

(1991) 09 AHC CK 0091

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 2208 of 1991

Hardwar Rai

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Sept. 20, 1991

Acts Referred:

- Uttar Pradesh Toll Tax Regulations Levy and Collection Rules, 1980 - Rule 4, 7, 8

Citation: (1992) 1 AWC 129

Hon'ble Judges: R.R. Misra, J; A.P. Misra, J

Bench: Division Bench

Advocate: R.B. Tripathi, for the Appellant;

Final Decision: Allowed

Judgement

R.R. Misra, J.

Sri Hardwar Rai, the Petitioner, and Sri K.P. Tripathi, the opposite party No. 4, are contractors, who take contract for collection of toll tax in the Public Works Department. In the year 1982 an advertisement was published in the news paper for auction of levy and collection of toll tax from the Bridge of Baghauch, Ram Nagar, District Deoria. The Petitioner as well as opposite party No. 4 along with others took part in the said auction, which admittedly took place on 24-8-90. At the said auction the bid of the Petitioner was to the extent of Rs. 2,51,100/-, while of opposite party No. 4 was to the extent of Rs. 75,000/-. According to the terms of the said auction in paragraph 13 of the said terms the auction was stated to be initially for two years but later on it was amended for three years. In paragraph 15 of the said terms it was also mentioned that the rate of auction will be annually. There is a dispute between the parties as to whether the said amounts so offered at the time of said auction on 24-8-90 related to a period of three years or one year only. We shall advert to this part later on.

2. The Executive Engineer/Superintendent of Works, PWD, Deoria, the opposite party No.3. however, received a letter dated 16-1-1991 from the Commissioner Gorakhpur Division, Gorakhpur, the opposite party No. 2, that the lease has been granted in favour of Sri K.P. Tripathi, the opposite party No. 4, at the rate of Rs. 75,000/-per year for a period of three years. Aggrieved against the same, the Petitioner, who claims to be the highest bidder at the said auction, has challenged the said grant of lease to opposite party No. 4 by the opposite party No. 2 and has accordingly prayed for quashing the aforesaid letter dated 16-1-91 a true copy of which has been filed as Annexure (6) to the writ petition. The other payment made in the writ petition is for issue of a writ of mandamus commanding the opposite parties No. 2 and 3 to grant lease in favour of the Petitioner.

3. We have heard Sri R.B. Tripathi, learned Counsel appearing for the Petitioner and the learned Standing Counsel appearing for the opposite parties No. 2 and 3, as well as Sri H.S.N. Tripathi, learned Counsel appearing for the opposite party No. 4. Two fold arguments have been advanced before us by the learned Counsel for the Petitioner. The first is that the amount of bid offered at the time of auction by the Petitioner in the sum of Rs. 2,51,100/- was for a period of three years and not for a period of one year and this contention has been reiterated by the Petitioner by his letter dated 3-9-90 and 13-12-90 addressed to the Commissioner, Gorakhpur Division, Gorakhpur, the opposite party No. 2, copies of which have been filed as Annexure (4) and (5) to the writ petition. In support of this submission learned Counsel for the Petitioner has relied upon the fact that prior to the date covered by the present auction the Petitioner was granted lease for earlier period also at the rate of Rs. 11,000/- per year as is evident from a copy of the letter dated 28-9-82 from the Executive Engineer, the opposite party No. 3, addressed to the Petitioner which related to the earlier period of lease, a copy of which has been filed as Annexure (1) to the writ petition.

4. This position has been stoutly refuted by Sri H.S.N. Tripathi, learned Counsel appearing for Sri K.P. Tripathi, the opposite party No. 4. His submission is that the amount of bid at a figure of Rs. 2,51,100/- was per annum and not for three years. Reliance has been placed in this connection by Sri Tripathi on certain endorsement made by the officers of the opposite party No. 3 on the auction sheet as well as the order dated 19-9-1990 passed by the Commissioner, Gorakhpur Division, Gorakhpur accepting the bid of the Petitioner at the rate of Rs. 2,51,100/- per year for a period of three years. Mr. Tripathi, learned Counsel for the Respondent No. 4, has also relied upon the Clause (15) of the aforesaid terms of auction which states that the bids at the auction shall be on yearly basis. However, since the Petitioner has not been granted any lease in the present case on his bid at the auction on 24-8-90 and in view of our findings and conclusions, which we will record later on while dealing the second argument, it does not appear to us to be expedient and necessary to go into this controversy. This submission, therefore, made on behalf of the Petitioner for the relief sought for by him is accordingly of academic interest only and we

refrain from recording any opinion on this question.

