RAJASTHAN HIGH COURT

Tej Singh Sarupriya

Vs.

Rajasthan State Mines and Minerals Ltd.

Civil Special Appeal (Writ) No. 430 of 2000
(N.N. Mathur and D.N. Joshi, JJ.)

21.07.2000

JUDGEMENT

Mathur J.

1. This Special Appeal under Section 18 of the Rajasthan High Court Ordinance is directed against the judgment of the learned Single Judge dated 25th April, 2000, dismissing the writ petition.

2. The appellant - writ petitioner filed a writ petition under Article 226 of the Constitution of India seeking direction to quash the Memo of Understanding (in short 'MOU') dated 22-1-2000 (Annex.2) entered between the first respondent - Rajasthan State Mines and Minerals Ltd. (in short ('RSMML') and fourth respondent - M/s American International Health Management Ltd. (in short AIHML) to set up a hospital in joint venture by leasing out a plot of land measuring 18,432 square feet and contributing Rs. one crore (being 10%) to the equity of the hospital project). The petitioner has also sought a direction to quash the approval granted to the said MOU in the 320 the meeting of the Board of the RSMML, held on 30th March, 2000 (Annex.4). A further prayer was made to direct the first respondent and its officers to invite bids from all interested persons before awarding contract for establishing a multi-super-specialty hospital in joint venture with the first respondent.

3. It appears from the pleadings of the parties that the first respondent - RSMML is a company, owned and controlled by the State of Rajasthan. In the year 1997, the first respondent decided to establish a multi-super-specialty hospital for twin purposes. Firstly, for providing medical facilities to its past and present employees and their family members on no profit - no loss basis and other purpose was to provide medical

facilities to the citizens of Udaipur including free medical treatment to poor and needy. In search of competent partner, initially the first respondent approached to the Apollo Group of Hospitals. The Apollo Group of Hospitals submitted a project report. They were neither agreeable to provide medical facilities to the employees of the first respondent at no profit - no loss basis nor to provide free medical services to the poor. At this juncture, a company in the name of American International Health Management Ltd. came into existence in the city of Udaipur. Its Chairman and Managing Director Dr. Kirit Kumar Jain approached to the first respondent and agreed with the terms and conditions of providing medical services to its past and present employees and their family members at no profit-no loss basis. It is stated that the entire project is to cost around Rs. 20 croroes. The first respondent is to provide the land and to contribute to the share capital of the respondent No.4 to the tune of Rs. one crore only and the remaining amount is to be managed by the fourth respondent. On 29th December, 1999, in the 319th meeting of the Board, the proposal for RSMML's participation in the project of fourth respondent of setting up a super specialty hospital at Udaipur was considered and approved. Accordingly, on 22nd January, 2000, a Memo of Understanding was entered between the RSMML and AIHML for setting up a joint venture multi super specialty project at Udaipur. The terms and conditions have been set out in the MOU. On 26th March, 2000, petitioner Tej Singh Sarupriya, first time sent a proposal dated 26th March, 2000, as a Director of Udipur Hospital and Medical Research Centre Private Limited expressing desire to be a partner in establishing of multi super specialty hospital in the city of Udaipur. He also gave a package for consideration of respondent No.1. It appears from the averments made in the writ petition and Annex.3 that petitioner Tej Singh Sarupriya is a person dealing in jewellery business. He has 25% share in Udaipur Hospital and Medical Research Center Private Limited. Having found no reaction on his offer, he approached to this Court by way of a writ petition.

