

Nand Kishore Saraf

Vs

State of Rajasthan and Another

Civil Appeal No. 79 of 1965

(CJI P. B. Gajendragadkar, Raghuvar Dayal, V. Ramaswami – I JJ)

24.02.1965

JUDGMENT

RAGHUBAR DAYAL, J.-

This appeal, on certificate granted by the Rajasthan High Court, is against the dismissal of the appellant's writ petition under Art. 226 of the Constitution praying for the issue of a writ of certiorari to the State of Rajasthan, respondent no. 1, for the cancelling setting aside of its order dated April 1, 1964 granting the contract for collecting royalty on building stones excavated from certain area to respondent no. 2, Dharti Dan Shramik Theka Sahkari Samiti Ltd., a cooperative society. The appeal arises in these circumstances.

The appellant offered the highest bid at the auction for the grant of royalty collection contract on January 21, 1964. Respondent no. 2 was also one of the bidders, but stopped after offering a bid of Rs. 33,000. The final bid of the appellant was for Rs. 42,200. The State Government made the order in favour of respondent no. 2 on an application made by it on March 5, 1964, stating therein that the appellant had not deposited 25 per cent of the bid amount as security immediately after the completion of the auction in accordance with r. 36(7) of the Rajasthan Minor Mineral Concession Rules, 1959, hereinafter called the rules, and as per the terms and conditions of the Auction Notification and that it was prepared to take the royalty collection contract on the highest bid of Rs. 42,200. It was further stated in the application that respondent no. 2 was a cooperative society of the labourers who themselves worked on the mines of the area and therefore in view of Government's policy it should receive preference to an individual bidder. It was further stated that the benefit accruing out of the contract of royalty collection would be shared by the labourers and workers themselves which would go a long way to improve their socio-economic conditions and thus ultimately would ameliorate the conditions of the workers who were working hard in quarries since long.

The contention for the appellant is that the Government had merely to confirm the highest bid at the auction by way of formality and was not competent to section the contract in favour of someone who had not offered the highest bid at the auction.

Rule 34 of the rules provides that royalty collection contracts may be granted by the Government by auction or tender for a maximum period of two years after which no extension was to be granted. The procedure for auction is provided by r. 36. Sub-rule (5) thereof provides that no bids shall be regarded as accepted unless confirmed by Government or the competent authority and sub-rule (7) provides that on completion of the auction the result will be announced and the provisionally selected bidder shall immediately deposit 25 per cent of the amount of bid for one year and another

25 per cent as security for due observance of the terms and conditions of the lease or contract. It is admitted for the appellant that on completion of the auction he did not deposit 25 per cent of the bid as security in compliance with the provisions of sub-r. (7). He therefore lost whatever claim he could have had for the final acceptance of his bid by Government and therefore cannot question the grant of the contract to any other person by the Government.

The appellant urges that he held such royalty collection contract for the year 1963-64 and had deposited Rs. 9,250 as security for the due performance of that contract. On February 12, 1964, over three weeks after the auction, he submitted an application to the Mining Engineer, Jaipur, stating that he had been continuously taking contract for the last three years and that he was depositing Rs. 1,300 and that the balance of the security amount required, i.e. Rs. 9,250 be adjusted against Rs. 9,250 with the Government in connection with the earlier contract. This letter was not replied to. The request made in this letter could not possibly be accepted. The earlier contract was to continue up to March 31, and the security money had to remain with the Government upto that date. It is only after March 31, that anything could be said with some definiteness as to how much of the security money in deposit would be available to the contractor. Paragraph 2 of the Form of Agreement of Collection of Royalty on Minor Minerals, prescribed under the rules, and set out in the Schedule to the rules, states that the agreement shall remain in force for a period commencing from first April of a year and ending on March 31 of the next year on which the period of the contract would expire and that the security would be refunded on the termination of the contract. Para 6 of the Form provides that for the due fulfilment of the terms and conditions of the contract the Contractor shall deposit 25 per cent of the contract money in advance as security which will be refunded on the termination of the contract. The appellant alleged that there was a practice of adjusting previous security amounts towards the security for the net contract. The practice is denied on behalf of respondent no. 1 and the practice against the provisions of the rules cannot be recognized as of any binding effect. It may be mentioned here that the representation which the appellant made to the State Government on April 6, 1964, made no reference to his depositing the security by depositing Rs. 1,300 and by making a request for the adjustment of the balance from the security amount already in deposit and indicates that he too did not consider the request for adjustment of the amount acceptable.

There is nothing in r. 36 of the rules which may lead to the conclusion that the Government has to accept the highest bid by formally confirming it or that it cannot grant the contract to any person other than one who had bid the highest. A bid is not regarded as accepted unless it is confirmed by Government. The Government has therefore discretion to confirm the bid or not to confirm it. Further, r. 59 provides for the relaxation of any provision of the rules in the interest of mineral development or better working of mines.

There is the letter dated February 14, 1962 from the Director of Mines and Geology, to All Mining Engineers on the subject of encouragement of cooperative mines and states that cooperative societies ought to be encouraged for mining work also as per directive of the Government of India. Respondent No. 2 addressed a letter to the Director of Mines and Geology and referred to Government policy for the encouragement of cooperative societies in connection with royalty collection contracts. The order of Government dated April 1, 1964, after referring to the appellant's offering the highest bid, stated that the Government was satisfied that the Society, respondent No. 2, was a suitable party for the grant of the said contract. The view taken by the Government in preferring respondent No. 2 to the appellant for the grant of the contract cannot be said to be arbitrary or without any justification. The cooperative society is of the labourers who work in the mines and it is obvious that any benefit arising out of the contract would go to the labourers and

thus improve their economic position. In view of the spirit underlying r. 59. Government could therefore relax any such rule which could in any way come in the way of its granting the contract to respondent no. 2.

We therefore hold that the Government was competent to give the contract to respondent no. 2 it being not bound to accept the highest bid at the auction, though usually it accepts such bids.

Another consideration which is decisively against the appellant is that the contract for the collection of royalty for the year 1964-65 is shortly to come to an end and it would not be desirable, even if the appellant's contentions were acceptable, to interfere with that contract.

Reference, in this connection, may be made to the decision of this Court in K. N. Guruswamy v. State of Mysore [[1955] I S.C.R. 305] where the appellant was refused a writ solely on the ground that it would have been ineffective, the period of the impugned contract coming to an end after about a fortnight of the order of this Court. That was a case where on merits the Court was of opinion that the writ should have been issued.

We therefore dismiss the appeal and order the parties to bear their own costs.

Appeal dismissed.

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