5. The second submission made by the learned Counsel for the Petitioner is that admittedly the opposite party Nos. 2 and 3 have accepted the bid of the opposite party No. 4 in this case although the bid of the Petitioner was the highest at the said auction, but the same could not be accepted without the prior approval of the State Government (emphasis supplied). Admittedly, no such approval of the State Government has, in fact, been taken by the opposite parties Nos. 2 and 3 as is apparent from the record of the present case. Although a counter-affidavit has been filed on behalf of the State of U.P., the opposite party No. 1, but there is no assertion in the said counter-affidavit that any prior approval of the State Government was given to opposite parties No. 2 and 3, when they sought to accept the bid of opposite party No. 4. On this admitted fact, the contention urged on behalf of the Petitioner is that having regard to Rule 8 of the U.P. Tolls Regulation Levy and Collection Rules, 1980 (herein after referred to as Collection Rules 1980), it was not open under the law for the opposite parties No. 2 and 3 to have accepted the bid of opposite party No. 4 by the impugned order dated 16-1-1991 (Annexure-6 to the writ petition). This contention has been opposed by the learned Counsel for the opposite party No. 4 by placing reliance on certain provisions relating to the procedure for grant of lease as contemplated by Rules 4 and 7 and subsequently by Rule 8 of the Collection Rules 1980. For the purposes of our case relevant provisions of the Rules are reproduced hereunder:-

2 (d) "Commissioner" means the Commissioner in which Bridge is located and includes any officer nominated by the Commissioner to perform the functions under these rules on his behalf.

2 (e) "Executive Engineer" means the Executive Engineer, Superintendent of Works of the Division concerned of the Public Works Department.

4 (i) The Governor or his nominee may invite auction bids from the persons desirous of taking lease for the collection of the tolls levied on the bridge specified in the notification issued by the Government.

4 (2) The Governor or his nominee shall scrutinize the auction bids and verify the status and other particulars submitted by the applicants and after examining the documents or papers submitted by the applicants shall prepare a list of the suitable candidates to whom the lease contract may be granted.

4 (iv) The Governor or his nominee presently the Divisional Commissioner, will select any person out of the list of the bidders and may order that the said person/contractor shall be granted lease in respect of the right to collect tolls on the specified road bridge.

4 (v) The Governor, if it considers necessary, in public interest may put to public auction the lease of the right to collect tolls on any specified road bridge. Such

public auction shall be held after giving prior notice in important newspapers by the authorised officer by giving a minimum notice of one month in the first instance. If such occasion arises which makes the tenders/auction to be re-invited redone, a similar notice of one month for the public auction may be issued.

4 (vi) The Governor or his nominee presently the Divisional Commissioner shall have the power to accept or reject any bid/tender and his decision in that respect shall be final.

7. Vesting to powers accepting auction bids:-The powers accepting auctions and entering into agreement on behalf of the Governor of Uttar Pradesh shall be vested in the Commissioner of the Division concerned or any officer as may be authorised by the Governor to do so in this behalf.

8. Accepting of highest auction bid:-If an auction bid-negotiated offer is not the highest one the lower auction bid/negotiated offer can only be accepted after getting the prior approval of the State Government.

6. The argument advanced on behalf of the opposite party No. 4 is that since all the powers stated in the aforesaid provisions--in Rules 4 and 7 above, of the Governor are vested in the Commissioner of the Division concerned, therefore, if we read Rule 8 in that light, the moment the Commissioner of the Division grants approval for the grant of the lease the provisions of Rule 8 are satisfied. Having regard to the scheme for the grant of the lease and the acceptance of the bid at the auction as contemplated in the Rules extracted above, we are unable to agree with the aforesaid submission made on behalf of the opposite party No. 4. When we dissect Rule 8 of the Collection Rules 1980, we find that first part thereof contemplates an authority accepting the auction bid that the said acceptance should be done on the contingency stated in Rule 8 only after getting the prior approval of the State Government, i.e. another authority. If the interpretation put by the learned Counsel for the opposite party No. 4 is accepted then the authority accepting the bid in such contingency shall be the same as the authority granting the approval. The said interpretation, however, is also not acceptable because if Rule 8 is read as has been suggested by the learned Counsel for the opposite party No. 4, it will make the words "after getting the prior approval of the State Government" occurring in Rule 8 of the said Rules redundant. It will further lead to absurdity. Therefore, accepting the submission made by the learned Counsel for the Petitioner, we interpret Rule 8 of the said Rules by saying that the said Rule contemplates two different authorities, one the authority accepting the bid, i.e. the Commissioner of the Division in the present case, and the other the State Government. Proceeding further, we find that in the present case, since opposite parties Nos. 2 and 3 have not accepted the highest bid of the Petitioner at the auction held on 24-8-1990 and have accepted the lower auction bid of the opposite party No. 4 admittedly, without prior approval of the State Government, the impugned order dated 16-1-1991 passed by the opposite party No. 2 the Commissioner of the Division, violates the mandatory provisions of

Rule 8 of the said Rules and is liable to be quashed.

