

Chief Conservator of Forest & Ors.

v.

Virendra Kumar & Ors.

(Civil Appeal No. 7414 of 2024)

10 July 2024

[Vikram Nath* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Validity of forfeiture by forest department of the security deposit made by successful auction bidder due to failure to comply with work mandate, considered.

Headnotes[†]

Auction – Conditions of sale – Forfeiture of security deposit – Respondent emerged as successful bidder in auction conducted by forest department, Gorakhpur (U.P.) in 1998 for certain forest produce – Parties executed an Agreement in terms of relevant Conditions of Sale – However despite being informed about last date to deposit the bid amount and complete the work, followed by two subsequent reminder letters/notices, Respondent failed to comply with the said mandate – Resulting in forfeiture of Respondent's security deposit and re-auctioning – Forfeiture challenged in High court on the ground that department's approval was not given within stipulated time, and hence Respondent applied for withdrawing its bid – In its support, Respondent relied on Condition of Sale Manual applicable in 1980-81 overwritten as "1997-98" since auction took place in 1998 and argued that concerned provision mandated communicating approval/disapproval within 40 days from auction – High Court allowed the writ petition – Decision challenged in this SLP:

Held: 1. High Court erred while relying on Manual applicable in 1980-81 because the year in this manual was overwritten as "1997-98" without bearing any signature – A fact noted by High Court but not given due weightage. [Para 14]

2. Court accepted Appellant's argument that no manual was published after 1987-88 and hence it will prevail over previous

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Digital Supreme Court Reports

edition of 1980-81 that Respondent sought to reply on – As 1987-88 edition did not contain provision regarding above-noted 40 days' time period, and required the successful bidder to enquire about the status of acceptance of contract if no formal communication is received by him within 35 days, and provided for deemed approval in absence for formal approval within stipulated time-period of 35 days, the Respondent could not escape the consequences of withdrawing from auction. [Para 15-16]

3. On facts, Respondent did not comply with the initial letter and subsequent reminders which reflected its non-diligent and lackadaisical approach that couldn't be overlooked and thus the forfeiture of security deposit of Respondents was valid. [Para 17-18]

List of Acts

Conditions of Sale Manuals.

List of Keywords

Forest Department; Auction; Security amount; Forfeiture; Lackadaisical approach; Re-auction.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7414 of 2024
From the Judgment and Order dated 11.01.2011 of the High Court of Judicature at Allahabad in WC NO. 55072 of 2000

Appearances for Parties

Ms. Garima Prashad, Sr. A.A.G., Sudeep Kumar, Ms. Manisha, Advs. for the Appellants.

Amit Sharma, R.C. Kohli, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.
2. This appeal by special leave is against the judgment and order dated 11.01.2011 passed by the High Court of Judicature at Allahabad in Writ Petition (C) No. 55072 of 2000. The said Writ Petition in the

Chief Conservator of Forest & Ors. v. Virendra Kumar & Ors.

High Court was filed by the Respondents herein challenging the notice dated 17.01.2000 passed by the Divisional Forest Officer, Gorakhpur forfeiting the security amount of the Respondents. For the sake of convenience, we will refer to the parties as per their instant status before this Court.

3. Brief facts of the matter are that the Forest Department had issued a public notice dated 05.03.1998 inviting registered contractors for participation in a sale auction. In pursuance of the said notice, sale auction was completed on 27.03.1998 as per prescribed procedure and the Respondents offered the highest bids in respect of the various lots. On being declared as the successful bidders, an agreement was executed between the Appellant and the Respondent on the same date with respect to the lot No. 195 (38-H Nasirabad, Banke Range). On the following day itself, a proposal was sent to the Conservator of Forests and Regional Director, Eastern Circle, Gorakhpur, U.P. by the Divisional Forest Officer for approval of the auction proceedings. The said approval was granted by the Regional Director on 14.05.1998.
4. Post approval of the auction proceedings, the Divisional Forest Officer addressed a letter to the Respondent on 15.09.1998 calling upon him to deposit the bid amount of Rs. 2,92,000/- against the respective lots latest by 25.09.1998, obtain their work orders and conclude the work latest by 08.10.1998. It was further stated that in case, the work is not completed within the stipulated time as aforesaid, the security amount deposited with reference to the said auction shall be forfeited and auction proceedings shall be quashed. Even after the issuance of the aforesaid letter, the Respondents did not complete their work and accordingly, a public Notice dated 26.10.1998 was issued by the Forest Department directing the Respondent once again to deposit the bid money and conclude the work. Another notice dated 23.04.1999 was issued to the Respondent stating that the entire work should be completed latest by 15.05.1999, failing which, the amount of security deposited shall be forfeited and the lots in question shall be put to fresh auction. Respondent failed to take action and accordingly on 17.01.2000, the Divisional Forest Officer issued a letter to the Respondent communicating that for non-compliance of the directions given to them, the security amount deposited by them is being forfeited and the lot is being put to re-auction.

