

(2001) 04 AP CK 0045

Andhra Pradesh High Court

Case No: Writ Petition No. 497 of 2001

Battu Ramachander

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision: April 18, 2001

Acts Referred:

- Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 - Regulation 4
- Constitution of India, 1950 - Article 14 21, 226

Citation: (2001) 3 ALD 619

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: Mr. Venkata Raja Ram, for the Appellant; Government Pleader for Forests and Mr. A. Ramalingeswara Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.B Sinha, CJ

1. This writ appeal is directed against a judgment dated 13-3-2001 passed by the learned single Judge in WP No.2258 of 2001 whereby and whereunder the writ petition filed by the appellant herein was dismissed. The said writ petition was filed seeking inter alia a writ of mandamus declaring the auction notice issued by the third respondent and allotting the mango and cashew yields and seeds to the non-tribal without following the procedure contemplated under the A.P Scheduled Area Land Transfers Regulations, 1959 and its amendment 1 of 1970 as illegal contrary to law and violative of Articles 14 and 21 of the Constitution.

2. The sole question which arises for consideration is as to whether a wide publicity was given in terms of Regulation 4 of A.P. Scheduled Area Land Transfers Regulations, 1959 as amended by Amendment Act No.1 of 1970. The fact of the matter is that the third respondent has issued a Notification of auction on 11-1-2001

for the yield of mango and cashew in the schedule area. According to the appellant, he was not aware of the said Notification as a result whereof, he could not participate in the auction. The appellant contends that he being a tribal member, the forest produce ought to have been offered to him first and denying an opportunity to the tribals to participate in the auction is wholly illegal. The learned single Judge arrived at a finding of a fact upon taking into consideration the statements made in the counter-affidavit that the details of plot numbers, location of gardens- species wise, number of trees etc., are mentioned in the sale notice dated 11-1-2001 and the same had been sent to all the Divisional Forest Officers in the circle; Conservator of Forests, Khammam, Mandal Revenue Officer, Kothagudem, Deputy Superintendent of Police, Kothagudem Gram Panchayat, Chattakonda Andhra Pradesh Forest Development Corporation Limited etc.

3. The learned single Judge further noticed that 15 days" time had been given from the date of notice of holding of auction and despite the communication and the wide publicity thereof, the petitioner-appellant did not participate in the auction.

4. Mr. M. V. Rajaram, learned Counsel appearing for the appellant inter alia would submit that wide publicity as envisaged under Regulation 4 of aforementioned Regulations should have been strictly adhered to. The learned Counsel would contend that such publicity ought to have been given by beat of drums. It was submitted that no publicity has been made even in terms of the statements made in the counter-affidavit.

5. The learned Government Pleader for Forests on the other hand submits that pursuant to the auction notice, a very high price had been quoted and the respondent No.4 being the highest bidder, his bid was accepted. The learned Counsel pointed out that no question was raised before the learned single Judge that the grounds of publicity stated in the counter-affidavit had not been followed.

6. The question as to whether how and in what manner the publicity should be made or auction notice would be notified would depend on the facts and circumstances of each case. In a case of this nature, the publicity by way of advertisement in the newspaper or advertisement in the electronic media is not envisaged. The print and the electronic media may not reach the members of the scheduled tribe who live in interior places. The mode of publicity adopted by the official respondents cannot be said to wholly unfair so as to attract the wrath of Article 14 of the Constitution. It is a well settled principle of law that in a matter like this, the Court has to find out as to whether a fair procedure has been adopted. What would be a fair procedure would vary from case to case. In a case of this nature, we do not find that the mode of publication adopted by the respondents can be said to be unfair.

7. In *Debasis Dutta v. State of West Bengal* (2) 1998 CLT 398 HC , a full Bench of Calcutta to which one of us -Satyabrata Sinha was a party to the decision, while

holding that writ of mandamus can be issued only when there exists a legal right, observed as follows :

The writ petitioner in this application has not questioned the vires of the relevant provisions of the Act, the Management Rules or the Recruitment Rules. He, therefore, cannot seek for issuance of writ or in the nature of mandamus as he does not have any legal right to be interviewed as his name has not been sponsored by the Employment Exchange. It is well settled that writ of mandamus can be issued only when there exists a legal right in the writ petitioner and a corresponding legal duty in the respondents.

8. It was also observed:

We are also of the view that it cannot be the intention of any Legislature that in all situations, an advertisement to the newspaper would be an absolute necessity. According to the writ petitioner himself the post which is sought to be filled up is the post of a Clerk. Had an advertisement been issued in All India Newspapers or such vacancies were notified through broadcast in Radio and Television, it might have been impossible for the Managing Committee of the School to handle thousands of applications and grant interview to all of them. But in a case where a large number of posts are sought to be filled up, the Director of School Education can issue requisite directions to the Managing Committee for advertising the post.

9. Relying on the decisions in *Joginara Jha v. College Service Commission* 1983 (3) SLR 4 and [Sardara Singh and others, etc. Vs. State of Punjab and others](#), it was also observed:

It is also pertinent to note that the Courts have also upheld recruitments in cases where vacancies were notified only in a notice board and the same had not even been intimated to the Employment Exchange.....Even in some cases in the matter of distribution of largess or invitation to treat, calling for limited tenders has been held to be justified.

10. So far as the second contention raised by the learned Counsel to the effect that even the modes of publicity asserted in this appeal are not complied with, suffice it to say that the said question had not been raised earlier. In any event, the said question involves a disputed question of fact. This Court in exercise of its jurisdiction under Article 226 of the Constitution cannot go into the same.

11. We see no merit in this appeal and it is accordingly, dismissed. No costs.