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Anti Corruption and Social Welfare Organisation Vs. State of Punjab and anr.

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Court : Punjab and Haryana

Decided On : Oct-12-1995

Reported in : (1996)112PLR553

Judge : Ashok Bhan and; P.K. Jain, JJ.

Acts : [Constitution of India](#) - Article 226; [Punjab Municipal Act, 1911](#) - Sections 83

Appeal No. : Civil Writ Petition No. 4803 of 1995

Appellant : Anti Corruption and Social Welfare Organisation

Respondent : State of Punjab and anr.

Advocate for Def. : K.S. Sidhu, Addl. A.G. for the Respondent No. 1,; Vinay Kittal, Sr. Adv. and;

Advocate for Pet/Ap. : Harbhajan Singh, Adv.

Disposition : Petition dismissed

Judgement :

P.K. Jain, J.

1. This petition has been filed under Articles 226/227 of the [Constitution of India](#) seeking issuance of a writ in the nature of certiorari quashing the auction dated March 13, 1995 conducted by Nagar Council, Sunam - respondent No. 4 for

leasing out the collection of octroi rights on contract with effect from April 1, 1995 to March 31, 1995 to respondent No. 5.

2. The factual background giving rise to this petition is that in view of the powers conferred upon it by Section 83 of the Punjab Municipal Act, 1991, respondent No. 4 Nagar Council, as per the recent policy of the Punjab Government and with a laudable object to increase efficiency in income of the Nagar Council by collection of octroi, decided to lease out the collection of octroi within the municipal limit of the said Nagar Council for a period of one year i.e. 1.4.1995 to 31.3.1996 by public auction with prior approval of the authorities concerned. Reserved price as per guidelines laid down by the State Government was fixed at Rs. 88,00,000/-. It was one of the conditions to participate in the auction that every bidder shall deposit a sum of Rs. 1,00,000/- to make him eligible to bid at the auction. Accordingly, auction was held on March 13, 1995 and the highest bid for Rs. 88,14,000/- given by respondent No. 5 - Gurdial Singh and Co. was accepted. Admittedly, respondent No. 5 set up his booths/offices, recruited employees as well as absorbed certain employees of the Nagar Nigam as per its policy and on the terms and conditions as laid down and commenced the function of collecting octroi within the limit of the said Nagar Nigam.

3. Now Anti Corruption and Social Welfare Organisation, Punjab - petitioner No. 1 and Grewal and Co., Sunam, a Partnership firm through its partner Tarsem Chand - petitioner No.2, have filed the present petition seeking a writ in the nature of certiorari for quashing the said auction and the subsequent proceedings in pursuance thereof. It has been stated in the petition that to achieve the object of leasing out the octroi to private person/concern to increase efficiency and the income of the Nagar Council, it was necessary that the Nagar Council-respondent No. 4 ought to have given due publicity through public notices to the general public so that maximum number of bidders could participate in the auction and give bids, but the pamphlets which were got printed by respondent No.4 were never displayed/affixed on appropriate places nor any due publicity was given for holding auction on the date, time and place as proposed; that petitioner No. 2 had withdrawn a sum of Rs. 1,00,000/- from its Bank-account but the deposit was not accepted and it was not permitted to participate in the auction; that only 2 or 3

persons were allowed to enter the room and the auction was made in a closed room which was a fake one and after 10 minutes it was declared that the highest bid was given by respondent No.5 for a sum of Rs. 88,14,000/-. It is further stated that petitioner No. 1 had received a letter (Annexure P.2) from the Punjab Municipal Workers Union (Regd.), Sunam, alleging therein that there had been embezzlement in the auction and that the auction was held in a closed door room and only a few selected persons were allowed to enter and to give bid. It is also averred that petitioner No.2 was and is ready to give a bid upto the amount of Rs. 97,00,000/- but the respondents with a view to help the contractors and themselves did not allow petitioner No.2 to participate in the auction and thus they have caused a great loss to the State exchequer as well as to the Nagar Council. It is thus alleged that the auction by respondents Nos. 2 to 4 is totally arbitrary and against the principles of natural justice and fair play. Petitioner No.2 had filed a civil suit in the Court of Sub Judge I Class which was allowed to be dismissed as withdrawn.