4. It was contended before the learned Single Judge on behalf of the petitioner that the first respondent has acted arbitrarily in entering into agreement with the fourth respondent without giving any publicity and ignoring the public interest. Reliance was placed on various decisions viz; (i) *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu reported in*[1] (Para 7), (ii) *T.V.L.Sundaram Granites v. Imperial Granites Ltd. reported in*[2] and (iii) *Style (Dress Land) v. Union Territory of Chandigarh reported in* [3] The learned Single Judge observed that there was no quarrel to the proposition that the Court must keep in mind the public interest and if there is any arbitrariness, the Court

must interfere in such type of cases and they are always subject to judicial review. The learned Single Judge, however, distinguished the said cases on the ground that in all the three cases, either it was the State Government or the Municipality, who were the litigants. The learned Single Judge also observed that it was doubtful if the first respondent RSMML is State or its instrumentality within the meaning of Article 12 of the Constitution of India. The learned Single Judge further observed that merely because it is under the control of the State, that itself would not make the respondent No.1 the instrumentality of the State. However, the learned Single Judge did not go into the question in absence of any reply affidavit filed by the respondents and proceeded on the assumption that the RSMML is a State. The learned Judge also disapproved the conduct of the petitioner in not serving the notices on respondent with memo and annexure after obtaining the exparte stay order. The learned Single Judge also rejected the petition on the conduct of the petitioner. The learned Single Judge found that the petitioner was one of the Directors of Udaipur Hospital and Medical Research Centre Private Ltd. with 25% share holding of the company. He wanted to strengthen his monopoly in the hospitals at Udaipur and, therefore, anyhow he managed to get the information about the MOU arrived at between the first and fourth respondents. The learned Single Judge also found that nothing was shown, how the action of the respondent No. 1 was arbitrary or discriminatory. The learned Single Judge refused to interfere with the matter in exercise of powers under Article 226 of the Constitution of India for the reason that the object of the agreement was in public interest. In the opinion of the learned Single Judge, if somebody else is coming forward in the city like Udaipur for starting multi super specialty hospital then ther shall be healthy competition with other hospitals and poor and downtrodden people of Udaipur district, which is mainly of tribals, will get better facilities and better treatment. On overall consideration, the learned single Judge expressed that he was convinced that there was no arbitrariness on the part of the first respondent in entering into contract with the respondent No.4 for construction of multi super specialty hospital. Thus, the learned single Judge rejected the writ petition for more than one reason.

5. It is contended by Mr. D.S. Shishodia, Senior Advocate, that the learned Single Judge has committed error in holding without any basis that the first respondent - RSMML is not a State within the meaning of Article 12 of the Constitution of India. We aree not inclined to go into question since the learned Single Judge himself has not gone into the question in absence of any reply affidavit filed on behalf of the first

respondent. We simply say that the observation of the learned Single Judge "merely because it is under the control of the State Government, that itself would not make the respondent No.1 an instrumentality of the State", is not a decision on the point. This question is left open.

6. It is next contended that learned Judge has committed error in rejecting the writ petition on the conduct of the petitioner in not serving the notices along with paper book on the respondent after obtaining exparte interim order. The learned Single Judge having experience the prevailing practice of not serving the notices with paper book, felt that to discourage such sort of practice in the Court, the writ petition should be dismissed on this ground alone. We are in agreement with the learned Single Judge that the prevailing practice of not serving the respondents after obtaining the exparte stay order for long time for one or the other excuse, is not good for the health of the judicial system. This deserves to be discouraged. However, the learned Single Judge has not dismissed the writ petition on this ground alone. It appears from the record that though the notices sent by the registered post, were not accompanied by the memo of petition and annexures thereto and as such there was no proper service, but apart from the notices sent by thee registered post, notices along with the paper book were also served through process server before the returnable date.

7. It is also contended by Mr. D. S. Shishodia, learned Senior Advocate, appearing for the appellant that the first respondent has acted arbitrarily in entering into agreement with the fourth respondent by giving most valuable land on a lease of Re. 1/- per year without affording an opportunity to all interested persons to participate in the project. Learned counsel has also read the other conditions set out in the M.O.U. and submitted that the offer given by the petitioner was more attractive than that of respondent No.4 It is submitted by Mr. Shishodia that the Managing Director of the first respondent even did not place his proposal Annex.3 before the Board of Directors. The appellant was atlest entitled to consideration of his offer. Learned counsel has heavily placed reliance on the decision of the Apex Court in M.I. Builders Private Ltd.'s case (supra).

