

State of Punjab

Vs

Yoginder Sharma Onkar Rai & Co. and Others

Civil Appeals No. 7992 of 1996 with No. 7993 and 7994 of 1996

(S. P. Bharucha, K. Venkataswami,)

17.09.1996

JUDGMENT

BHARUCHA, J. –

1. These are appeals against the judgment and order dated 8-5-1996, of a Division Bench of the High Court of Punjab and Haryana, passed upon a writ petition filed by the first respondent, M/s Yoginder Sharma Onkar Rai & Co. The subject-matter of the writ petition was the auction of liquor vends of Groups Nos. 108 to 111 in Khanna Circle, District Ludhiana State of Punjab for the year 1996-97. The first appeal is by the State of Punjab. The other appeals are by the successful bidders.

2. The auction took place on 11-3-1996. On 18-3-1996, the first respondent filed an earlier writ petition (Writ Petition No. 4047 of 1996) before the High Court challenging the auction. Thereon the Division Bench ordered :

"After hearing the learned counsel for the parties and perusing the record we are of the opinion that the points raised by the petitioners do require a consideration by the competent authority authorised to reject the higher bid offered and the auction held. The disputed questions of facts raised in this litigation can also be better appreciated by such authority.

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In view of the facts and circumstances of the case, this petition is disposed of with the following directions :

(i) That Shri Y.S. Ratra, Financial Commissioner, Taxation shall treat this writ petition as representation/revision in terms of Rule 36(18) of the Rules filed before him to determine the legality of the bids in auction held in favour of the private respondents.

(ii) The parties shall be given an opportunity of being heard before passing the appropriate orders."

Consequential directions were also given.

3. The Financial Commissioner heard the parties as directed by the High Court and rejected the representation/revision filed by the first respondent. He noted various circumstances on the basis of which he came to the conclusion that the first respondent had not given a bid of Rs. 4.21 crores for

Group No. 108 or a bid of Rs. 3.50 crores for Group No. 111. The Financial Commissioner found that the possession of a receipt for entry into the auction pandal did not mean that the first respondent had made a bid unless it was shown from the bid sheet that its name was recorded thereon. Being a sitting licensee for the last 4 or 5 years did not give the licensee any right to get the vend again unless he bid for it in open auction. Not much reliance could be placed on newspaper reports, as the Supreme Court had held that newspaper reports had no evidentiary value but were only hearsay evidence. That a bank counter had been opened in the pandal did not bar the successful bidders from depositing the requisite amount of 15% of the bid money in the government treasury at Khanna in the stated time. In the pandal there were 1200-1300 persons. They were not all bidders. Being the first auction of liquor vends in the State for the given year, licensees from other districts had come to see the trends and make a market survey. That only 2 or 3 bidders had given bids for a particular vend was, therefore, not noteworthy. Though the partners of S.P. Kalia and Co. and Puneet Kalia and Co. were relations there was no reason why they should not bid against each other. It was next to impossible that 34 drafts could have been prepared on the day of the auction in banks at Khanna and Mandi Gobindgarh which would reach the pandal by 11 a.m. considering the fact that the banks opened at 10 a.m. at Khanna and Mandi Gobindgarh, which was approximately 40-50 kms from the site of the auction at Ludhiana. It was more likely that all this would take 2 hours. This indicated that the first respondent did not have adequate funds to deposit 15% of the bid money at the fall of the hammer and, therefore, did not bid at all. Note was taken of the pattern of bidding. For Group No. 108 the initial bid was for Rs. 3.55 crores, the next was Rs. 3.65 crores, then Rs. 3.68 crores, then Rs. 3.70 and the successful bid was of Rs. 3.71 crores. Thus the trend of the rise was Rs. 10 lakhs in the first instance, then Rs. 3 lakhs, then Rs. 2 lakhs and, lastly, Rs. 1 lakh. The case of the first respondent was that it bid Rs. 4.21 crores, that is to say, there was a rise of Rs. 50 lakhs over the last bid. Substantially similar was the position in regard to Group No. 111 where there was allegedly a rise of Rs. 45 lakhs. It was hard to believe that the Collector, who was present at the auction, would not have intervened in these circumstances. No evidence was forthcoming that anything spectacular had happened in the pandal. The first respondent had not approached any of the senior officers who were in the city in connection with the auction. The mere mention during the argument that it had approached the Excise and Taxation Commissioner and told him its case and that he said he would look into the matter was an afterthought. If the difference between the successful bids and the allegedly higher bids was really of Rs. 50 lakhs and Rs. 45 lakhs respectively, the first respondent should have put it in writing and the Excise and Taxation Commissioner would have taken cognizance. The telegram sent by the first respondent was 4 days after the auction. There were telegrams under different names but they were all similarly worded and no mention was made therein of the amounts of the allegedly higher bids, but merely that a lower bid had been accepted despite a higher bid. Due credence had to be given to the reports of the two independent observers nominated by the Excise and Taxation Commissioner and the Deputy Commissioner of the District who were present at the pandal. No mention had been made of the alleged higher bids in the observers' reports, which stated that the auctions were fair and there was no favouritism. The decision of the State Government not to allow S.K. Ralhan, Deputy Excise and Taxation Commissioner, Patiala Division, to conduct auctions in other districts of Patiala Division was based on administrative grounds and the matter was under consideration. There was no evidence that the auction had been stage-managed. The claim of the first respondent was, therefore, without any basis, an afterthought and not based on any concrete evidence.

