

PETITIONER:
HAJI T.M. HASSAN RAWTHER

Vs.

RESPONDENT:
KERALA FINANCIAL CORPORATION.

DATE OF JUDGMENT 17/11/1987

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
RAY, B.C. (J)

CITATION:
1987 SCALE (2) 1067

ACT:

Indian Contract Act, 1872: Auction-Disposal of property by State or instrumentality of the State-Resort to private negotiation instead of public auction justified in compulsive situations.

Constitution of India, Article 14: Property owned by State or instrumentality of State-sale of-Through public auction or by inviting tenders-Action to be fair and above board-Nothing to be done to give impression of bias, favouritism or nepotism.

HEADNOTE:

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The respondent, a State Government Corporation obtained decree for certain amount against the appellant and in execution proceedings a tea estate was brought for sale by court auction in 1969, but in the absence of a bidder the respondent itself had to purchase it at a higher price. The respondent, however, could take possession of the estate only in 1982. It then invited tenders for the sale of the estate. The appellant offered Rs.6,00,000. The next best offer was for Rs.4,15,550 and the third for Rs.2,07,451. The highest offer was accepted, but the appellant could not pay the amount except the earnest money, even after repeated extension of time and offer to receive the balance in instalments. The respondent then negotiated with the next highest bidder, who enhanced the offer to Rs.4,50,000 which was accepted by the respondent. The property, however, was sold to a partnership firm in which the said bidder was a partner.

The appellant thereupon moved the High Court complaining that the respondent in selling the property to the firm had deviated from the normal practice of inviting the tenders from the public and that the Corporation being a public authority was bound to act reasonably and fairly and it ought not to have arbitrarily selected the purchaser. The High Court declined to interfere.

Dismissing the appeal,

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HELD: The action of the respondent in offering the property to the person next in order by private negotiations and selling the same at

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his request to the partnership firm was perfectly justified. [1087G]

The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection and should not be suggestive of discrimination, bias, favouritism or nepotism. Ordinarily these facts would be absent if the matter is brought to public auction or sale by tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations necessitating departure from the rule, but then such instances must be justified by compelling reasons and not by just convenience. [1086H; 1087A-C]

In the instant case, the respondent dealt with the property in all fairness. It invited tenders for the sale of the property under the notification. The appellant submitted the highest tender in response to the said notification. He was granted all concessions and facilities for payment by instalments but he failed. If the appellant could not act according to his tender, there was no reason why the property should not be offered to the person who was next in order. The respondent, therefore, did not do anything unfair with the second bidder after it had got the tender amount raised substantially. [1087D-F]

K.N. Guruswamy v. The State of Mysore & Ors., [1955] 1 SCR 305 at 312; Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors., [1978] 2 SCR 272; R.D. Shetty v. The International Airport Authority of India JUDGMENT:

State of Jammu and Kashmir & Anr., [1980] 3 SCR 1338; Fertilizer Corporation Kamagar Union v. Union of India, AIR 1981 SC 344; Ram and Shyam Company v. State of Haryana & Ors., [1985] Suppl. SCR 541 and Shri Sachidanand Pandey v. State of W. B. AIR 1987 SC 1109, applied.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 914 of 1987.

From the Judgment and Order dated 22.8.1984 of the Kerala High Court in O.P. No. 6806 of 1984.

Abdul Khader and E.M.S. Anam for the Appellant.

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G. Vishwanath Iyer, N. Sudhakaran for the Respondent.

The Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. A tea estate of 100 acres with some buildings, machinery and equipments was given as security to the Kerala Financial Corporation ("The Corporation") against the loan taken by the appellant. A part of the loan remained outstanding and the appellant could not clear it. The Corporation thereupon filed O.A. No. 8/64 before the District Court of Kottayam for recovery of the arrears and obtained decree for an amount of Rs.1,20,000. In execution of the decree, the said tea estate was brought for sale by court auction. On November 5, 1969, the auction sale was held. There was no bidder. So the Corporation itself had to purchase the property for about Rs.1,65,000. There was long standing dispute between the workmen of the estate and the previous management relating to payment of their wages. The Corporation therefore could

