After sanction is accorded by the competent authority, a lease in form in Appendix 9.14 shall be granted over the signature of the Departmental Officer concerned'

In view of the aforesaid Rule of the Department it is obvious that the petitioner has based his petition on misconception in respect of procedure relating to auction In the Scheme of the Manual and the notice of auction, no finality can be attached to

any bid including the highest bid and it is for the competent authority to take a final decision in the matter. Therefore, the respondent 3, had only forwarded his recommendation to the Superintending Engineer.

6. In the return filed on behalf of respondents 2 and 3 it has been stated that although the figure Rs. 38,73,1007- was mentioned as upset price according to Public Works Department Manual, but it was not the cost of construction of the bridge. It is true that the petitioner was the highest bidder at the auction, but the respondent 3, had no authority to announce and declare the petitioner as the highest bidder after the close of the bid. The Superintending Engineer being the competent authority to accept the bid, he has not accepted the highest bid. Therefore, the respondent 3 bona fide declined to accept the fixed deposit receipt. It was clearly indicated by the respondent 3, to the petitioner that the auction was likely to be cancelled because of omission to include an important condition in the auction notice as is evident from para 7 of the petition itself. It has been admitted that the petitioner, vide letter dt. 1-3-1989 to respondent 2, expressed his willingness to abide by the condition which remained to be inserted in the auction notice. After receipt of this letter the respondent 2, called a detailed report about the auction from the respondent 3. The report is Annexure R1. The earnest money deposited by the petitioner was released by the respondents. In view of the fact that an important condition was not inserted in the auction notice, the respondent 3, has issued a fresh auction notice on 9-3-1989, adding a fresh condition No. 12, in the Nav Bharat, Indore, but the respondent No. 2, the Superintending Engineer did not find this in order. Therefore, he directed the respondent 3 to cancel the auction notice. Accordingly the auction notice was cancelled

7. It has also been averred by the respondents 2 and 3, that in the judgment of this Court in Mandsaur Transport Association v. State of M. P. (M. P. 618 of 86 decided on 15-12-1987 (reported in AIR 1988 Madh Pra 159)) it was held that toll tax can be recovered by the State Government even after recovery of cost of construction of a particular bridge. Against this decision an appeal has been preferred by the Mandsaur Transport Association in the Supreme Court which is still pending. If the Supreme Court decides that the Shivna Bridge is exempted from toll tax on the ground that the Shivna bridge falls within the municipal limits,

then it will have an effect on the Khajuria bridge which is on the same route and the income of the toll tax shall increase. However, if the power of the State to recover toll tax is held to be without jurisdiction by the Supreme Court, then also the State will have no-right to recover toll tax of Shivna Bridge in Mandsaur in view of the fact that the cost of construction of that bridge has been recovered by toll tax. Therefore, the change of condition or insertion of a new condition cannot be said to be illegal, arbitrary or mala fide. In case of re-auction the petitioner will also have a chance to bid at the auction and it is not going to cause any loss to the State Exchequer.

8. It has also been pleaded that the points raised in the case are purely contractual and no statutory rights of the petitioner are involved in the same. No petition lies in such matters for enforcement of contractual rights. If the petitioner feels that any loss or damage has been caused to him an effective alternative remedy by way of a proper suit is available to him.

9. The other bidders have also appeared as intervenors and have opposed the petition.

10. When the petition came up for hearing it was stated by the respondents that the right to collect toll tax on the bridge has been re-auctioned and as a result of the highest bid the State is going to gain Rs. 11,70,000/-.

11. The learned counsel for the petitioner Shri R. G. Waghmare relying on various authorities of this Court and the Supreme Court vehemently argued that the bid of the petitioner being highest should have been accepted and the order of cancellation of the bid and of re-auction is erroneous. The principles enunciated in the authorities cited by Shri Waghmare are well settled. When a State deals with private individuals in matters of contract, license, lease, etc., the State is expected to act fairly and not in an arbitrary manner. The action of the State should not be discriminatory leading to an inference that the State is trying to favour someone and disfavour the other.

