
(1993) 10 DEL CK 0056

In the Delhi High Court

Case No : Civil Writ Appeal No. 2045 of 1993

Arun K. Saraf and Another

APPELLANT

Vs

Lt. Governor of Delhi

RESPONDENT

Date of Decision : 28-10-1993

Acts Referred:

Citation : (1993) 4 AD 422 : (1993) 52 DLT 307 : (1994) 28 DRJ 400 : (1994) RLR 25

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Arun Jaitley, P.S. Shroff, Ravinder Sethi, Sumeet Bansal and Madan Lokur, for the Appellant;

Judgement

Vijender Jain, J.

(1) Delhi Development Authority (for short DDA), a body constituted under the Delhi Development Act, 1957, invited tenders for a plot of land at Vasant Kunj-Jawaharlal Nehru University for the construction of Five Star Hotel. The advertisement-was published by the Dda of the said auction in The Times of India, The Hindustan Times, Indian Express, Hindu and Anand Bazar Patrika etc. In response to the said advertisements more than 40 forms were sold up to 22.2.1993 which was the last date. Out of these only two forms/sealed tenders were received and only one out of said two tenders was valid as the other tender submitted by another party did not fulfill the requirements of the DDA. The tender was opened on 1.3.1993. The tender furnished by the petitioner was accompanied by a bank drafts/pay orders equivalent to 25% of the tendered amount of Rs. 32.25 Crores. The other tender submitted by one M/s. Asian Consolidated Industries Ltd. was not accompanied by 25% of the tendered amount, only a bank draft for Rs. 11 lac was enclosed as earnest money with the statement that the said M/s. Asian Consolidated Industries would make the payment of the earnest money equivalent to 25% of the tendered amount. The tender amount was Rs.53.1 crores. The said M/s.Asian Consolidated Industries

Ltd.submitted an application along with tender that they will deposit the balance amount of earnest money together with interest at the rate of 12% p.a. by 15.5.1993, but the said M/s. Asian Consolidated Industries Ltd. did not make the payment of 25% of the earnest money within the stipulated time. It is an admitted case that the petitioner's tender was valid.

(2) According to the petitioners they were orally informed on 11.3.1993 that their bid was accepted by the DDA. However, respondent-DDA denied any such communication. To the surprise of the petitioners, they received a letter dated 15.3.1993 from Deputy Director (CL) Delhi Development Authority informing them that their tender had been rejected by the competent authority. No reason was assigned for the rejection of tender. The petitioners state that they came to know from a newspaper report that the Urban Development Minister had stalled selling of the plot ear-marked for the construction of a Five Star Hotel in Vasant Kunj area and directed that fresh tenders for the sale be invited, and that directive was issued u/s 41(1) of the Delhi Development Authority Act to this effect. The petitioners then made representations to the Minister of Urban Development, Lt. Governor of Delhi and the Vice Chairman of Delhi Development Authority to reconsider the aforesaid decision. According to them the auction has been very well advertised and received adequate publicity. According to the petitioners the stand of the respondent-DDA after the bids were opened in not selling the plot in question is illegal and arbitrary. Petitioners have also challenged the decision of the Delhi Development Authority to go for reauction which should have received international publicity as totally unjust, unfair and arbitrary and was to out the petitioners .They also argued that as the petitioners were the highest bidder, fully qualified in all respects and there was a legitimate expectation that they would be awarded the tender. According to them the tender had been rejected taking into account irrelevant consideration and extraneous consideration and ignoring relevant considerations.

(3) Being aggrieved by the letter dated 15.3.1993 the petitioners challenged the letter and filed the present petition for issuance of a writ or appropriate direction to be issued to the respondent to quash the said letter.

(4) The respondent-DDA filed it Counter and argued that though the bid of the petitioner was highest but as the disposal of the hotel site was on the terms and conditions of tender for grant of lease-hold rights of hotel plot under the Delhi Development Authority (Disposal of Development Nazul Land) Rules, 1981 the highest bid according to the terms and conditions, can only be accepted subject to confirmation of Vice Chairman of Delhi Development Authority and it was the sole discretion of the Vice Chairman of Delhi Development Authority to confirm the bid/tender including the highest tender and he reserves the right to reject any of the tenders without assigning any reasons, even if the tender was above the reserved price. The stand taken by the respondent-DDA is that in view of the above there was no obligation on the part of the Delhi Development Authority and particularly on the Vice-Chairman of the Delhi Development Authority to

confirm the highest tender. It has been further stated that it was in the absolute discretion of the Vice-Chairman of the Delhi Development Authority to accept or reject the highest tender as stipulated in the terms and conditions of the tender in the present case.