4. The order of the Financial Commissioner was passed consequent upon three writ petitions. The petitioner in one of the three writ petitions did not carry the matter to the High Court. The writ petitioner in another writ petition filed a second writ petition challenging the order; it came up

before another Division Bench which, on 9-4-1996, passed the following order :

"We find no infirmity in the detailed order, Annexure P-9, passed by the Financial Commissioner, (Taxation), Punjab. All the points raised before us have been dealt with in detail by the Financial Commissioner and we concur with the findings recorded by him.

Dismissed."

The writ petitioner in the third writ petition was the first respondent and it filed the present writ petition (No. 5007 of 1996) impugning the Financial Commissioner's order on 6-4-1996. This writ petition was disposed of by the judgment and order under appeal.

5. The Division Bench noted therein the case of the first respondent that it had offered Rs. 4.21 crores for Group No. 108 as against the successful bid of Rs. 3.71 crores which had been wrongly accepted, thereby putting the public exchequer to a loss of Rs. 50 lakhs. Similarly, for Group No. 111, the first respondent had offered Rs. 3.5 crores but the bid of Rs. 3.05 crores was accepted, thus putting the exchequer to a loss of Rs. 45 lakhs. Though the representatives of the first respondent were present at the time of the auction, their presence and the bids offered by them were not recorded. It was the said S.K. Ralhan who had not accepted the higher bids offered by the first respondent without any basis or assigning any valid reason. The first respondent had raised a hue and cry, which met with deaf ears. The first respondent, through its partner, Yoginder Sharma, had approached the Excise and Taxation Commissioner and brought to his notice the arbitrary, capricious, illegal and unconstitutional action on the part of the said S.K. Ralhan but no action was taken. The denials of the respondents before the High Court were noted, including those of the said S.K. Ralhan. The order on the earlier writ petition (No. 4872 of 1996) was set out in extenso. The Division Bench then enumerated the circumstances which had led the Financial Commissioner to reject the representation or revision of the first respondent (as set out above). The validity of the auction was challenged by the first respondent on three grounds. The first and second grounds related to the provisions of the Punjab Excise Act, 1914 (1 of 1914) and the Punjab Liquor Licence Rules, 1956 and the terms and conditions of the auction notice. (These grounds were rejected and need not detain us.) The third ground, which was accepted, was set out thus :

"(iii) The petitioner, despite being the highest bidder, was wrongly shown to have not participated in the bid. The learned counsel has referred to various circumstances, which, according to him, show the bona fides of the petitioner in bidding in the auction and having been present on the spot."