8. On the other hand, Mr. M.R. Singhvi, learned counsel appearing for the first respondent, has reiterated the contentions raised before the learned Single Judge and also placed reliance on the same authorities viz ; (i) *Air India Limited v. Cochin*

International Air Port Ltd. reported in[4] (ii) The *Nagar Rice and Flour Mills v. D.N. Teekappa Gowda and Bros. reported in* [5] and (iii) *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed reported in* [6] and (iv) *Mithilesh Garg v. Union of India reported in* [7]

9. Mr. M.S. Singhvi, learned counsel appearing for the fourth respondent, submitted that a perusal of Annex.3 shows that the petitioner Tej Singh Sarupriya made on offer for participation in the project to set up a multi super specialty hospital in Udaipur in his capacity as a Director of Udaipur Hospital and Medical Research Center Private Limited. Learned counsel has invited our attention to page 36 of the paper book, which shows that the petitioner Tej Singh Sarupriya has signed as Director of the Udaipur Hospital and Medical Research Centre Private Limited. It is further submitted that in fact, there was no offer of the said Research Center. Learned counsel has also invited our attention to Annex.10, which has been filed before us wherein the Managing Director of the Udaipur Hospital and Medical Research Center Dr. Anju Sharma along with the Director Sri B.R. Choudhary and Dr. Dinesh Sharma, Chairman, has addressed a letter dated April 5, 2000, to the Managing Director, RSMM Ltd, Udaipur, informing that the Udaipur Hospital is not interested in the proposal as submitted by Mr. T.S. Saropariya. The letter dated April 5, 2000, reads as follows :

> UDAIPUR HOSPITAL AND MEDICAL
> RESEARCH CENTRE Pvt. Ltd.
> Gulab Bagh Road, UDAIPUR-313001(Raj.)
> Ref No.
>
> Date:
> April 5, 2000
>
> To
> The Managing Director
> RSMM Ltd,
> Udaipur
>
> Sub: Proposal submitted by Mr. T.S. Saropariya
>
> Dear Sir,
>
> This is for your kind information that the proposal submitted by Mr. Tej Singh Saropariya, who is one of the directors in Udapur Hospital and holds 25% of equity shares, to construct a charitable hospital in collaboration with RSMM is

given by him in an individual capacity. As the Board does not approve the proposal hence the Udapur Hospital is not interested in the abovesaid proposal. For any further information please contact the undersingn.

Sd/-
Dr. Dinesh Sharma
Chairman

Sd/-
Dr. Anuj sharma
Managing Director

Sd/-
Dr. B.R. Choudhary
Director A.R.

10. It is submitted by Mr. M.S. Singhvi that as the offer was made on behalf of the Udaipur Hopital, the writ petition could not have been submitted by the petitioner in his individual capacity. Learned counsel has also relied upon a decision of the Apex Court in *Himachal Pradesh v. Raja Mahendra Pal reported in* [8]

11. We have considered the rival contentions.

12. It is to be borne in mind that instant case is not of distribution of largesse or granting of licenses or quotas, but of joint venture, where the State or its instrumentality enters into signing a partnership or a joint undertaking for a particular transaction or project for mutual service or profit. In such joint venture, the State or the Association of persons or Companies jointly engage in some commercial enterprises wherein all contribute assets and share risks. The trend of joint venture companies is on increase. Now a days, the expression "joint ventrure" is very frequently used. The Black's Law Distionary has defined joint venture "a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and lossees". There has been a growth of joint ventures in our Country wherein foreign companies join with Indian counterparts and contribute towards capital and technical know-how for the success of the venture.