4. Notice of motion was given to the respondents. Separate reply has been filed on behalf of respondents No. 3 and 4 on the one hand and respondent No. 5 on the other. In its reply, respondents Nos. 3 and 4 have denied the allegations levelled by the petitioners. It is stated that earlier octroi used to be collected by the employees of the Nagar Nigam and those officials were opposing the leasing out the right to collect the octroi to a private person on account of their personal interest; that the employees threatened to go on strike and the employee's union also extended a threat, for which police help was sought to maintain security, law and order at the time of auction. It is further stated that the present petition has been filed by the petitioner No.1 only on the behest of such employees' union and no public interest is involved and as such petitioner No. 1 has no locus-standi to file this petition. As regards petitioner No.2, it is alleged that it never came to the Nagar Nigam, nor deposited the amount of Rs. 1,00,000/- to make it eligible to participate in the auction; that petitioner No.2 had filed a civil suit on the same cause of action which was dismissed as withdrawn without any permission to file fresh proceedings on the same cause of action, and as such petitioner No.2 has no locus standi to file the present petition and the same is also barred for want of necessary permission of the civil Court to file fresh proceedings on the same

cause of action. On merits it has been pleaded that due publicity was given for holding the auction to lease out the right to collect the octroi for a period of one year; that a public notice of auction was given in the well circulated newspapers in area like 'Punjabi Tribune' (Annexure R.1) dated 27.2.1995, 'Jan Bani' (Annexure R.2), dated 27.2.1995; that the pamphlets (Annexure R.3) were published by the Executive Officer of the Nagar Nigam and were displayed at the appropriate places: that a letter dated 24.2.1995 (Annexure R.4) along with pamphlets was sent to the Tehsildar, Sunam, with a request to affix the pamphlets on the notice board in his office. It is further stated that letter Annexure R.6 was sent with pamphlets to all the near-about municipal committees like Malerkotla, Nabha, Lehragaga, Bhawanigarh, Barnala and Dhanaula with a request to affix the pamphlets on appropriate places to bring to the notice of the general public that the auction of rights to collect octroi shall be held at Sunam on 13.3.1995. It is also added that the proper announcement was also made by loud speaker in the city in respect of this auction and requests were sent to all the councillors to be present at the time of auction vide letter dated 24.2.1995 (Annexure R.5). It is explained that the Deputy Director, Local Govt. a nominee of the Deputy Commissioner was present besides the President and other members of the Nagar Council at the time of auction in addition to the public persons. The allegations that the auction was held in a close room or that petitioner No.2 was refused entry to participate in the bid have been denied. It is also explained that the octroi collection for the year 1993-1994 was Rs. 60,00,000/- and minimum reserved bid was fixed at Rs. 88,00,000/- for the year 1995-96 which was 30% more than the previous year, although according to the guidelines reserved price could be fixed 25% more than the highest income made by the council during the last three years.

5. We have heard the learned counsel for the parties and have gone through the record. It may be clarified at the outset that during the hearing a proposal was mooted out by petitioner No.2 to offer a bid of Rs. 97,00,000/- for collecting octroi during the year 1995-96. Since respondent No. 5 had already deposited the necessary amount after the acceptance of highest bid, had set up his booths/offices at various places, had engaged necessary staff including the state of the Nagar Nigam and had collected octroi from 1.4.1995 till date, that proposal could not be matured and was dropped. Arguments on merits have been heard.

6. Respondents Nos. 3 to 5 have raised a technical objection that the petitioners have no locus standi to file the present petition. As regards petitioner No. 1, the petition has been filed as a public interest litigation. This contention appears to be mis-conceived. Public interest litigation which is a recent pragmatic step in the Indian Judicial history, is brought before the Court not for the purpose of enforcing the right of one individual against other as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. Public interest litigation cannot be invoked by a person or body of persons, to satisfy his or its personal grudge and enmity. If such petitions are entertained, it would amount to abuse of process of the Court. Personal interest cannot be enforced through the process of this Court in the garb of public interest litigation. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