The Division Bench stated that, in support of his submission that the first respondent had offered a higher bid, its counsel had referred to various circumstances and submitted that the cumulative effect thereof proved the presence and participation of the first respondent in the auction, which had not been taken note of. The circumstances enumerated by the first respondent and "probabilised to have been proved" were set out by the Division Bench. The first circumstance was the receipt for entry into the auction pandal; this, according to the Division Bench, established that the first respondent had decided to participate in the auction. The second circumstance was that the representatives of the first respondent were in possession of bank drafts worth Rs. 1.90 crores besides cash in the sum of Rs. 10 lakhs on the date of the auction "for the purpose of bidding in the auction". The factum of bank drafts was not disputed. The Financial Commissioner's observations in regard to the bank drafts were then set out and the Division Bench observed :

"The conclusions arrived at by the Financial Commissioner, Taxation, are based upon conjectures and apparently observed with pale eyes. It is not improbable to obtain 34 drafts prepared from a bank at Khanna and Mandi Gobindgarh on the same day and before the time of auction. It is not uncommon that the banks have been providing special services to their customers particularly having huge monetary dealings. The Financial Commissioner, Taxation, has not referred to any special knowledge of banking system and has arrived at the aforesaid conclusion without ascertaining the true position from the concerned bank."

According to the Division Bench, if drafts for such a huge amount had been issued, the same demonstrated the bona fide intention of the first respondent to participate in the auction. Again, it was "fully established" that the first respondent's representatives were in possession of the bank drafts on the relevant date, which showed their intention to participate in the auction. The provisions of Rule 36(17), though they could not be made the basis for quashing the auction proceedings, were relevant to show the biased treatment given to the first respondent. Whether the first respondent had raised the plea or not, it was for the authorities to explain the omission in not mentioning the predetermined licence fee, which might have become the basis for accepting or rejecting the bid offered by a particular bidder. It was intriguing and not explained as to why such an omission was allowed in the case of Groups Nos. 108 and 111 only and not in the case of any other group auctioned on the same day or thereafter. The first respondent had taken steps for participation in the auction by obtaining an entry slip and by procuring bank drafts, which led to the irresistible conclusion that it was not only a spectator. The affidavits of the partners of the first respondent showed that they were present at the time of the auction and had participated in it, but their presence was not taken note of. Press reports also suggested that the auction was not free from suspicion. Some extracts of these press reports were set out. It was then said by the Division Bench that it was true that press reports could not be made the basis for holding the auction illegal or contrary to the law; however, "in drawing inferences, the circumstances of the press reports cannot be completely ignored, ...". The telegrams aforementioned also could not be completely ignored. The mere omission of details therein could not be made the basis for rejecting them. It was not a coincidence that immediately after the auction was concluded on 11-3-1996, the said S.K. Ralhan had been transferred. His transfer suggested, prima facie, the satisfaction of the authorities that he had not been fair in holding the auction. It was worth mentioning that the successful bidders had not denied the allegations made against them and it was, therefore, proved that the persons participating in the auction were hand in glove with each other with the object of putting the State exchequer to loss. "The cumulative effect", the High Court held, "of the aforesaid discussion clearly and unequivocally leads to the conclusion that the auction with respect to Groups Nos. 108 and 111 held on 11-3-1996, was neither fair, nor proper. The petitioners were wrongly deprived of their right of participation in the bid and the State exchequer was subjected to huge loss, which in no case is lesser than Rs. 95 lakhs."

