

(1995) 12 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11818 of 1995

Madan Lal Jindal and Co.

APPELLANT

Vs

The State of Haryana, etc.

RESPONDENT

Date of Decision: Dec. 4, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Municipal Act, 1911 - Section 83

Citation: (1996) 113 PLR 460

Hon'ble Judges: N.K. Sodhi, J; Ashok Bhan, J

Bench: Division Bench

Advocate: Mohan Jain and Rakesh Aggarwal, for the Appellant; S.S. Khetarpal and Jaivir Yadav, for the Respondent

Final Decision: Allowed

Judgement

Ashok Bhan, J.

Prayer made in this writ petition is for quashing order dated 31.7.1995, Annexure P-6 passed by the Municipal Committee, Rattia, respondent No. 3, cancelling the auction in favour of the petitioner at the instance of the Deputy Commissioner, Hisar.

2. The State of Haryana issued certain guidelines on 12.6.1995 for privatisation of the collection of octroi i.e. giving contracts to the private persons in auction to collect the octroi, Municipal Committee, Rattia, respondent No. 3 (hereinafter referred to as "the Municipal Committee"), in pursuance to the aforesaid guidelines issued auction notice and circulated pamphlets inviting general public for auction for the grant of contract for collection of octroi for one year i.e. from 1.8.1995 to 31.7.1996. Auction for the contract of collection of octroi for the Municipal Committee was held and the petitioner was allotted the same, being the highest bidder for Rs. 10.25 lacs. A formal agreement was drawn and signed between the

parties. A formal letter of appointment to the petitioner as a contractor, being highest bidder was issued on 24.7.1995. Further petitioner complied with all the requisite conditions of furnishing security/bank guarantee within the stipulated time. Petitioner was authorised to collect the octroi from 1.8.1995 to 31.7.1996.

3. On 31.7.1995, petitioner received a communication Annexure P-6, from the President of the Municipal Committee to the following effect.-

"Subject: Regarding cancellation of Octroi Contract.

In reference to the subject above noted you are informed that the Deputy Commissioner, Hissar, has cancelled the Octroi Contract of Municipal Committee, Rattia, due to irregularities vide his letter No. 7071/LF dated 27.7.1995. This order comes into force immediately."

4. Petitioner being aggrieved has filed the present writ petition challenging the action of respondents No. 2 and 3 inter alia on the grounds that the Deputy Commissioner, Hisar, had no power under the statute to order cancellation of the auction in favour of the petitioner that the contract was between the petitioner and the Municipal Committee and it was for the Municipal Committee to take any action in accordance with law and the Municipal Committee could not act at the instance of the Deputy Commissioner. It is alleged that the Deputy Commissioner acted at the instance of the local member of the Legislative Assembly, who was inimically disposed against the petitioner. Further ground taken is that the contract had been completed between the parties and the same could not be cancelled on the ground of commission of alleged irregularities without affording an opportunity to show cause to the petitioner.

5. Notice of motion was issued in response to which written statement has been filed.

6. The stand taken by the respondents is that the agreement between the parties could be cancelled at the instance of the Deputy Commissioner without affording any hearing to the petitioner.

7. The matter is being disposed of at the motion stage, being of urgent nature.

8. A perusal of order, Annexure P-6 shows that the Municipal Committee had passed the order at the instance of the Deputy Commissioner, Hisar. There is no independent application of mind by the authority cancelling the agreement between the parties. The alleged irregularities committed by the petitioner have not been specified. After an agreement is completed between the parties, the same could not be cancelled without affording an opportunity of hearing to the concerned party especially when it is being cancelled on the ground of commission of certain irregularities. The order is against the principles of natural justice i.e. condemning a person unheard. It is a cardinal principle of natural justice that no person can be condemned unheard. Order such as Annexure P-6, cancelling the contract under the

circumstances could not be passed without a show cause notice and affording a hearing to the party concerned.

9. Counsel appearing for the Municipal Committee fairly conceded that there is no dispute between the petitioner and the Municipal Committee and there were no irregularities committed by the petitioner and the agreement between the parties was cancelled on a communication received from the Deputy Commissioner, Hisar.

10. Counsel appearing for the Deputy Commissioner, Hisar failed to show the source of power which could authorise the Deputy Commissioner to instruct the Municipal Committee to cancel a valid agreement entered between the parties. Instructions issued by the Deputy Commissioner, Hisar, under the circumstances to parties, were without any authority vested in him by any provision of law. The same was arbitrary and whimsical which resulted in loss to the Municipal Committee as well as the petitioner.

11. For the reasons stated above, order Annexure P-6, is quashed, being against the auction conditions and having been passed in an arbitrary manner in violation of the principles of natural justice. Petitioner would now be allowed to run the octroi post of Municipal Committee, Rattia, as per the contract on payment on proportionate octroi charges of the auctioned money with effect from 15.12.1995 till the completion of the contract i.e. upto 31.7.1996.

12. We further impose costs of Rs. 10,000/- to be paid by Shri N.C. Wadhwa, Deputy Commissioner, Hisar, personally as he had passed the order in a most arbitrary manner without any authority of law resulting in loss to the Municipal Committee as well as the petitioner. Government is injuncted from re-imbursing these costs to Shri Wadhwa, Municipal Committee, Rattia, would be entitled to these costs as basically the loss has been suffered by it. Costs to be paid against receipt to the Municipal Committee within one month from today. Receipt be produced in Court on 18.1.1996.

13. The writ petition is allowed, but for production of receipt of payment of costs, the case is adjourned to 18.1.1996.

14. Copy of this order be given dasti on payment.