

## CIVIL MISCELLANEOUS.

Before A.D. Koshal, J.

KISHAN LAL,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

## Civil Writ No. 619 of 1970.

May 6, 1970.

*Punjab Minor Mineral Concession Rules, 1964—Rules 28, 29, 30(2) (iv), 32 and 33—Auction for the exploitation of saltpetre—Highest bidder depositing 50 per cent of the bid after fall of the hammer—Government neither confirming nor rejecting the bid—Such bid—Whether deemed to be accepted—Valid contract—Whether comes into being.*

*Held*, that the words “no bid shall be regarded as accepted unless confirmed by Government” in clause (iv) of sub-rule (2) of rule 30 of the Punjab Minor Mineral Concession Rules, 1964, are clear and unambiguous and are susceptible of only one construction, namely, that till the Government declares that it has accepted the bid, the bid shall not be deemed to have been accepted so that no rights flow from it to either party till its acceptance. A contract binding on the parties would come into being, according to the rules, only after the bidder executes the deed or in any case not earlier than the communication by the Government of the acceptance of the bid. Hence in an auction for the exploitation of saltpetre, a valid contract between the Government and the highest bidder does not come into being on the fall of hammer and deposit of 50 per cent of the bid. (Para 5)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the impugned Notification dated 8th January, 1970 (Annexure ‘B’) so far as it relates to village Harni Khurd and declaring the re-auction held on 12th February, 1970, as null and void; confirming the previous auction in favour of the petitioner and restraining the respondents from executing the agreement with Sukh Lal, respondent No. 5.*

S. K. JAIN, ADVOCATE, for the petitioner.

SURINDER SARUP, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA) for the respondents.

## JUDGMENT

A. D. KOSHAL, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution of India are these. In pursuance of a notification (annexure ‘A’ to the petition) issued by the

Director of Industries, Haryana, the saltpetre bearing areas in village Harni Khurd situated in Dhabwali Block were auctioned on the 15th of September, 1969, when the petitioner, a saltpetre contractor, turned out to be the highest bidder, his bid being as high as Rs. 12,500. He paid 50 per cent of the amount at the spot as required by the rules. In order to be effective, this bid had to be confirmed according to the rules and the conditions governing the auction, by the Government. That stage was, however, never reached and on the 8th of January, 1970, another notification (annexure 'B' to the petition) was published in the Haryana Government Gazette declaring that the saltpetre areas above mentioned would be auctioned on the 12th of February, 1970, at 10.00 A.M. This notification was also issued by the Director of Industries, Haryana, and the areas in question were put to auction as declared therein, the highest bid having been given by respondent No. 5 for Rs. 29,000.

(2) The petitioner has challenged the re-auction of the said areas on the following grounds :—

- (i) As soon as he gave the highest bid on the 15th of September, 1969, there came into operation between him and the Government a valid contract for the exploitation by him of the saltpetre available in Harni Khurd against a payment of Rs. 12,500 and that contract was to remain good till it was revoked by Government. No revocation having been decided upon or communicated to the petitioner by the Government, the contract remained in force throughout.
- (ii) No refusal having been made by the Government to confirm the bid within a reasonable time, the bid must be deemed to have been confirmed.
- (iii) The sale of the saltpetre in question became operative in favour of the petitioner with the fall of the hammer at the auction in view of the provisions of clause (2) of section 64 of the Sale of Goods Act.
- (iv) Notification (annexure 'B' to the petition) was legally non-existent, it not having been made in pursuance of any order passed by Government.
- (v) Notification (annexure 'B') was liable to be struck down as action taken *mala fide* inasmuch as the petitioner alone

was selected as a contractor in whose case a re-auction was ordered.

(3) He, therefore, prays that the notification in annexure 'B' and the auction held in pursuance of it be quashed and that the bid given by him at the auction held on the 15th of September, 1969, be confirmed.

(4) In support of ground (i) learned counsel for the petitioner has drawn my attention to the provisions of Rules 28 and 29, clauses (iv) and (v) of sub-rule (2) of Rule 30 and Rules 32 and 33 of the Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as the Rules) framed under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, as also to paragraphs 1 to 4 of the terms and conditions of the auction which form part of notifications, annexures 'A' and 'B'. Those provisions and paragraphs may be reproduced here with advantage :

"THE PUNJAB MINOR MINERAL CONCESSION RULES

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G.—*Grant of Contracts.*

28. (1) Contracts may be granted by the Government by auction or tender for a maximum period of five years after which no extension shall be granted.
- (2) The amount to be paid annually by the contractor to the Government shall be determined in auction or by tender to be submitted for acceptance by the authority competent to grant the contract.
- (3) Contract shall be granted only in such cases as the Government may, by general or special order, direct.
29. The Presiding Officer may reject or accept any bid or tender without assigning any reason to the bidders or tenderers. Where the highest bid or tender is rejected, the reason shall, however, be reported to the Government.

30. (1) \* \* \* \* \*

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(2) \* \* \* \* \*

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(iv) no bid shall be regarded as accepted unless confirmed by Government. On completion of the auction the result will be announced and provisional selected bidder shall immediately deposit 25 per cent amount of bid for one year and another 25 per cent as security for due observance of the terms and conditions of the contract ;

(v) the earnest money shall be refunded immediately at the completion of the auction to all excepting the person whose bid is provisionally accepted. The earnest money shall be adjusted against the security under clause (iv) ;

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32. In case of contracts where the annual amount is not more than Rs. 1,000, the balance amount shall be deposited by the contractor on the date of auction or opening the tenders, as the case may be. In other cases the balance amount shall be deposited in equal quarterly instalments of the annual amount in advance on due dates, prescribed in the agreement.