13. In the case of *G.D. Zalani v. Union of India reported in* [9] the Supreme Court held that the normal method of auction or inviting tenders is not feasible when technolgical tie-up in joint venture was to be formed. In para 34 of SCC : Para 33 of AIR, the

Supreme Court has observed as under :

> "34. We must reiterate that this was not a case of granting of lease of a government compnay, in which case the Court would have been justified in insisting upon the authorities following a fair method consistent with Article 14, i.e., by calling for tenders. We agree that while selling public property or granting its lease, the normal method is auction or calling for tenders so that all intending purchasers/ lesses should have an equal opportunity of submitting their bids/tenders. Even there, there may be exceptional situations where adopting such a course may not be insisted upon. Be that as it may, the case here is altogether different. HAL was trying to improve not only the quantum of production but also its quality and for that purpose looking for an appropriate partner. They went in for the best. It must be remembered that this technology is not there for the mere asking of it. All the leading drug companies keep their processes and technology a guarded secret. Being businessmen, they like to derive maximum profit for themselves. It is ultimately a matter of bargain. In such cases, all that need be ensured is that the Goverment or the authority, as the case may be, has acted fairly and has arrived at the best available arrangement in the circumstances."

14. In the case of *New Horizons Ltd. v. Union of India reported in* [10] the Apex Court held that even in cases where the Government action must be in consonance with the standards or norms, which should not be arbitrary, irrational, or irrelevant, it is entitled to have certain measure of "free play in the joints". It will be profitable to extract para 17 of SCC form the said judgment as follows (para 19 of SCW):

> "The decision of this Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognized that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere."

15. In *Tata Cellular v. Union of India reported in* [11] the Apex Court has examined the

scope of judicial review in the matter of contract and laid down the following principles (Para 113) :

> "(1) The modern trend points to judicial restraint in administrative action.
> (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
> (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negtiations through several tiers. More often than not, such decisions are made qualitatively by experts.
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facets pointed out above) but must be free from arbitrariness not affected by bias or actuated by maladies.
> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

16. The case of M.I. Builders Private Ltd. (AIR 1999 Supreme Court 2468) on which learned counsel has heavily placed reliance, was not a case of joint venture but a case of contract for construction of underground commercial complex in the city of Lucknow. In the said case, on facts, it was found that the whole process of awarding contract to M.I. Builders was in flagrant violation of law with the sole purpose of conferring benefit on it. The allegations of malafide were firmly established. In fact in the said case, subsequently, Maha Nagar Palika itself withdrew the grant of project to M.I. Builders. In the facts of the case, the Apex Court found that the dictum contained in the case of *M/s Kasturi Lal Lakshmi Reddy v. The State of Jammu and Kashmir reported in* [12] was inapplicable.

17. In Kasturi Lal's case (AIR 1980 Supreme Court 1992) (supra), their lordships of the Supreme court in para 22 observed as follows (para 22) :

> "The State may choose to do so, if it thinks fit and in a given situation, it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party; "Please wait, I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry". It would be most unrealistic to insist on such a procedure, particularly in an area like Jammu and Kashmir which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneur for providing resources and other facilities for setting up an industry, the contract cannot be assailed as invalid as long as the State had acted bonafide, reasonable and in public interest."

18. From the above observations, it becomes clear that the isuance of public advertisement inviting people at large to offer their prices or to apply for entrustment of contract, is not an absolute or invariable rule. A joint venture project is always based on mutual trust and confidence and after examining the investment capactity, experience and capability and human resources available with the partner and other material, such a decision of the Government or its instrumentality cannot be assailed as invalid except in a case where the decision of the State or its instrumentality is not bonafide, reasonable and in public interest. If the terms and conditions of the contract and surrounding circumstances show that the State has acted malafide or out of improper or corrupt motive or in order to promote private interest of someone at the cost of the State, the Court will undoubtedly interfer but so long as the State action is *bona fide* and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publictiy made or tenders invited.

