

PETITIONER:
RAJ KUMAR KARANWAL

Vs.

RESPONDENT:
THE COMMISSIONER & ANR.

DATE OF JUDGMENT: 04/11/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF NOVEMBER, 1996

Present :

Hon'ble Mr. Justice K.Ramaswamy
Hon'ble Mr. Justice G.B. Pattanaik
K.S. Chauhan and Anil Karnwal, Advs. for the Petitioner
O R D E R

The following Order of the Court was delivered:
O R D E R

The petitioner, admittedly, had made a bid in the auction for the year 1993-94, conducted on February 25, 1993 for a sum of Rs. 1,20,000/- per annum. The said bid could not be worked out for the reason that the previous contractor had approached the High Court and had the operation of the contract stayed which period expired by efflux of time. Consequently, for the years 1995-97, instead of conducting fresh auction, on an application made by the petitioner, the Executive Engineer had recommended to grant lease to the petitioner for the same amount of Rs. 1,20,000/- for two years as was done in the previous order which was accepted by the first respondent on September 2, 1995. On subsequent instructions, the first respondent had cancelled the grant of the lease to the petitioner by his proceedings dated October 28, 1995. When the petitioner had challenged the legality thereof, the High Court in W.P.No. 31606 of 1995 by order dated August 27, 1996 treating the grant of contract to the petitioner as an extension of the previous grant, held that the first respondent was devoid of power to extend the lease without obtaining prior permission of the State Government. Thus, this special leave petition.

It is contended by Mr. K.S. Chauhan, learned counsel for the petitioner, that the first respondent having granted the lease for the years 1995-97, had no power to cancel the same under Rule 7 of the U.P. Toll Tax Regulations Levy & Collection Rules, 1980 (for short, "the Rules") which gives absolute power to the Commissioner under Rule 7 thereof. Therefore, without any power to review his own order, the Commissioner is devoid of power to cancel the same. We find no force in the contention.

Even assuming that the view taken by the High Court is not sound in law, since it is a fresh grant, the ultimate

decision can be rested on the following circumstances. Rules 4,7,8 and 9 of the Rules reads as under :

"4. Procedure for grant of lease.-

In accordance with the provision of Section 2-C of the Act.

(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.

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

(iii) If it is considered necessary the Governor or his nominee may call any bidders for negotiations.

(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 on respect of the right to collect tolls on the specified road bridge.

(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.

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

(vii) No lease/contract of the right to collect the tolls under the Act on any road bridge shall be made for a period exceeding 5(five) years at a time.

(viii) The Governor or his nominee shall require the lessee to furnish security equal to three months installment of auction money (including earnest money).

(ix) The lease/contract shall be executed on the standard form.

(x) The cost of execution and registration of the lease be borne by the lessee.

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 proper approval of the State Government.

9. Extension of the lease - No Extension of lease may be granted without the prior sanction of the State Government".

Rule 4(i) give power to the Governor or his nominee to 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. Rule 4(ii) envisages that 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 candidate to whom the lease contact may be granted. If it is considered necessary the Governor or his nominee may call any bidder for negotiations under sub-rule (iii). Under sub-rule (iv) power has been given to select nay bidder and thereafter the person nominated has power to grant contract of lease in respect of the right to collect tolls on the specified road bridge. Sub-rule (v) gives alternative mode of grant of lease by public action with which we are not concerned in this case. After the grant of the lease, not exceeding five years as envisaged under sub-rule (vii), the lessee shall furnish security equal to three months instalment of auction money. He shall execute the contract in the standard form under sub-rule (ix). After execution thereof, the power of acceptance has been given to the Commissioner-Ist respondent under Rule 7 of the Rules. If the auction bid after negotiation is not the highest one, the lower auction bid can only be accepted after getting the approval of the State Government under Rule 8; extension of the lease is regulated under Rule 9.

Thus the mode conducting auction is a complete code by itself regulating the right to collect the tolls on the specified road bridges by public notification. It is seen that the first respondent was devoid of any power to accept any bid for the previous years which expired by efflux of time except in the manner prescribed under Rule 4 and the following rules thereafter. The action of the first respondent, therefore, is one without jurisdiction and thereby it is a nullity. The Government, therefore, was right in directing the first respondent to have the order granting lease by him to the petitioner, cancelled. We do not find any illegality in the action taken by the

respondent warranting interference.

The special Leave Petition is accordingly dismissed.

JUDIS