7. In the present case petitioner No. 1 has not revealed the necessary facts which may show that the present petition has been filed to vindicate the grievance of the public in general or to enforce the fundamental rights of the poor section of the community who are unable to approach the Court. On the other hand Annexure R.9 goes to show that municipal workers union was opposing the leasing out of the right to collect octroi by auction to a private person and extended a threat of complete strike whereby the entire work of supply of the necessities of dairy life would be paralysed. The Executive Officer of the Nagar Council was asked to stop the auction. This letter was written on 10.3.1995. Thereafter the same Union wrote a letter Annexure P.2 after the auction was held to petitioner No. 1 alleging therein that there was an embezzlement; that the reserved price was kept less than the last year's budgets; that few selected persons were called for participation in the auction bid; that certain persons who had come to participate in the auction were not allowed to deposit the amount and to participate therein and that due publicity was not given by affixing or displaying pamphlets and after the pamphlets were printed, they were kept back. It is on the basis of this letter that the petitioner No.1

joined hands with petitioner No. 2 and filed the present petition alleging the allegations contained in letter Annexure P.2 to be grounds in their petition for quashing the auction in question. This goes to show that petitioner No.1 or both the petitioners have not filed this petition really for the benefit of the general public but only to help the municipal workers' union or to enable petitioner No. 2 in its effort to stultify the decision of respondent No.4 to give the right to collect octroi by auction to a private person. Therefore, it cannot be said that petitioner No.1 or both the petitioners have any locus standi to file the present petition in the garb of public interest litigation. It is the case of petitioner No. 2 itself that it had filed a civil suit on the same cause of action challenging the legality and validity of this auction. It is also admitted by petitioner No.2 in the petition itself that the said suit was dismissed as withdrawn by the civil Court. There is no averment in the petition nor any document has been placed on the record to show that the suit was withdrawn with permission of the Court to file fresh proceedings on the same cause of action. This is another technical bar in the way of petitioner No.2 to file the present petition.

8. On merits the petitioners have raised the following three points to challenge the legality or validity of the auction in question:-

- i) That petitioner No. 2 was not allowed to deposit a sum of Rs. 1,00,000/-and to participate in the auction;
- ii) That the auction was held without giving due publicity as required by law, and
- iii) That the auction was held in a closed door room where 2/3 persons were allowed and after 10 minutes it was declared that the highest bid is for Rs. 88,14,000/- i.e. just Rs. 14,000/- above the reserved price, although petitioner No. 2 was ready to give bid upto the amount of Rs. 97,000/-.

'In the reply filed by the respondents all these three allegations have been denied in toto.

9. According to petitioner No.2, it had withdrawn a sum of Rs. 1,00,000/-from the P.N.B. on 13.3.1995 through cheque by its partner Shri Inderjit Singh which

amount was to be registered to make it eligible to participate in the decision. A certificate of the bank (Annexure P.1) has been filed in support of this plea. From a bare perusal of Annexure P.1, it is evident that this certificate does not relate to any account opened by the said partnership firm Grewal and Co. On the other hand this certificate goes to show that Savings Bank account No. 6490 has been opened by Shri Inderjit Singh and Smt. Baljinder Kaur in their joint names and a sum of Rs. 1,00,000/- was withdrawn on 13.3.1995 from the said account. There is no affidavit filed by either petitioner No.2 or Shri Inderjit Singh, alleged to be one of the partners of petitioner No.2, to state that this amount was withdrawn solely for the purpose to deposit the same with the Nagar Nigam to enable petitioner No. 2 to participate in the auction regarding the collection of octroi on that date. No other document has been placed on the record to show that the alleged partnership firm had any Bank-account and there was sufficient fund therein to enable it to participate in the auction and to bid for the same. Therefore, the first ground put-forward by the petitioners is not sustainable on facts.

10. Coming to the second ground, it is evident from the reply filed by the respondents that after the decision by respondent-Nagar Nigam to lease out the collection of octroi Under Section 83 of the Punjab Municipal Act a public notice of auction was given in the newspapers, 'Punjabi Tribune' (Annexure R.1) dated 27.2.1995 and 'Jag Bani' (Annexure R.4) dated 27.2.1995 which have undoubtedly wide circulation in the State of Punjab and particularly on the area of the said Nagar Council. Pamphlets (Annexure R.3) were got printed by the Executive Officer of the Nagar Nigam and were displayed at the prominent places in the city. The said pamphlets were also sent to the Tehsildar Sunam vide letter dated 24.2.1995 with a request to affix and display the same on the notice-board in his office, which is undoubtedly a public office open to all. Still further the respondent Nagar Nigam sent pamphlets along with letter (Annexure R.6) to all the nearabout Municipal Committees, like Malerkotla, Nabha, Lehragaga, Bhawanigarh, Barnala and Dhanaula with the request to affix and display the pamphlets on prominent places so as to bring it to the notice of the general public that the rights to collect the octroi for the period 1.4.1995 to March 31, 1996 would be auctioned by Nagar Nagar, Sunam, on 13.3.1994. Time and places was also mentioned in the pamphlets. Still further an announcement was also made by the use of