33. When a bid is confirmed or a tender is accepted, the bidder or tenderer shall execute a deed in Form 'L'. The execution of the deed shall be made within three months from the date of communication of acceptance of bid or tender to the bidder or tenderer and if no such contract is executed within the aforesaid period, the order accepting the bid or tender shall be deemed to have been revoked and the amounts paid under rule 30(2)(iv) or 31(3) as the case may be, shall be forfeited to the Government :

Provided that where the Government or any officer authorised by it to accept bid or tender on its behalf, is satisfied that the bidder or tenderer is not responsible for the delay in the execution of the contract, the Government or other officer, as the case may be, may

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permit the execution of the contract within a reasonable time after the expiry of the aforesaid period of three months."

#### TERMS AND CONDITIONS OF THE AUCTION

1. Each bidder shall be required to deposit Rs. 200 as earnest money with the Presiding Officer before participating in the auction.
2. The period of contract shall be up to 31st July, 1970.
3. The auction purchasers will have the right to extract salt-petre from the revenue estate of that village except the areas which may be exempted by the Director of Industries, Haryana.
4. No bid shall be regarded as accepted unless confirmed by Government. On completion of the auction the result will be announced and provisional selected bidder shall immediately deposit 25 per cent amount of bid of the year as security and 25 per cent as the earnest money.
5. In case of reasonable grounds for suspicions that the bid has been intentionally kept low by means of forming a pool by the bidders the Director of Industries shall have the right to ignore the bid provided another bid equal to double the amount of the bid already given is offered within a period of 30 days of the date of auction.
6. (a) In case of contracts where the amount of royalty will not be more than Rs. 1,000 the entire amount shall be deposited by the contractors on completion of the auction.
  - (b) In other cases the balance amount shall be deposited by the contractors as under :—
    - (i) Further 25 per cent of bid at the time of signing the agreement.
    - (ii) Remaining 50 per cent of the bid before or on 1st of March, 1970.
    - (iii) The highest bidder will have no right to withdraw his offer and will have to abide by the decision of the Government.

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- (iv) When the bids are confirmed, the bidder shall execute deed in form 'L', within one month from the date of communication of the acceptance of the bids. If no such contracts are executed within the aforesaid period, the order accepting the bid shall be deemed to have been revoked and the amounts paid shall be forfeited to the Government :

Provided that the Director of Industries may extend the time for execution of the deed."

(5) It is contended on the strength of this material that a bidder is expected to begin exploitation of the saltpetre deposits immediately after the provisional acceptance of his bid and that what is meant by clause (iv) of sub-rule (2) of Rule 30 as well as paragraph 4 of the terms and conditions of the auction is that as soon as the highest bidder deposits 50 per cent of the amount of his bid immediately after the fall of the hammer, a valid contract comes into being between him and the Government which is subject to the proviso that it may be revoked by the latter within a reasonable time. The words "no bid shall be regarded as accepted unless confirmed by Government," according to learned counsel, should be interpreted as laying down that the highest bid shall be regarded as accepted till rejected by the Government. This interpretation cuts at the very root of both the letter and the spirit of sub-rule (2) and paragraph 4 above set out, the words used wherein are clear and unambiguous and are susceptible of only one construction, namely, that till the Government declares that it has accepted the bid, the bid shall not be deemed to have been accepted so that no rights would flow from it to either party till its acceptance: A contract binding on the parties would come into being, according to the rules and the terms and conditions, only after the bidder executes the deed in form 'L' or, in any case, not earlier than the communication by the Government of the acceptance of the bid. Ground (i) is, therefore, wholly unfounded and has to be repelled. 4. Ground (ii) is also without merit. It may be that the Government failed to take a decision within a reasonable time about the acceptance or rejection of the bid given by the petitioner, but then it cannot be said that the petitioner thereby acquired the right to treat the bid as one having been accepted by the Government. The only right that could possibly have accrued to him was to refuse to stick to the bid after the lapse of a reasonable time but in view of the express provisions contained in the Rules and the terms and

conditions of the auction the bid could not be taken as accepted unless the Government expressly confirmed it.

(6) Clause (2) of section 64 of the Sale of Goods Act states :

“64. In the case of a sale by auction—

(1) \* \* \* \* \*

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid ;

\* \* \* \* \*

This provision has no application to the present case which is admittedly governed by the Rules and the Act under which they had been made. Ground (iii) is, therefore, without substance.

(7) With regard to grounds (iv) and (v), it is sufficient to say that the petitioner has no *locus standi* to challenge the notification in annexure 'B' and the auction held in pursuance of it, in view of the fact that his bid was never confirmed by the Government and consequently he acquired no vested right under the first auction.

(8) For the reasons stated, the petition fails and is dismissed. The parties are, however, left to bear their own costs.

N. K. S.

APPELLATE CIVIL

Before A. D. Koshal, J.

JAGAT SINGH,—Appellant.

versus

GURMINDER SINGH, ETC.,—Respondents.

R. S. A. No. 66 of 1970.

May 7, 1970.

*Limitation Act (XXXVI of 1963)—Section 15(5) and Article 97—Punjab Pre-emption Act (I of 1913)—Section 30—Suit for pre-emption of undivided share of joint holding—Period of limitation for—Whether governed*