19. In the instant case, there is nothing to show that the decision of the first respondent is malafide or unreasonable or against the public interest. On the contrary, the *bona fide* of the petitioner appears to be doubtful. At the first instance, he has entered in the

picture quite late. The Board of Directors approved the proposal in the month of December,1999 and then the MOU was also entered in the month of January, 2000, Thus, there was no question of placing the proposal received in the month of march before the Board. Otherwise also, there was no proposal from the Udaipur Hospitals duly approved by the Board. The petitioner, who deals in jewellery business, may be wealthy person but he has not been able to carry his proposal even with the Udaipur Hospitals, wherein he claims to have 25% of shares.

20. The object of instant consortium is to provide medical services for the past and present employees and the family members of the first respondent on no profit-no loss basis and further for the benefit of the poor and downtrodden people of the Udaipur region. While the first respondent was in search of a partner for establishing a multi superspeciality hospital with twin purpose as referred-to above since 1997 and they failed with the Apollo Group, at that time, it received an offer from the respondednt No.4, which is headed by Dr. Kirit Kumar Jain, Chariman cum Managing Director. Dr. Kirit Kumar Jain is said to have vast experience in the medical field and has been in U.S.A. for last 22 years. He is a Cancer Specialist and has done specialisation in Sloan Kettering Kancer Centre, U.S.A. which is said to be a renowned World's best hospital for Cancer. He is also a M.B.A. qualified from U.S.A. for hospital management. He belongs to Udaipur and wants to set up a multi super specialty hospital at Udaipur to provide free medical care to poor. for this purpose, he floated the company with an authorized capital of Rs. ten crore. He has agreed with the terms and conditions of the first respondent providing medical services to its past and present employees and their family members at no profit and no loss basis. The entire project will cost around Rs. 20 crore and so far as the first respondent is concerned, it will be providing land and contributing to the share capital of respondent No.4 to the time of Rs. one crore only and the remaining amount is to be managed by the fourth respondent. It is also stated that in addition to Dr. Kirit Kumar Jain, two other prominent doctors are expected to join the project viz; Dr. Ramesh Gupta and Dr. Vinod Kumar. when such offer was with the first respondent, it was not at all expedient [as the Supreme Court observed in Kasturi Lal's case (supra)]to tell him " Please wait, I will have to first advertise see whether any other offers are forthcoming and after considering all offers, decide whether I should set up the super specialty hospital with you. Such an approach cannot be appreciated either from the service or business point of view, particularly in globalizing Indian Economy. A *bona fide* and prudent decision depends on various factors. No straightjacket formula can be tailored

in that regard. We only say that High Court is not expected to be readily available for interference simply on the ground that MOU for joint venture is entered without publicity.

21. Recently, the Apex Court in Air India Limited's case (supra) has observed that the High Court should exercise discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely in making out a legal point. The Court should always keep larger public interest in mind in order to decide whether its intervention is called-for or not. The Court further observed that the Court should intervene only when it comes to the conclusion that the overwhelming public interest requires interference. Dealing with the commercial transaction, the Court observed thus (para 12) :

> "In a commercial transaction of a complex nature what may appear to be better, on the face of it, may not be considered so when an overall view is taken. In such matters, the Court cannot substitute its decision for the decision of the party awarding the contract."

22. Thus, on the basis of material on record, we find that the first respondent *bona fide* believed that the fourth respondent can be the best partner for setting up a hospital in joint venture on the terms as set out in MOU. There is nothing on record to vitiate the said belief. We do not find any arbitrariness or unreasonableness in the decision of the first respondent. We do not find any good and valid reasons to interfere with the decision of the first respondent.

23. Consequently, we find no merit in the Special Appeal and the same is hereby dismissed.

Appeal dismissed

Cases Referred.

1. (1999) 6 SCC 464
2. (1999) 8 SCC 150
3. (1999) 7 SCC 89
4. 2000 AIR SCW 351
5. AIR 1971 SC 246
6. AIR 1976 SC 578

7. AIR 1992 SC 443
8. AIR 1999 SC 1786.
9. 1995 Supp (2) SCC 512
10. (1995) 1 SCC 478
11. (AIR 1996 SC 11)
12. AIR 1980 SC 1992