loudspeakers in the city of Sunam in respect of the date, time and place of the sold auction. It is also important to note that all the councillors of the Nagar, Nigam were requested to be present on the date, time and place vide letter Annexure R.5. The Deputy Commissioner of the District was also intimated and his nominee, Deputy Director, Local Government, was also present at the time of auction. Still further, police force was deployed to maintain law and order and to see that the auction proceedings were not disturbed or interrupted by any unscrupulous element. Thus, it is evident that wide publicity was given by the Nagar Nigam not only in the city of Sunam but in the surrounding cities covered by different Municipal Committees regarding its date, time and place. It may also be noted that the auction proceedings go to show that 7 persons participated in the said auction, each of them having deposited Rs. 1,00,000/- in advance so as to make him eligible to participate in the auction. It was not an auction of an ordinary article in which every member of the public could have participated. According to the conditions to be fulfilled before and after the auction, it was quite natural that only those persons could have participated in the auction who were financially sound and who had the capacity and necessary means to perform the contract of collection of octroi. Accordingly, the second plea raised by the petitioners has no merit in it.

11. Turning to the last plea, it is important to note that according to the guidelines laid down by the State of Punjab, the reserved price for auction of the State largesses ought to be 25% more than the highest income made during the last three years. The respondent-Nagar Nigam has placed a copy of the letter (Annexure R.11) dated 21.2.1995 detailing therein as to how the reserved price had been fixed. The details given in this letter go to show that the income during the year 1993-94 from the collection of octroi was Rs. 60,00,000/- whereas during the year 1994-95 it was about Rs. 68,00,000/- After adding an increase of 30% instead of 25%, i.e. Rs. 20,00,000/- the reserved price was fixed at Rs. 88,00,000/- . Thus, no mala fide can be imputed on the part of the Nagar Nigam in fixing the reserved price for leasing out the rights to collect octroi during the financial year 1995-96.

12. The auction proceedings were held in the presence of the President and other members of the Nagar Nigam. An after-thought plea raised by petitioner No.2 has no legs to stand upon. Moreover, it is a matter of common knowledge that every private businessman conducts his business in such-tike manner that he may earn something out of the transaction entered into by him. Besides, the aforesaid bid, respondent No,5 has spent sufficient amount on setting up offices/booths at different point, engaged certain staff, took certain staff on deputation from the Nagar Nigam as per terms of the auction, paid certain lakhs to the Nagar Nigam by way of advance besides bank-guarantee and started collecting octroi with effect from 1.4.1995. If at the time of auction the participants or respondent No. 5 had been of the view that they would not earn any profit out of the transaction, they could not have given the said bid only with a view to suffer loss.

13. The matter may be looked from another angle. Although no such plea has been taken by the petitioners in their petition, yet it may be stated that an agreement between. 'A' and 'B' to purchase certain property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. However, if there is an agreement among all the competing bidders at the auction and they formed a ring to peg down price and to purchase the government largess at knock out price, the purpose or design of the agreement, is to defraud the Government and then it can be said that there is an implied injury to the Government. The public policy is not static. It is variable with the changing times and the needs of the society. The march of law oust match with the fact situation. A contract which does not cause any loss to the Government or the public authority, nor there is anything to infer that the bidders had formed a ring to peg down the price at an auction sale, the auction cannot be invalidated or cannot be said to be injurious to public interest or public welfare or fraudulent to defeat the rights of the Government or the local authority. The facts in this case as revealed from Annexure R-II and R-8 demonstrate that the reserve price was fixed by the Nagar Nigam much more than the figure advised by the Punjab Government in its guidelines, and the highest bid is still more than the reserved price. Thereafter, we have no hesitation in holding that after wide publicity auction was held in the presence of various office bearers of the Nagar Nigam, the nominee of the Deputy Commissioner and the members

of the public. The highest bid was much more than the expected one laid down in the policy guidelines of the State Government. The question of any favour having been shown by respondent No.4 either to respondent No.5 or to anybody else cannot be inferred by any stretch of imagination in the present case.

14. For the reasons mentioned above, we do not find any merit in this petition and the same is hereby dismissed. In the facts and circumstances of the case, there will no order as to costs.

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