

Rajamalliah And Anr. vs Anil Kishore And Ors. on 4 August, 1980

Equivalent citations: AIR1980SC2037, 1980SUPP(1)SCC226, 1980(12)UJ813(SC), AIR 1980 SUPREME COURT 2037

Author: O. Chinnappa Reddy

Bench: A.P. Sen, O. Chinnappa Reddy

JUDGMENT

O. Chinnappa Reddy, J.

1. We are consternated to make some observations in the interests of judicial property, decorum and discipline and we do so with regret. A learned single Judge of the High Court sitting in the vacation, has entertained a last minute application and granted "ex parte stay", for the mere making almost, in the teeth of a mandatory direction issued by this Court to do a certain thing in a certain time, thereby permitting, as it were, an abuse of the process of the Court and contumacious circumvention of this Court's order. The Supreme Court while supreme as an Apex Appellate Court with plenary appellate powers under Article 156 of the Constitution, is not a Court of superintendence and possesses no powers to suo motu call for the records and quash orders of Courts in the lower ranges of the judicial ladder. Had we such powers, we might have been sorely tempted to use them in the present case. The facts are these; On an application made by seventeen unsuccessful bidders, a learned Single Judge of the High Court of Andhra Pradesh issued a writ under Article 226 of the Constitution quashing an excise auction held on 21st and 22nd September, 1979 and directing that a re-auction should be held within fifteen days. Appeals preferred to a Division Bench under Clause 15 of the Letters Patent by the Government of Andhra Pradesh and the successful bidders at the auction were dismissed. Further appeals preferred to this Court under Article 136 of the Constitution by the Government and the successful bidders were dismissed by us on 25th April, 1980 with a direction that the re-auction should be held within three weeks from that date. Some of the unsuccessful bidders who were the original petitioners before the High Court and who were represented before us by Counsel gave an undertaking through their Counsel that they would offer security in a sum of Rs. 33 lakhs within one week from 21st April, 1980 and that they would start the bids at the re-auction in such a way that the aggregate amount of the bids would not be less than 35 Lakhs. Subsequently on being mentioned, a week's further time was granted for furnishing the security. On May 9, 1980 the learned Counsel appearing for the Govt. of Andhra Pradesh reported to us that the petitioners before the High Court (unsuccessful bidders at the auction) had failed to furnish security as undertaken by them. Thereupon we directed the issue of notices to them to show why they should not be punished for committing breach of the undertaking given to this Court. Time

for holding the reauction was extended till May 26,1980.

2. In answer to the notices issued to them, the respondents who had given the undertaking to us through their Counsel appeared before us person-ally and expressed an unconditional apology for committing breach of the undertaking. An affidavit has also been filed on their behalf explaining its circumstances under which they were unable to furnish security within the period stipulated by this Court. They have, however, brought to our notices the circumstances that they have ultimately been able to comply with the under-taking given by them by furnishing security of property of the value of over Rs. Forty Lakh on 26th and 27th May, 1980 ie. before the date announced and by the Excise Commissioner for the reauction. The Excise Commissioner, it appears, had published a notification that the reautions would be held on May 28,1980. Sbri S.N. Kacker learned Counsel for the respondents submitted that the unconditional apology rendered the respondents might be accepted and the notices might be discharged. ie the circumstances of the case having regard to the facts discussed by the affidavit we accept the apology and discharge the notices issued to the respondents.

3. We mentioned that the Commissioner of Excise had issued a notification announcing that the resuction would be held on May 28 1980. This notification was published on May 15 1980, Two persons K. Racdurangam and SJ Mallik, claiming to be Excise conn actors who intended to participate in the reaction, filed a Writ: petition in the High Court of Andhra Pradesh on May 26, 1980 for quashing the notification issued by the Excise Commissioner. They moved the Vacation Judge of the High Court on May 28 1980 i.e. on the very day fixed for the reautioa foe staying the re auction. The learned Judge stayed the resuction. The principal ground mentioned in the affidavit filed in support if the Writ Petition was that the notification was not in consonance with the observations made by this Court in the appeals filed by the Government and the successful bidders. The two petitioners who suddenly developed sufficient interest in the resuction so as to file a writ petition and have the resuction stayed, had evinced no such interest earlier in the original auction. They were not among the seventeen persons who had questioned the original auction. Nor had they got themselves impleaded in the proceedings at any stage In fact in the affidavit filed by them in support of their writ petition they do not even mention that they had participated in the earlier auction. It should not be very difficult to see through their game, Vet, moving the High Court almost at the twelfth hour' without being able to allege that it was at their instance that the original auction was quashed, they did manage to obtain an order staging the resuction, virtually in defiance of the mandatory direction given by this Court. We are not a little surprised that the State Government did not move the High Court immediately to have the stay vacated but, instead, adopted the dubious course of seeking directions from this Court, when co preceding connected with the Writ Petition filed by Pandurans gam and Mallik was before this Court. We cannot help a feeling of strong suspicion that the State Government had their own role to play in the drama and that Peodurangam and Maliik had their blesaag if not their active cooperation. Certainly, there is more than meets the eye. It paias m to saj this but we must say it is indeed a great pity that tha learned Vacation Judge of the High Court allowed himself to be persuaded to make an order which practically frustrated the order of this Court. We express our serious displeasure at what has happened and we do hope that the High Court will dispose of the Writ Petition expaditiously.