not take possession of the estate. An extent of 85 acres out of 100 acres of the estate was in possession of the workmen as per settlement arrived at between the Labour Commissioner and the District Collector. The workmen used to collect the income therefrom towards their wages. This arrangement continued for about thirteen years. On January 7, 1982, the Corporation got possession of the entire estate. The Corporation wanted to recover its amount. It was not interested in the property. It therefore, invited tenders for the sale of the estate. On March 19, 1982, a tender notification was published in dailies like Malayala Manorama, Mathrubhoomi and Deepika newspapers. In response to the notification, the daughter-in-law of the appellant was the only tenderer. She offered Rs.5,10,505. The Corporation accepted the tender. It was subsequently found that the daughter-in-law was no better than the appellant. She also could not pay any amount.

On January 18, 1983, the Corporation again invited tenders for the sale of the property. The notification was published in the said newspapers as it was done earlier. This time, the Corporation received these tenders: (i) T.M. Hassan Rawther (Appellant before us) for Rs. six lakhs; (ii) P.M. Jacob for Rs.4,15,550 and (iii) K.K. Mathew for Rs.2,07,451. Since the appellant submitted the highest offer, the Corporation naturally had to accept it. On March 2, 1983, the acceptance was communicated to the appellant. He must have thanked his stars for getting back his family property which was so dear to him or which was according to him so valuable. But there was no such anxiety shown. He did not pay anything except the earnest money of Rs.40,000.

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The Corporation, however, extended the time for payment again and again. The Corporation also gave him instalments for payment of the balance price. All the efforts of the Corporation failed to induce the appellant.

The Corporation wanted to get back its money. It was not interested in retaining the property. So it negotiated with P.M. Jacob who had submitted his tender alongwith the appellant in response to the notification dated January 18, 1983. He had then offered Rs.4,16,550. His tender was the next best. After negotiation, he enhanced the offer to Rs. four and a half lakhs. The Corporation accepted it and decided to sell the property to P.M. Jacob. The property however, was sold to M/s. Gumraj Plantations at the request of P.M. Jacob. M/s. Gumraj Plantations is a partnership firm in which P.M. Jacob is one of the partners.

The appellant who could not purchase the said property by any means filed suit O.S. No. 229/84 before the Munsif Court Thidupuzha to restrain the Corporation from selling the property. He could not get relief in the suit since by then the sale deed was executed in favour of M/s. Gumraj Plantations. Subsequently, he moved the High Court of Kerala complaining that the Corporation while selling the property for Rs. four and a half lakhs to M/s. Gumraj Plantations, had deviated from the normal practice of inviting tenders from the public. He contended that the Corporation being a public authority was bound to act reasonably and fairly and it ought not to have arbitrarily selected the purchaser. The High Court found no substance in those submissions. The High Court observed:

"The submission made by the petitioner's counsel is that the decision to sell the property by private negotiations is arbitrary and is therefore liable to be interfered with by this court. This is clearly a case where in execution

proceedings the decreeholder has purchased the property and thereafter the property was sold in public auction to the petitioner, who purchased it for Rs. six lakhs but failed to pay the sale amount in spite of the fact that this court and afterwards the corporation had shown great indulgence towards the petitioner. This is not at all a fit case for interference under Art. 226 of the Constitution."

Being aggrieved by the judgment of the High Court, the appellant has preferred the present appeal. On May 18, 1985, this Court

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while entertaining the appeal issued notice limited to the question whether the sale of the property should be made by general auction. This Court further directed that in any event, the appellant will not be allowed to participate in the auction.

Very interesting turn of events. The appellant who miserably failed to secure the property for himself is now interested in securing the best price for the Corporation. He says that this is a public interest litigation. His case is that the Corporation in all fairness must dispose of the property by public auction. It could not have bargained with P.M. Jacob and sold the property to M/s. Gumraj Plantations.

Before the High Court, the appellant attacked the sale also on the ground that it was actuated by extraneous considerations. He alleged that the corporation had succumbed to the pressure of some influential persons for the sale of the property in favour of M/s. Gumraj Plantations. The appellant made these allegations but did not substantiate it. He did not give the names of influential persons who had brought pressure on the Corporation. He did not even state as to how the Corporation officials had shown undue interest with P.M. Jacob or with the other partners of M/s. Gumraj Plantations for sale of the property. It is not proper to make such light hearted and vague allegations against the statutory authorities. These allegations, in our opinion, are uncharitable and unfounded.

