

State of Uttar Pradesh

Vs

Shiv Charan Sharma and Others

Ashok Kumar and Another

Vs

Union of India and Others

Civil Appeals Nos. 1248

(D. A. Desai, A. P. Sen JJ)

06.04.1981

JUDGMENT

DESAI, J. –

1. Special leave to appeal is granted in both the matters.

2. We have heard learned Attorney-General for the State of U.P., Mr. R. K. Garg for the petitioner/appellant in appeal arising out of S.L.P. (Civil) No. 1747 of 1981 and Mr. O. P. Rana for Shiv Charan Sharma, respondent in appeal arising out of S.L.P. (Civil) No. 2936 of 1981. Both these appeals arise out of a grant of lease for excavating sand and minor mineral from the leased area by the State of U.P. The grant was in favour of Ashok Kumar and Asha Ram, appellants in appeal arising out of S.L.P. (Civil) No. 1746 of 1981.

3. At the instance of Shiv Charan Sharma, one who failed to procure the lease, a revision application was preferred to the Central Government but it was dismissed. Hence he moved the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 7109 of 1980. A Division Bench of the High Court by its judgment dated November 24, 1980 allowed the writ petition and quashed and set aside the others dated February 16, 1980 and July 25, 1980, the first by the State of U.P. and second in revision by Union of India and directed the State to grant lease after following the prescribed procedure in force at the relevant time which would be applicable to the facts of this case. In short, the dispute was whether the grant was to be made on an application of a party or by auction between contending offerers. It would have been necessary for us to examine the relevant rule and the notification issued under the relevant rule. However, before we undertook to examine the same, we directed on the earlier date by way of abundant caution to assure us the bona fide of the rival contenders that in any events, the State does not lose what it has already obtained, that Shiv Charan Sharma does deposit Rs 1,50,000 and Ashok Kumar and Asha Ram do deposit Rs 2,00,000 and the deposit will be treated as minimum offer by them for a licence for a period of one year. Apart from the fact whether there should be a grant on application or by auction, public interest demands that those who seek the privilege of extracting mineral under lease from the State, in this case Shiv Charan Sharma on one hand and Ashok Kumar and Asha Ram on the other, they be asked to bid against each other and we must record our happiness that all parties are agreed that, that

would be the just and legal procedure. In proceeding in this manner, we are not embarking upon any hitherto unknown to adventurous course. We are merely translating into action the sentiment expressed in the majority opinion of the Constitution Bench in Fertilizer Corporation Kamgar Union (Regd.), Sindri v. Union of India ((1981) 1 SCC 568). The pertinent observation may be extracted : (SCC p. 579, para 21)

We want to make it clear that we do not doubt the bona fides of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the higher or any other offer, but the public at least gets the satisfaction that the government has put all its cards on the table.

4. Public auction with open participation and a reserved price guarantees public interest being fully subserved. That is what High Court by the judgment under appeal directed.

5. Accordingly, we set aside the judgment of the High Court as well as the order of the U.P. State dated February 16, 1980 and the order of the Union of India dated July 25, 1980 and direct that the Collector, Meerut should hold an auction permitting Shiv Charan Sharma on the one hand and Ashok Kumar and Asha Ram on the other, to bid against each other for the grant of a lease for a period of three years reserving the minimum bid of Rs 1,50,000 for one year and the highest bid shall be accepted without further enquiry subject to other conditions that may have to be fulfilled under the relevant rules. The minimum bid at auction should commence from Rs 1,50,000 per year. If the Collector feels any difficulty for any relevant consideration including the conduct, he must seek further directions of this Court through learned Attorney-General of India. The auction should be held on April 16, 1981 in the office of the Collector at 11 a.m. No further notice will be given to the parties. This order is a notice to them to attend and participate in the auction.

6. The appeals are disposed of accordingly with no order as to costs.

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