6. As far as the Financial Commissioner was concerned, the High Court said :

"Least we say about Shri Ratra, better it would be. We were interested in the job of adjudication of the rival claims of the parties, presuming him to be an independent and impartial person, keeping in view the status of the post he is holding. During arguments, a reference has been made to Annexure PS-2, a press report dated 12th March, 1996, which shows that Shri Ratra had gone to the press with the claim that outcome of the auction had allegedly been better than the expected rise of 12 to 13 per cent. At that time, it was not brought to our notice that Shri Ratra had already

taken a stand with respect to the matter in dispute and, presumably, could not have given any other finding than the one, which is incorporated in Annexure P-66. Omission on the part of the parties to bring to our notice the commitments made by Shri Ratra has resulted in the reference being made to him."

7. Ultimately, in the High Court's view, the substance of the circumstances in the context of the allegations made, clearly suggested that the auction was not fairly and properly held, with the result that the State exchequer had been subjected to a huge loss. The High Court thereupon passed the following order, which must be quoted in extenso :

"Under the circumstances, the writ petition is allowed and the auction held on March 11, 1996 with respect to Groups Nos. 108 and 111 vide Annexures P-44 and P-47 is quashed. Consequently, the auction of Groups Nos. 109, 110 and protection vend of Kotla Azner (Fatehgarh Sahib) in favour of the successful bidders of Groups Nos. 108 and 111 shall also stand quashed. This judgment would become effective from May 16, 1996, and the private respondents are allowed to continue their business until the midnight of May 15, 1996.

In view of the detailed discussion made above, the order of the Financial Commissioner, Taxation, Punjab (Annexure P-66) is quashed for the remaining period of 10 and a half months commencing with effect from 16-5-1996 to 31-3-1997. All the four groups, i.e., Nos. 108 to 111 and protection vend of Kotla Azner (Fatehgarh Sahib), are directed to be re-auctioned positively before May 15, 1996, at the cost of the petitioners, after due publicity and advertisement. The petitioners, private respondents and all others shall be permitted to participate in the bid, which shall be strictly held in accordance with the provisions of Rule 36 of the Punjab Liquor Licence Rules. All such persons, who enter the venue for the purpose of bid, shall be directed to sign a separate paper sheet, recording their attendance and the bid shall be supervised by an officer, not below the rank of Financial Commissioner.

After predetermining the licence fee, first bid for Group, No. 108 shall be deemed to be Rs. 4.21 crores offered by the petitioners and for Group No. 111, the first bid shall be deemed to be of Rs. 3.50 crores, offered by the petitioners.

After deducting the proportionate fee for the period commencing from 1-4-1996 to 15-5-1996, the balance amount of fee, if deposited by the respondent/successful bidders, shall be refunded to them after May 15, 1996.

The petitioners shall deposit a sum of Rs. one lakh within two days, out of which the expenditure for reholding of the auction shall be adjusted and the balance amount paid back to them after completion of the process of auction.

In the new auction, Shri S.K. Ralhan, Deputy Excise and Taxation Commissioner and Shri Y.S. Ratra, Financial Commissioner, Taxation shall not be associated in any manner.

In case, the petitioners opt not to participate in the new auction bid and no other bidder offers the bid of the amount already offered by the private respondents-successful bidders, this petition shall be deemed to have been dismissed with costs of

rupees one lakh to be paid to the private respondents. However, on the completion of the fresh process of auction, the private respondents shall be liable to pay a sum of Rs. 10,000 as costs which shall be deposited in the State treasury."

8. The learned counsel for the appellants submitted that questions of fact were involved. At the hearing of the earlier writ petition this had been recognised by the Division Bench and the first respondent had been referred to the Financial Commissioner treating the writ petition as a representation or revision under the statutory provision. The order of the Financial Commissioner was reasonable in its appreciation of the facts. The Division Bench had not found it to be perverse. The Division Bench, therefore, was not entitled to reverse it. In any event, the judgment of the Division Bench was based upon conjectures and the order that was passed by it was erroneous and unworkable.