The only question that arises for consideration is whether on the facts and in the circumstances, the Corporation was not justified in selling the property by private negotiations in favour of M/s. Gumraj Plantations at the instance of P.M. Jacob. It is needless to state that the Government or public authorities should make all attempts to obtain the best available price while disposing of public properties. They should not generally enter into private arrangements for the purpose. These principles may be taken as well established by the following decisions of this Court: (i) K.N. Guruswamy v. The State of Mysore and others, [1955] 1 SCR 305 at 312; (ii) Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi and others, [1978] 2 SCR 272; (iii) R.D. Shetty v. The International Airport Authority of India and Ors., [1979] 3 SCR 1014; (iv) Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir and Anr., [1980] 3 SCR 1338; (v) Fertilizer Corporation Kamagar Union v. Union of India, AIR 1981 SC 344; (vi) Ram and Shyam Company v. State of Haryana and Ors. [1985] Supp. SCR 541 and (vii) Shri Sachidanand Pandey v. State of W.B. AIR 1987 SC 1109.

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In R.D. Shetty v. The International Airport Authority of India and Ors. [1979] 3 SCR 1014 at 1041 Bhagwati, J. speaking for the Court observed:

"Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweetwill, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Art 14. It is now well settled as a result of the decisions of this Court in *E.P. Rayappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India* that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Art. 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory."

In *Kasturi Lal Lakshmi Reddy v. State of J & K*, [1980] 3 SCR 1338 at 1355 Bhagwati, J. again speaking for the Court reiterated what he said earlier to *R.D. Shetty* case. The learned Judge went on to state:
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"Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

The learned Judge continued (at p. 1357):

"But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court

cannot lightly assume that the action taken by the Government is unreasonable or without public interest because as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore, the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law."

In Fertilizer Corporation case (AIR 1981 SC 344 at 350 this Court speaking through Chandrachud, C.J., observed:

"We want to make it clear that we do not doubt the bona fides of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has

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put all its cards on the table. In the instant case, the officers who were concerned with the sale have inevitably, though unjustifiably attracted the criticism that during the course of negotiations the original bid was reduced without a justifying cause. We had willy-nilly to spend quite some valuable time in satisfying ourselves that the reduction in the price was a necessary and fair consequence of the reduction in the quantity of the goods later offered for sale on March 31, 1980. One cannot exclude the possibility that a better price might have been realised in a fresh public auction but such possibilities cannot vitiate the sale or justify the allegations of malafides."

In Shri Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109 at 1133, O. Chinnappa Reddy, J. after considering almost all the decisions of this Court on the subject summarised the propositions in the following terms:

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain percepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

After applying these tests, the learned Judge finally upheld the action of West Bengal Government in not inviting tenders, or in not holding a public auction but negotiating straightway at arms length with Taj Group of Hotels for giving about four acres of land for establishing a five star hotel.

The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting

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tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State owned properties are required to be disposed of publicly. But that is not the only rule. As O.Chinnappa Reddy, J. Observed "that though that is the ordinary rule, it is not an invariable rule." There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It must be justified by compelling reasons and not by just convenience.

What is the position in the present case. Here is a case where the Corporation invited tenders for the sale of the property under notification dated January 18, 1983. The appellant submitted the highest tender in response to the said notification. He was given all concessions for payment of the tender amount. But he did not. He negotiated with the Managing Director of the Corporation for facilities for payment by instalments. That was also granted to him. There again he failed. If the appellant could not act according to his tender, we fail to see why the property should not be offered to the person who was next in order. The Corporation, in our opinion, did not do anything unfair with P.M.Jacob. The Corporation got the tender amount raised from Rs.4,16,550 to Rs.4,50,000. It shows the fairness with which the Corporation dealt with the property.

On a consideration of all the facts and circumstances of the case, we are satisfied that the action of the Corporation in offering the property to P.M.Jacob and selling the same at his request to M/s. Gumraj Plantations was perfectly justified and cannot be found fault with

In the result the appeal fails and is dismissed. In the circumstances, however, we make no order as to costs.

P.S.S.

Appeal dismissed.

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