7. We are further of the opinion that Rule 7 of the said Rules relates to an absolutely different situation than Rule 8 of the said Rules in as much as Rule 7 states that the power of accepting the auction bid and entering into an agreement on behalf of the Governor of the Uttar Pradesh shall vest in the Commissioner of the Division. Rule 8, however, contemplates a different situation than the power of accepting the auction bid and entering into an agreement. It states and deals with a situation in which the auction bid is accepted of a person/contractor who is not the highest bidder but of a lower auction bidder, whose bid can also be accepted by the Commissioner concerned only after the prior approval of the State Government. Thus Rule 7 of the Collection Rules 1980 speaks of and points out the authority who has to act on behalf of the Governor of the Uttar Pradesh i.e. the Commissioner, while Rule 8 relates to the act or power of the said authority i.e. the Commissioner of accepting the auction bid and entering into an agreement. It further contemplates that in doing so if the bid of such a person is accepted, who is not the highest bidder then before accepting the bid of such a person the rule requires that approval of the State Government should also be obtained. This is a mandatory requirement. Thus reading Rules 7 and 8 of the Collection Rules 1980 together, we also find that in so far as the acceptance of the bid in the situation contemplated by Rule 8 is concerned, the said acceptance of course, has got to be done by the Commissioner of the Division but only after getting the prior approval of the State Government i.e. an authority entirely different from the Commissioner of the Division. Obviously, there is good reason for making Rule 8 of the said Rules because it is not left to the sweet discretion of the Commissioner of the Division alone whether to accept the bid of the highest auction bidder at the auction or not. In case he accepts the bid of the highest bidder, he has to grant the lease to the said person. But in case he decides to accept the bid of a person other than the highest bidder, i.e. of a lower auction-bidder, the safeguard provided in such a contingency is that he has to get the prior approval of the State Government. In our opinion, the said interpretation also serves the ends of justice. In so far as the stand of the learned Standing counsel is concerned, we may mention that he has also taken the stand provided for under Rule 8 of the Collection Rules of 1980, i.e. the Commissioner of the Division will be accepting the bid of the lower bidder but only with prior approval of the State Government.

8. For the foregoing discussions, we held that the impugned order dated 16-1-1991 is illegal and is not warranted by law.

9. Before parting with the case, our attention has been invited to G.O. No. 5431/23-Sa.Ni.De-31 (13)/86 dated 16-11-1987 issued by the Secretary, Uttar Pradesh Government, Lucknow addressed to all the Commissioners of the Division. It has been stated in the said G.O. that the period of validity of the auction bids is normally three months from the date of auction and that in this period of three

months necessary orders have got to be issued to the first three bidders at the auction and consequently as the circumstance permits to one bidder within the aforesaid period for executing the lease deed and in case they did not get a lease deed executed within the said period, the earnest money is likely to be forfeited. In the present case, admittedly, the auction took place on 24-8-1990 and the same has been sanctioned by the Commissioner of the Division vide his letter dated 16-1-1991 i.e. much after a period of three months and that too in favour of the bidder who was at serial 4. In these circumstances, we are of the opinion, that the earnest money of neither of the Petitioner, nor of the opposite party No. 4 was liable to be forfeited. Therefore, the opposite parties Nos. 2 and 3 are directed to refund to them their security money within a period of one month from the date of a certified copy of this judgment along with an application for refund of the security is produced by them before the authority concerned in case the said deposits of earnest money were in accordance with law by passing necessary orders thereon.

10. With the aforesaid observations, we accordingly allow the writ petition and quash the impugned order dated 16-1-1991 (Annexure-6 to the writ petition). On the totality of the facts of this case, we feel and accordingly remit the case back to opposite parties Nos. 2 and 3 for re-auction of the collection of the said tolls on yearly basis as per terms of the auction notice or on such terms as it deem fit and proper in the circumstances of the case.

11. The ad interim order dated 25-1-1991 granted by this Court is hereby discharged. The amount deposited by the Petitioner under the said interim order, if any, shall also be refunded to him by the Respondent-authority concerned.