

Rajamalliah and Another

Vs

Anil Kishore and Others

Civil Appeals Nos. 3429-3432 of 1979

(O. Chinnappa Reddy, A. P. Sen JJ)

04.08.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. We are constrained to make some observations in the interests of judicial propriety, decorum and discipline and we do so with regret. A learned Single Judge of the High Court, sitting in the vacation, has entertained a last minute application and granted "ex parte stay", for the mere asking almost, in the teeth of a mandatory direction issued by this Court to do a certain thing in a certain time, thereby permitting, as it were, an abuse of the process of the court and contumacious circumvention of this Court's order. The Supreme Court while supreme as an apex appellate Court with plenary appellate powers under Article 136 of the Constitution, is not a court of superintendence and possesses no powers to suo motu call for the records and quash orders of courts in the lower runge of the judicial ladder. Had we such powers, we might have been sorely tempted to use them in the present case. The facts are these : On an application made by seventeen unsuccessful bidders, a learned Single Judge the High Court of Andhra Pradesh issued a writ under Article 226 of the Constitution quashing an excise auction held on September 21 and 22, 1979 and directing that a reauction should be held within fifteen days. Appeals preferred to a Division Bench under Clause 15 of the Letter Patent by the Government of Andhra Pradesh and the successful bidder at the auction were dismissed. Further appeals preferred to this Court under Article 136 of the Constitution by the government and the successful bidders were dismissed by us on April 25, 1980 (Set 1980 Supp SCC 81) with a direction that the reauction should be held within three weeks from that date. Some of the unsuccessful bidders who were the original petitioners before the High Court and who were represented before us by counsel gave an undertaking through their counsel that they would offer security in a sum of Rs. 35 lakhs within one week from April 21, 1980 and that they would start the bids at the reauction in such a way that the aggregate amount of the bids would not be less than Rs. 35 lakhs. Subsequently on being mentioned, a week's further time was granted for furnishing the security. On May 9, 1980, the learned counsel appearing for the Government of Andhra Pradesh reported to us that the petitioners before the High Court (unsuccessful bidders at the auction) had failed to furnish security as undertaken by them. Thereupon we directed the issue of notices to them to show cause why they should not be published for committing breach of the undertaking given to this Court. Time for holding the reauction was extended till May 29, 1980.

2. In answer to the notices issued to them, the respondents who had given the undertaking to us through their counsel, appeared before us personally and expressed an unconditional apology for committing breach of the undertaking. An affidavit has also been filed on their behalf explaining the circumstances under which they were unable to furnish security within the period stipulated by this

Court. They have, however, brought to our notice the circumstance that they have ultimately been able to comply with the undertaking given by them by furnishing security of property of the value of over rupees forty lakhs on May 26 and 27, 1980 i.e. before the date announced by the Excise Commissioner for the reauction. The Excise Commissioner, it appears, had published a notification that the reauction would be held on May 28, 1980. Shri S. N. Kacker learned counsel for the respondents submitted that the unconditional apology rendered by the respondents might be accepted and the notices might be discharged. In the circumstances of the case having regard to the facts discussed by the affidavit we accept the apology and discharge the notice issued to the respondents.

3. We mentioned that the Commissioner of Excise had issued a notification announcing that the reauction would be held on May 28, 1980. This notification was published on May 15, 1980. Two persons K. P. Pandurangam and G. D. Malik, claiming to be Excise contractors who intended to participate in the reauction, filed a writ petition in the High Court of Andhra Pradesh on May 26, 1980 for quashing the notification issued by the Excise Commissioner. They moved the Vacation Judge of the High court on May 28, 1980 i.e. on the very day fixed for the reauction for staying the reauction. The learned Judge stayed the reauction. The principal ground mentioned in the affidavit filed in support of the writ petition was that the notification was not in consonance with the observations made by this Court in the appeals filed by the government and the successful bidders. The two petitioners who suddenly developed sufficient interest in the reauction so as to file a writ petition and have the reauction stayed, had evinced no such interest earlier in the original auction. They were not among the seventeen persons who had questioned the original auction. Nor had they got themselves impleaded in the proceedings at any stage. In fact, in the affidavit filed by them in support of their writ petition they do not even mention that they had participated in the earlier auction. It should not be very difficult to see through their game. Yet, moving the High Court almost at the twelfth hour, without being able to allege that it was at their instance that the original auction was quashed, they did manage to obtain an order staying the reauction, virtually in defiance of the mandatory direction given by this Court. We are not a little surprised that the State Government did not move the High Court immediately to have the stay vacated but, instead, adopted the dubious course of seeking directions from this Court, when no proceeding connected with the writ petition filed by Pandurangam and Mallik was before this Court. We cannot help a feeling of strong suspicion that the State Government had their own role to play in the drama and that Pandurangam and Mallik had their blessing if not their active cooperation. Certainly, there is more than meets the eye. It pains us to say this but we must say it : It is indeed a great pity that the learned Vacation Judge of the High Court allowed himself to be persuaded to make an order which practically frustrated the Order of this Court. We express our serious displeasure at what has happened and we do hope that the High Court will dispose of the writ petition expeditiously.

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