9. The learned counsel for the first respondent drew our attention to its case that in the auction pandal itself its partners had met the Excise and Taxation Commissioner and told him their grievance and the Excise and Taxation Commissioner had assured them that the matter would be looked into. The learned counsel referred to the press reports which stated that the Excise and Taxation Minister of Punjab had said that while there was no report with the State Government on the alleged irregularities during the auction of liquor vends, it had come to the notice of the State Government that the auction of some liquor vends in Ludhiana were conducted in a manner contrary to the interests of the Revenue and that, on the basis of a representation, the State Government had relieved the Deputy Excise and Taxation Commissioner in charge of the Patiala Division of the responsibility of conducting auctions for the remaining districts of the Division. A copy of the order relieving the said S.K. Ralhan was pointed out. The learned counsel submitted that, even so, the Financial Commissioner in his report had stated that the decision of the State Government not to allow the said S.K. Ralhan to conduct auctions in the remaining districts of Patiala Division was based on administrative grounds. The learned counsel submitted that there was, thus, evidence to show that the auction had not been conducted fairly and in the prescribed manner. The Financial Commissioner in his report had stated that it was hard to believe that the Collector would not have intervened when bids of Rs. 50 lakhs and 45 lakhs respectively over the next highest bids had been made. The learned counsel submitted that the Financial Commissioner himself should have accepted the higher bids of the first respondent. The first respondent was even now prepared to deposit 15 per cent of the required deposit for the remaining half of the term and secure the balance. The learned counsel relied upon the judgment of this Court in *Rajshila v. State of U.P.* [1993 Supp (1) SCC 477]. This was a case where the appellant could not participate in the auction of the exclusive right to collect tolls on a bridge owing to a strike in government offices. The appellant 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 of fulfilment. The appellant had tendered cash security of Rs. 7 lakhs on the date of the auction and sought permission to participate, but the request had been turned down. Upon this, the appellant had given an application signifying its willingness to offer Rs. 86 lakhs per year as against the accepted bid of Rs. 75 lakhs per year. After hearing the counsel, this Court was persuaded to take the view that the ends of justice would be met by an order directing a reauction subject to certain conditions, the first being that the appellant should, 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 on or before the stated date. If the sum of Rs. 25 lakhs was deposited, the contract in favour of the successful bidder would stand set aside. The learned counsel submitted that the present was a case where the ends of justice required that the judgment and order under appeal be maintained subject to such conditions as this Court might deem fit to impose.

10. The question that goes to the root of these appeals is : did the first respondent make bids at the auction of Rs. 50 lakhs and Rs. 45 lakhs respectively over the successful bids for Groups Nos. 108 and 111 ?

11. This is a question of fact. It was rightly referred to the Financial Commissioner under the statutory provision by the Division Bench in its order on the earlier writ petition. On the order passed by the Financial Commissioner the High Court could interfere in a writ petition under Article 226 only if it found it to be perverse, that is to say, if it found its conclusions such as could not reasonably have been arrived at upon the record. The Division Bench in the order under appeal has not so held, specifically or impliedly.

12. The order of the Financial Commissioner is not perverse or unreasonable. He was right in concluding that the fact that the first respondent had entered the auction pandal did not establish that it had made a bid. His views about the drafts procured by the first respondent from the banks at Khanna and Mandi Gobindgarh are not unreasonable, for, ordinarily, a prospective bidder would not cut it so fine. He would ordinarily obtain the required bank drafts before the auction date and not wait to do so with only an hour or so to spare. No extraordinary circumstances have been adverted to by the first respondent which required it to obtain the drafts only on the morning of the auction from banks which were a sizeable distance from its site. The pattern of bidding referred to by the Financial Commissioner is very telling. It is unlikely that when the bid is rising by Rs. 10 lakhs, Rs. 3 lakhs, Rs. 2 lakhs and Rs. 1 lakh, it should suddenly rise by Rs. 50 lakhs and Rs. 45 lakhs respectively. The Financial Commissioner was justified in rejecting the case of the first respondent that it had approached the Excise and Taxation Commissioner and spoken to him about what had happened for this was mentioned only in the course of the argument before him. It is also germane for the Financial Commissioner to observe that no higher Revenue officials had been approached by the first respondent, as also to point out that the observers' reports did not speak of any irregularity. They would certainly have done so had a bid which was Rs. 50 lakhs more than the successful bid been ignored; there would have been a commotion in the auction pandal and this would have been mentioned in the reports. The Financial Commissioner pointed out, and rightly, that the telegram sent by the first respondent was four days after the auction. There were other telegrams, similarly worded but under different names. In all the telegrams no mention had been made of the quantum of the higher bid but merely that lower bid had been accepted against a higher bid. The Financial Commissioner noted that two partnerships had bid against each other but commented, with some justification, that the mere fact that their partners were relations did not make for a rigged auction.