Digital Supreme Court Reports

5. As mentioned at the outset earlier, the Respondents, being aggrieved by the communication dated 17.01.2000, filed the Writ Petition before the High Court praying for directions to the Appellants to refund the security amount deposited by the Respondent. Before the High Court, the Respondents argued that since the approval to the auction was not granted within the stipulated period, they had applied to withdraw from the auction and were not bound by the said offer made in the auction and accordingly, security amount could not have been forfeited.
6. The agreements between the parties were executed in terms of conditions of sale of the various forest produce. There were two Conditions of Sale Manuals produced before the High Court. The first manual was published in the year 1980-81 and the second manual was published in the year 1987-88. The High Court, in its judgment, observed that there is cutting over the dates of both the manuals relating to application of the order mentioned therein. In the first manual, in place of year 1980-81, it has been cut and made enforced for 1997-98 and in the second manual, in place of 1987-88, it has been cut and made enforced for 1989-90. High Court also noted that the cuttings do not bear any signatures.
7. The Respondents, for their argument of non-forfeiture of security amount, relied heavily on sub-clause (viii) of Clause 10 of 1980-81 Terms & Conditions of Sale and Auction of Jungle Wood wherein it was provided that if the acceptance or rejection of sale of lots is not informed to the contractor after 40 days, then the contractor will not be bound to take the contract on the accepted bid. Whereas, the Appellants relied on the conditions contained in sub-clause (viii) of Clause 10 of 1987-88 Conditions of Sale, wherein it has been provided that if the approval of the concerned officer is not received within the stipulated period and if the competent authority approves the bid of the lot, then it will be deemed that the lot has been approved.
8. The High Court observed that the Respondents were relying on the conditions made applicable in 1997-98 while the Appellants were relying on the conditions made applicable in 1989-90 and since the auction was held in the year 1998, the conditions applicable in the year 1997-98 will govern the sale by auction pursuant to which agreements have been executed. Accordingly, since the Respondents/contractors were not communicated about the approval or disapproval

Chief Conservator of Forest & Ors. v. Virendra Kumar & Ors.

of sale of lots within 40 days, they were not bound by the said offer made in the said auction and could withdraw themselves. Thereby, it was held that the recovery sought to be made from the Respondents was illegal as being contrary to the Conditions of Sale contained in sub-clause (viii) of Clause 10 of the Terms & Conditions of Sale applicable in the year 1997-98. The Writ Petition was allowed by the High Court, setting aside the Appellant's order dated 17.01.2000 and directing the Appellants to refund the forfeited amount.

9. Aggrieved by the impugned order, the Appellants are before us. An interim stay of the impugned order of the High Court was granted by this Court vide order dated 08.08.2011.
10. The case of the Appellants, largely, is that the relevant Manual operative in the Financial Year 1997-98 is that on which the Financial Year 1987-88 is printed. As per this Manual, the Clause 10 (viii) was amended and the condition of communicating the approval of the auction within 40 days was deleted. It was provided that if no communication regarding approval of the auction is received within the prescribed period, it shall be deemed that the approval of the lots had been accorded by the competent authority. In the absence of any Manual published after the year 1987-88, the said Manual with printed year 1987-88, being the latest Edition, shall prevail over the earlier Edition of the Manual with printed year as 1980-81.
11. Further, it was argued that the Respondents are bound by the terms and conditions as per Agreement dated 27.03.1998 executed by it with the Appellants immediately after the conclusion of the auction proceedings. In this regard, it was also highlighted that Condition No. 2-D of the said agreement clearly provides that if any purchaser fails to deposit the installments as agreed upon, the Forest Officer is entitled to cancel the auction and forfeit the amount of security deposited, amongst other things.
12. Learned Addl. Advocate General appearing for the Appellants has also drawn the Court's attention to sub-clause (vii) of Clause 10 of 1987-88 Conditions of Sale wherein it is provided that if the buyer does not receive any information regarding acceptance of the contract within 35 days from the date of auction, then he should contact the Deputy Conservator of Forests/Conservator of Forests and get information in this regard. The Forest Department will not bear any responsibility for not receiving timely information.

Digital Supreme Court Reports

13. We have heard learned Counsel for the parties and perused the relevant documents on record.
14. We are unable to bring ourselves to agree with the observations made by the High Court. The High Court specifically noted that the cutting over the dates of both the manuals of Conditions of Sale do not bear any signature and yet, went ahead with considering the over-writing as valid and weighed the applicability of respective Manuals based on such over-writing. In the absence of signatures according any sanction to such over-writing, we believe that the High Court has seriously erred by making a finding that the Manual for Year 1980-81 will supersede the Manual for Year 1987-88 and will be applicable for an auction held in the year 1998.
15. Since these are the only two Conditions of Sale Manuals produced before us as well as the High Court, we find force with the Appellants' argument that in the absence of any Manual published after the year 1987-88, the said Manual with printed year 1987-88, being the latest Edition, shall prevail over the earlier Edition of the Manual and be applicable to the instant auction.
16. The Manual of 1987-88 seems to have brought in amendments in the form of sub-clauses (vii) and (viii) of Clause 10, as mentioned above, which impose the responsibility on the contractor to enquire about the acceptance of the contract if no information is received within 35 days and also grants a deemed approval in cases where the approval is not received within the stipulated period. Once, it has been determined that the Manual of 1987-88 will be relevant for the instant case, it follows that the liability rested on the shoulders of the Respondents to enquire about the status of approval, and they could not have withdrawn from the auction after executing the agreement without bearing its consequences. The said consequences were clearly stated in Clause 2-D of the agreement dated 27.03.1998 and include forfeiture of security amount.
17. There is yet another relevant consideration that we have taken into account while reaching the final decision. It is the fact that in spite of repeated notices by the Appellants calling upon the Respondents to complete the work within a stipulated period, the Respondents failed to come forward and do the needful. Respondents came forward by filing a Writ Petition, only after the communication dated 17.01.2000 forfeiting the security amount. It reflects on the non-diligent and

Chief Conservator of Forest & Ors. v. Virendra Kumar & Ors.

lackadaisical approach adopted by the Respondents which cannot be overlooked by this Court.

18. We thus hold that the security amount deposited by the Respondents rightly deserves to be forfeited by the Appellants.
19. Accordingly, the appeal is allowed. The impugned order dated 11.01.2011 is, hereby, set aside and the notice issued by the Appellants dated 17.01.2000 is upheld as valid.
20. Pending application(s), if any, is/are disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Niti Richhariya, Hon. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)