12. In the case of Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147 the claim of the highest bidder was ignored in the matter of grant of lease,

but the lease was granted to another person who had offered some more money on the order of the Chief Minister. In these circumstances it was held that a unilateral offer, secretly made, not correlated to any reserved price made by the grant'ee after making false statement in the letter was wrongly accepted without giving any opportunity to, the highest bidder either to raise the bid or to point out the falsity of the allegations. As such the highest bidder suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fairplay in action. In that case it was held that in the matter of distribution of State largess it would amount to arbitrary action which is not permissible.

13. In another case in *M/s. Kasturilal Lakshmi Reddy v. State of Jammu and Kashmir*, AIR 1980 SC 1992 it has been held that the discretion of the Government is not unlimited in the matter of grant of largess. Government action must satisfy test of reasonableness and public interest. However the action of the State Government in granting tapping contract by way of negotiation was held as not arbitrary or irrational. In the same judgment it has also been held that the Government action should satisfy the test of reasonableness in public interest. If the action of the Government is found to be unreasonable or lacking in the element of public interest it would be liable to be struck down as invalid. The Government cannot be permitted to act in a manner which would benefit a private party at the cost of the State. In the *State of U. P. v. Vijay Bahadur Singh*, AIR 1982 SC 1234 the Supreme Court has held that the Government has power to reject the highest bid and such a power is not restricted to the bid being inadequate. In that case even after the provisional acceptance of the bids, the Government revised its policy and decided to get the work done through the Forest Corporation. It was held that such an action of the Government is not illegal.

15. In the case of *State of Orissa v. Harinarayan Jaiswal*, AIR 1972 SC 1816 it has been held that rejection by the Government of the 'highest bid in auction sale of country liquor shops is not violative of Arts. 14 and 19(1)(g) of the Constitution and such a decision of the' Government is not subject to judicial review. In that case it was held that the Government can even sell the shops by private negotiations.

16. Therefore, in the light of the aforesaid decisions of the Supreme Court there can be no quarrel with the proposition that the State Government has its right to accept or reject the bid. However, the discretion vested in the State Government has to be exercised with reasonableness and in the interest of the public. The State largess cannot be granted on the 'arbitrary actions on the part of the persons accepting the bid. There has to be an element of reasonableness and the public interest in such decisions should be supreme. It is not alleged in the instant case that after the rejection of the highest bid of the petitioner, the contract has been given to any other person who had offered a lower bid or that after cancelling the bid the contract has been given in a clandestine way to some one to favour him after setting aside a higher bid unilaterally without informing the person who bid highest,

17. In the instant case the reason which led to the rejection of the earlier bid by respondent 2, was an omission to mention a very, important condition in clear terms. Although in the auction notice condition No. 10, has been incorporated, but it does not speak in clear terms about the contract of Shivna Bridge whereas in view of the pendency of an appeal in the Supreme Court, challenging the levy of toll tax by the State Government it was necessary for the authorities to insert a condition pertaining to that fact because the Khajuria Nala Bridge falling on the same route the decision by the Supreme Court can materially affect the income of Khajuria Nala Bridge. Therefore, in our opinion, the action of respondent 2, in cancelling the auction was neither arbitrary nor unreasonable. It cannot be alleged and it has not been alleged that the respondent No. 2, Superintending Engineer rejected the bid to favour some other contractor. On the contrary from the order of re-auction it is clear that every person desiring to bid at the auction was free to do so, including the petitioner. Although the subsequent events are not material for the decision of this petition, but this fact cannot be lost sight of that as result of the re-auction the State stands to gain about Rs. 11,00,000/- more than it was supposed to get from the earlier auction. The petitioner has also participated in the second auction. Therefore, he was not deprived of any opportunity to bid at the second auction. As such the action of the respondents can neither be held to be unfair nor arbitrary. In our opinion, the action of the respondents was taken in good faith and in public interest to avoid any future complications in the matter of

contract.

18. In the result we find no force in this petition. It is accordingly dismissed with no order as to costs.

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