13. The Division Bench castigated the Financial Commissioner for his report and stated that his conclusions were "based upon conjectures and apparently observed with pale eyes". It said that "it is not improbable "to obtain 34 drafts prepared from a bank at Khanna and Mandi Gobindgarh on the same day and before the time of auction. It is "not uncommon" that banks provide special services to their customers, particularly if they have huge monetary dealings. The Financial Commissioner had not referred to any special knowledge of the banking system and had arrived at his conclusions without ascertaining the true position from the bank concerned. The Division Bench did not state its authority for its statements about banking practice.

14. The Division Bench found that "it was fully established" that the first respondent's representatives were in possession of the bank drafts, "which showed the petitioner's intention of participation in the auction". The Division Bench took the view that the Revenue authorities were obliged to explain why the predetermined licence fee had not been mentioned and that it was intriguing "why such an omission was allowed in case of Groups Nos. 108 and 111 only and not

with respect to any other group auction on the same day or thereafter". In fact, it appears that this omission took place not only with regard to Groups Nos. 108 and 111 but with regard to all auctions in Ludhiana-I. The fact that the first respondent had taken steps for participation in the auction by obtaining an entry slip and by procuring bank drafts led the Division Bench "to the irresistible conclusion that they were not only spectators". The affidavits of the partners of the first respondent also showed that they were present at the time of the auction and had participated in it but their presence had not been taken note of. Extracts of press reports were set out in the judgment and the Division Bench noted that while they could not be made a basis for holding an auction illegal or contrary to the law, "in drawing inferences" the press reports could not be ignored. The mere omission of giving details in the telegrams was not a reason to reject them. It was not a coincidence that the said S.K. Ralhan had been transferred after the auction on 11-3-1996, was concluded and it suggested, prima facie, that the authorities had been satisfied that he had not been fair in holding the auction. The Division Bench found that the successful bidders had not specifically denied the allegations of relationship between their partners and their interaction in the auction; it was, therefore, proved that they "were hand in glove with each other with the object of putting the State exchequer to loss". As a matter of fact, the allegations are denied by the successful bidders in their affidavits. The cumulative effect clearly and unequivocally led the Division Bench to the conclusion that the auction with respect to Groups Nos. 108 and 111 was neither fair nor proper. The first respondent had been wrongly deprived of its right of participation therein and the State exchequer had been subjected to a loss of not less than Rs. 95 lakhs.

15. We are constrained to observe that the judgment of the Division Bench is based upon conjectures and inferences more tenuous than those it found the Financial Commissioner guilty of. Such conjectures and inferences are impermissible in a judgment upon a writ petition under Article 226 where the fact-finding authority has arrived at a conclusion which is not perverse or so unreasonable that, upon the record, it could not have been reached.

