

State of Uttar Pradesh and Others

Vs

Vijay Bahadur Singh and Others

Civil Appeals Nos. 1920-1925 of 1981

(O. Chinnappa Reddy, R. B. Misra JJ)

23.03.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. The Uttar Pradesh legislature enacted the Uttar Pradesh Forest Corporation Act, 1974 to provide for the establishment of a Corporation for the better preservation, supervision and development of forests and the better exploitation of forest produce within the State of Uttar Pradesh. The Chairman and all other members of the Corporation were to be appointed by the State Government. The State Government was to make subventions and to advance loans to the Corporation from time to time. The Corporation was required to perform the functions prescribed by the Act subject to any general or special directions that might be given by the State Government. One of the functions of the Corporation, expressly stipulated by the Act, was "to undertake removal and disposal of trees and exploitation of forest resources entrusted to it by the State Government". Another function was "to manage, maintain and develop such forests as are transferred or entrusted to it by the State Government". Obviously, the 'contract system', that is, the system of selling by public auction the right to fell trees and exploit forest produce in specified forest areas (described in their parlance as 'forest lots') was to go. It was to be substituted by the scheme of allotting the forest lots to the Uttar Pradesh Forest Corporation and requiring the Corporation to fell the trees and exploit forest produce. However, despite the enactment of the Uttar Pradesh Forest Corporation Act, the contract system appeared to persist. For the year 1980-81 auction of forest lots of East Bahraich Division was, as in previous years, advertised and it was to be held on September 22, 23, 24 and 25, 1980. But soon after publishing the advertisement, the Government took a decision that the forest lots should be allotted to the Uttar Pradesh Forest Corporation for felling of trees. This decision appears to have led forest contractors to move fast in the matter by getting some members of the legislature to intervene almost immediately. Notwithstanding that the legislature itself had laid down the policy to be pursued in the matter of exploitation of forest produce, which was to be through the offices of the Forest Corporation, some legislators, acting quite contrary to legislative policy, recommended to the Forest Minister of the Government of Uttar Pradesh that the forest lots of Bahraich Forest Division should not be allotted to the Forest Corporation. There was a meeting in the room of the Minister. After some discussion, the Minister issued oral instructions to the effect that the Forest Corporation should work only Khair lots in both the Forest Divisions of Bahraich during the year 1980-81 and that the allotment of lots of sal and other trees to the Forest Corporation was to be cancelled. The Minister also issued oral instructions that the work of the Forest Divisions of Bahraich was to be entrusted to the Forest Corporation next year. Pursuant to the oral instructions of the Minister, the Uttar Pradesh Forest Corporation, by its letter dated September 6, 1980, informed the Chief Conservator of Forests, Uttar Pradesh that they would take up work of Khair lots only during the year 1980-81. The Chief Conservator of Forests in his turn conveyed the information to

the Conservator of Forests, Gorakhpur and the Divisional Forest Officer, East Bahraich Forest Division. Thereafter, forest lots of East Bahraich Division other than Khair, were advertised for public auction on November 1, 3, 4 and 5. It was one of the Conditions of Auction that any bid that might be accepted at the time of auction was only provisionally accepted and that it was subject to ratification by the competent authority, namely, the State Government. On November 1, 3 and 4 the auction went off smoothly and bids for several lots were provisionally accepted by the Forest Officers. On November 5, 1980 there was trouble. There was an explosion at the place of auction. It scared the bidders. The Forest Officer stopped the auction and submitted a report to the Conservator of Forests. The Conservator of Forests wrote to the Additional Chief Conservator of Forests informing him about the postponement of the auction and also mentioning that representations had been revived from two groups of contractors. According to the version of one group of persons, some bidders who were present at the auction had been abused and threatened by others who brandished revolvers at them. In order to persuade them not to bid at the auction, they even fired revolvers in the air. The Forest Officer did not take any action against them. They wanted that the auction of all the lots including those held on November 1, 3 and 4 should be cancelled. The other group of contractors stated in their representation that they were the highest bidders at the auction held on November 1, 3 and 4 which had gone on peacefully and that their bids should be accepted and not cancelled. According to the Conservator of Forests the entire trouble was due to the failure of the District Forest Officer to observe the official instructions strictly. He had allowed unregistered contractors to become successful bidders instead of preventing them from participating in the auction. The Conservator also stated in his letter that the highest bids fetched at the auction were 71 per cent more than the estimated price. It was only in East Bahraich Forest Division that there were such huge bids. In such Forest Division the bids were about 37 or 55 per cent more than the estimated price. According to the Conservator of Forests the high bids in East Bahraich Division were due to the fact that the Bhingla, Sbhelwe, East and West Kakaradai forest areas were notorious for illicit felling of trees. In offering high bids the contractors who had become the highest bidders were evidently motivated by the opportunity and chance for illicit felling. The Conservator, therefore, recommended that all lots of East Bahraich Division should be allotted to the Forest Corporation for exploitation. The Chief Conservator of Forests agreed with the report of the Conservator of Forests, East Bahraich Division and had a talk with the Forest Minister on the subject. In the prevailing situation, the Minister ordered that all the lots of East Bahraich Division also should be allotted to the Forest Corporation. Orders were accordingly issued cancelling the auction held on November 1, 3, 4 and 5 and allotting all the forest lots of East Bahraich Division to the Forest Corporation. These orders of the Government were challenged by the highest bidders at the auction held on November 1, 3 and 4 by filing a writ petition in the High Court. The High Court allowed the writ petition and issued a writ, straightway directing the Government to accept the highest bids and to permit the contractors to work the forest lots. The Forest Corporation and the State of Uttar Pradesh have preferred appeals to this Court after obtaining special leave from this Court.

