

Rajshila

Vs

State of U.P. and others

Civil Appeal No. 5015 of 1991

(M. N. Venkatachaliah, S. C. Agrawal, G. N. Ray JJ)

13.12.1991

JUDGMENT

1. The appellant, M/s. Rajshila, a firm of partners, seeks special leave to appeal to this Court from the order dated 31-1-1991 of the Division Bench of High Court of Allahabad made in Civil Miscellaneous Writ Petition No. 2250 of 1991. Appellant challenged the award of the exclusive right to collect Toll on the bridge across Ganga at Jajmau, Kanpur Division in favour of M/ s. Munendra Nath Upadhyay & Company, the fourth respondent herein, at the auction held in that behalf on 14-11-1990.. The High Court dismissed the writ petition.
2. We have heard Shri Harish Salve, learned counsel for the appellant, Shri R. B. Mishra for the State of Uttar Pradesh; and Sri R. N. Narsimhamoorthy learned senior counsel for respondent No. 4. Special leave is granted and the appeal taken up for final hearing, heard and disposed of by this judgment.
3. On the 21st of September, 1990, a public notice was caused to be issued by the authorities concerned inviting tenders from intending bidders for the award of the right to collect toll on the said bridge. The auction was originally fixed to be held on the 30th of October, 1990. Seven persons obtained tender papers but only two, the fourth respondent and another by the name Roshan Lal & Company, filed their tender papers in time. The auction which was scheduled to be held on 30th October, 1990 was postponed to 8th November, 1990 and thereafter to 14th November, 1990. At the auction held on 14th November, 1990, however, only the fourth respondent participated and offered a bid of Rs. 75 lakhs per year. Thereafter Roshan Lal & Company aired a grievance that the postponement of the auction from 8th November to 14th November, 1990 was done without due publicity; that it had been denied competitive participation and that it would offer a higher bid of Rs. 80 lakhs per year. In the light of this development, the authorities appeared to have communicated to the fourth respondent that its bid of Rs. 75 lakhs per year was inadequate and could not be accepted whereupon the fourth respondent communicated its willingness to offer Rs. 80.21 lakhs which was found acceptable and was accepted. The said Roshan Lal & Company did not bestir itself to agitate the matter any further.

But the present appellant which did not participate in the auction came up before the High Court with the grievance that it was virtually prevented from participation at the auction. It was alleged that owing to a strike in Government offices during the period it had had to run from pillar-to-post to fulfil the precondition of a security deposit which, in view of the involved procedure, was rendered impossible to be fulfilled and that appellant tendered the cash security of Rs. 7 lakhs on the

date of the auction and sought permission to participate. Upon this request being turned down appellant is said to have given an application on the same date signifying its willingness to offer Rs. 86 lakhs per year,

4. After hearing learned counsel for the parties we are persuaded to the view that ends of justice would be met by a conditional order, directing a reauction subject to the following conditions:

a) That appellants shall, with a view to establishing its readiness and willingness to stand by the offer of Rs. 86 lakhs per year, deposit a sum of Rs. 25 lakhs by a cross demand draft drawn on any nationalised bank in favour of the "Executive Engineer, National Highways Construction Division (Bridge), Public Works Department, 12 /476, Makrawat Ganj, Kanpur". The draft shall be delivered to the said Executive Engineer on or before 10th January, 1992.

b) If the said sum of Rs. 25 lakhs is so deposited the present contract in favour of the fourth respondent shall stand set aside.

However, with a view to maintaining the continuity of the collection of the Toll till the procedural formalities of reauction are complied with, the fourth respondent shall be permitted to continue to operate the contract till 31st March, 1992. Its rights and obligations arising out of the earlier contract shall be limited to the period from 9th February, 1991 when the operation of the contract is stated to have commenced till 31st March, 1992. For this period, the fourth respondent shall be liable to pay at the rate of Rs. 80.21 lakhs per year and proportionate part thereof for the year, months and days actually covered.

c) If the appellant fails to deposit the sum of Rs. 25 lakhs as aforesaid then the contract in favour of the fourth respondent shall run for the whole period of three years from 9-2-1991 but at Rs. 86 lakhs per year. The sum of Rs. 86 lakhs shall be calculated from the inception, namely, 9-2-1991.

d) If the appellant makes deposit of Rs. 25 lakhs on or before 10th January, 1992, the authorities concerned shall take immediate and prompt steps for the conduct of a fresh auction by notifying the calendar of events. The proceedings for the conduct of the reauction shall be concluded by the 20th March, 1992 as the outer most date. It is desirable that the proceedings be finalised much earlier. The period of the contract shall be three years to commence from 1st April, 1992.

e) That at the reauction, appellant shall satisfy all other requirements of eligibility for participation such as necessary and requisite Solvency Certificate, Income-tax Claim Certificate, Character Certificate etc., as required by the rules and as applicable to all other bidders.

However, in view of the fact that appellant has been asked to make a earnest deposit of Rs. 25 lakhs, it shall not be necessary for the appellant to furnish the cash security of Rs. 7 lakhs or such other sum as may be prescribed as such cash security in relation to the reauction.

f) At the reauction the first bid shall be recorded against the appellant at Rs. 86 lakhs per year. If appellant, for whatever reasons, does not, or is found ineligible to,

participate in the reauction and if the bids secured thereat fall short of Rs. 86 lakhs per year, the difference calculated for the period of three years shall be deducted out of the sum of Rs. 25 lakhs deposited by the appellant and the balance alone shall become refundable to the appellant.

5. The order of the High Court under appeal is set aside and the appellant's writ petition in the High Court disposed of on the aforesaid terms. Appeal disposed of accordingly. No costs. Order accordingly.

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