16. The basic question which cannot be lost sight of is did the first respondent make bids at the auction of Rs. 50 lakhs and Rs. 45 lakhs respectively over the successful bids for Groups Nos. 108 and 111 ? Securing Groups Nos. 108 and 111 was so important for the first respondent, it would have us believe, that it raised the bids by the staggering sums of Rs. 50 lakhs and Rs. 45 lakhs respectively. If it did, the previous rises having been of the order of Rs. 10 lakhs, Rs. 3 lakhs, Rs. 2 lakhs and Rs. 1 lakh, it would have attracted the attention of some, if not most, of the twelve to thirteen hundred persons in the auction pandal. It would be a brave auctioneer indeed who would, in the circumstances, ignore such bids. The partners of the first respondent would not in the ordinary course of human conduct have let it pass without stout, long and loud protests. They would have attracted notice, and support. But, according to the oral submissions of the first respondent's counsel before the Financial Commissioner, the first respondent's partners were satisfied with an oral complaint to the Excise and Taxation Commissioner and his assurance that he would look into the matter. In the ordinary course of events, one would have expected a bidder making such large bids which are ignored to shoot off notices in all directions. All we have are telegrams sent four days after the auction which do not mention the enormous difference between the bids. Of the twelve to thirteen hundred persons present in the pandal, not one independent observer has stated on affidavit that the first respondent had made bids far larger than the successful bids but they had been ignored. To our ears the first respondent's story does not ring true.

17. As we have already held, the Financial Commissioner's conclusions in his report were reasonable. The remarks made by the Division Bench about him were not justified. As Financial Commissioner he spoke to the press about the outcome of the auctions generally. This was in the

performance of his duties. In any event, we do not see in his order anything that indicates that he was in any way biased.

18. The Division Bench was, in the circumstances, in error in reaching the conclusion that the auction was not fairly and properly held with the result that the State exchequer had been subjected to a huge loss. In any event, loss to the exchequer is a factor which may be taken into account in genuine cases, as it was in the case of *Rajshila* [1993 Supp (1) SCC 477] cited by the learned counsel for the first respondent. At the same time, the finality of auctions must also be recognised to be in the interests of the exchequer. If auctions are set aside and reauctions ordered on less than satisfactory material, the loss of the exchequer would be far greater.

19. This brings us to the form of the order that the Division Bench passed. We have quoted it above in extenso. It quashes the auction. It directs reauction for the balance of the term. It directs that for Group No. 108 the first bid "shall be deemed to be Rs. 4.21 crores" as offered by the first respondent, and for Group No. 111 the first bid "shall be deemed to be of Rs. 3.50 crores" as offered by it. The order then directs that in case the first respondent opts not to participate in the fresh auction and no other bidder offers a bid of the amount equivalent to the earlier successful bid, "this petition shall be deemed to have been dismissed".

20. It is a very difficult order to appreciate. If at the fresh auction the first respondent does not bid and no other bidder offers a bid equivalent to the earlier successful bid and the writ petition is to stand dismissed, what is the State Government's authority for holding the fresh auction? Whether or not the first respondent bids or somebody else bids an amount equivalent to the earlier successful bid can be known only after the fresh auction is held. If at that stage the petition is to stand dismissed, there is no authority for holding the fresh auction. Secondly, if at the fresh auction the first respondent does not bid and no other bidder offers a bid equivalent to the earlier successful bid, it must mean that the earlier successful bidder is no longer interested; but, by reason of the dismissal of the writ petition, he remains bound by his earlier bid. This is not a workable or well thought out order.

21. In cases where there is real need to set aside an auction, he who challenges it must be required to prove his bona fides before the auction is set aside by depositing a substantial portion of what he says he will bid. It is only if the deposit is made that the auction should be set aside and a reauction ordered.

22. The Division Bench would have done well to follow the order (quoted above) already passed by another Division Bench upon a writ petition impugning the same order of the Financial Commissioner.

23. The appeals are allowed. The judgment and order under appeal is set aside. The writ petition filed by the first respondent is dismissed. The first respondent shall pay to the appellant in each of the three appeals the costs of the appeal, quantified in the sum of Rs. 25,000.