2. The High Court took the view that the Government had given no reasons for cancelling the auction and that its decision was therefore void. The High Court further said that if the disturbance which took place on November 5 was the reason for the cancellation of all the auctions, that ground was irrelevant and should not have formed the basis of the Government's decision. It was further held that the Conditions of Auction enabled the Government to reject the highest bids on the ground of inadequacy of bids only and on no other ground. If the bids were not inadequate the Government was bound to confirm the auction. The High Court also observed that there appeared to be no policy decision of the Government that the various forest lots should be allotted to the Forest Corporation.

In any case, it was said that the allotment in favour of the Corporation was arbitrary as it was for a price of Rs 97 lakhs only whereas the bids fetched a price of rupees one crore and ninety two lakhs.

3. It appears to us that the High Court has clearly misdirected itself. The Conditions of Auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under Condition 10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and was subject to ratification by the competent authority, namely, the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say, not to accept the highest bid but even to prefer a tenderer other than the highest bidder. The High Court was clearly in error in holding that the Government could not refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition 10 does not so restrict the power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect. It may lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation, may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has the power to accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time, it must follow that a change or revision of policy subsequent to the provisional acceptance of the bid but before its final acceptance is a sound enough reason for the Government's refusal to accept the highest bid at an auction. That is precisely what has happened here. the legislative policy which the Government was bound to implement sooner or later was clearly against auction of forest lots and in favour of allotment of the lots to the Forest Corporation. That was why though forest lots were originally advertised for auction the Government cancelled the proposal to auction the lots and decide to allot them to the Forest Corporation. The decision of the Government to do so was in implementation of the policy laid down by the legislature when it passed the Uttar Pradesh Forest Corporation Act. However, at the intervention of some members of the legislature the Forest Minister decided to go back upon the previous decision to allot the forest lots to the Forest Corporation in accord with the legislative policy. He decided to sell the lots by public auction, contrary to the policy indicated by the legislature. Though the auction went off smoothly on the first three days, there was a disturbance on the fourth day. The incident on the last day and the fantastic bids spurred the Government to rethink the entire matter and to accept the recommendation of the officials of the Forest Department from Forest Officer to Chief Conservator of Forests that the highest bids offered at the auction held on November 1, 3 and 4 should not be accepted by the Government. The Government, not having already ratified the bids and finding itself free to revise its policy, cancelled the auction and allotted the forest lots to the Forest Corporation. It is true that there is no express policy decision of the Government recorded after the date of auction. It is implicit in the very action of the Government in cancelling the auction and allotting the forest lots to the Forest Corporation. The policy decision had already been taken by the legislature when it enacted the Uttar Pradesh Forest Corporation Act and by the Government when it earlier decided to allot all the forest lots to the Forest Corporation. There was a deviation from the policy decision, at the instance of some legislators, in the case of the East Bahraich Forest Division. The events that took place later that is

the fantasy of the bids at the auction on November 1, 3 and 4 and the disturbances that took place on November 5 exposed the folly of such deviation and resulted in the Government immediately reverting to its earlier decision to allot all the forest lots to the Forest Corporation. It is true that the auction held on November 1, 3 and 4 fetched bids totalling Rs 1 crore 92 lakhs which was 71 per cent over the estimated price of the timber. This was far, far above any amount that might be expected to be realised from the Forest Corporation. In our view that would not make the decision of the Government arbitrary. In the first place the bids were fantastically high and therefore, became suspect. One must wonder how such bids could be offered if the bidders did not propose to indulge in illicit felling. The State is not merely interested in realising revenue but is equally interested in the preservation and development of forests. It cannot knowingly enter into contracts with bidders who must have, at the back of their minds the opportunity or the gamble of illicit felling of trees. In the second place the Corporation is a wholly Government-owned Corporation dedicated to the better preservation and development of forests and the better exploitation of forest produce. The profits of the Corporation are in truth the profits of the State itself. The circumstance that the Corporation may not be able to pay the same price as forest contractors cannot be a reason for denying the Government the right to give effect to legislative policy. We are, therefore, unable to find any infirmity attaching to the decision of the Government. One of the principal grounds on which the High Court set aside the decision of the Government was that the Government stated no reasons for its decision. It is not correct to say so. The letter of the Government addressed to the Chief Conservator of Forests communicating its decision says : "Government have accepted this proposal that all the forest lots should be got worked through Forest Corporation and the entire auction of all the lots of major forest produce of this Division be cancelled." It is clear that the auction was cancelled because the Government decided to allot the entire forest lots to the Forest Corporation. As already observed by us this decision to allot the forest lots to the Forest Corporation was in conformity with legislative policy and the earlier decisions taken by the Government to implement the legislative policy. It was no more than a reversion to a policy decision already taken. It was a good and sufficient reason for setting aside the auction. We are unable to hold that the decision of the Government was bad for failure to state reasons. In the circumstances we allow both the appeals with costs, set aside the judgment of the High Court and dismiss the writ petition.

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