(5) The aforesaid averment seems to be incorrect in view of subsequent paragraphs of the affidavit of Dda, which clearly demonstrate that the decision of the Vice-Chairman not to accept the tender was not in exercise of his discretion as per the terms and conditions of the tender but the rejection was in view of the averments made in their affidavit which is as under:-

".....IT is further submitted that communication was received by the Delhi Development Authority from the Government of India, Ministry of Urban Development vide their letter dated 13.3.93 to the effect that the price offered by the tenderer is much lower as compared to the market value of the land and that the bidder is offering the price of about Rs. 8,000.00 per sq.mtr. whereas the price of the market is much higher and that is clear that sufficient publicity was given within and outside the country to attract competitive offer in as much only one lawful tender has been submitted, it would be in the public interest to enable the Delhi Development Authority to secure competitive price for the hotel plot in Vasant Kunj that a direction be given u/ Section 41 of the Delhi Development Authority Act that the Vice Chairman should not accept the single valid tender for the plot submitted by the petitioners Pursuant to the said directions a communication dated 15.3.93 was sent to the petitioner following a decision by the Vice Chairman and the Lt.. Governor in respect to the communication sent by the Central Govt. It was in these circumstances that the petitioners were communicated the rejection of the tender and along with the said communication a cheque for Rs.8,06,25,000.00 was sent to the petitioners. The deponent further states that there was only one single valid tender which was received and which in itself shows that no competition was attracted. The deponent further states that price at which the tender had been submitted was against the rising market trend. The tender was very low in the absence of any competition and the plot was going for a much less price than that the real market price. It was in these circumstances that a decision had been taken by the Central Govt. by giving direction u/Section 41 of the Delhi Development Act to the Delhi Development Authority to reject the highest tender...."

(6) After the filing of the writ petition the notice of the same was issued to the respondent - Delhi Development Authority on 21.4.93, respondent-DDA again issued advertisement for reauction of the said plot in the newspapers on 10.7.93. The last date for submitting the fresh tender was 27.8.93. The petitioner moved an application praying for the grant of stay against reauction of the plot in question. However, this Court declined that prayer of the petitioner keeping in view that Dd might get a higher price by reauction though the petitioners had stated that the price offered by them was highest apart from being workable and competitive and the Delhi Development Authority could not get better price. The

case was adjourned after the last date of submission of tenders in reauction which was 27.8.93. On On 6.9.93 when the case was listed the Counsel for the Dda Mr. Ravinder Sethi informed the Court that in pursuance of the fresh tender notice issued, no party has come forward to give its bid. He further informed that the reserved price of the plot was re-fixed at Rs. 36 crores. At that stage we ordered that the relevant files of the Central Government and the Dda be brought in Court.

(7) On perusal of the files of the Central Government reveal that the first page has been started with the noting of the Minister of State (MOS), Ministry of Urban Development which is as under:-

"I understand that a plot of land measuring over 4 acres is being allotted at Vasant Kunj to a party for constructing a 5-Star Hotel. It is also understood that there is only one bidder. The Dda is considering for the finalisation of the deal. Since such allotments are highly prone to public criticism. Secretary (UD) may please ask the Dda to be careful and not to respond to a single bidder only. If need be it may be re-tendered

(8) There is a note on the next page by the Secretary to the Ministry of Urban Development which is on 12.3.93 on which Mos (UD) issued a directive not to accept the single bid.

(9) The Vice Chairman Dda on 12.3.1993 informed Secretary. Ministry of Urban Development decision of the L.G. for acceptance of the highest valid tender pertaining to the petitioner. According to the letter of Vice-Chairman Dda which we have reproduced later it is admitted that the decision of the Lt. Governor with regard to the acceptance of the tender by Vice Chairman was in the process of being conveyed to the petitioners when the note from the Central Government was received in the Dda and consequently the communication of acceptance had been withheld. Vice-Chairman of Dda has also enclosed a detailed note which is as follows for the consideration of the Secretary, Ministry of Urban Development. On examining the letter from the Vice Chairman and the note the Secretary, Mud again wrote on the file for their benefit of the Ministry as under:-

"PLEASE refer to above note of MOS. 2. Facts in the case have been obtained from the V.C., Dda and is submitted herewith which may kindly be seen. It will be noticed that the Dda has followed all procedures required under the rules in auctioning this particular property. Adequate publicity has been made as is reflected from the fact that 41 tender forms were sold. However, only two sealed tenders were received. Out of it only one was a valid tender complete in all respects. The competent authority to accept the tender is the V.C., Dda and after following due procedures this tender has been accepted with approval of the Lt. Governor of Delhi who is also the Chairman of DDA. From the note of the Dda it is seen that the real estate market is depressed at the present time and if this tender is not accepted the Dda is apprehensive that there would be financial loss to it leading to audit and other objections. 3. Under the circumstances and in

view of the Explanation given by the V.C., Dda it is best that the Government does not interfere in this matter. 4. As there is some time constraint since the decision of the Dda is to be communicated within 15 days of the date of the tender which will expire on the 13th i.e. tomorrow I am advising the V.C.. Dda to go ahead with the acceptance of the tender, if he does not receive any instructions from us before the evening of 13th. 5. Mos is requested to let me know if anything further is to be done in the matter before the evening of 13th. For your kind information. sd/- (KJ.Reddy) 12.3.83 MOS(UD)"

"DISPOSAL of Five Star Hotel Site at Vasant Kunj Sealed tenders of allotment of two 5-Star Hotel Sites, one in West of Jnu, Vasant Kunj and the other in Distt. Centre, Janakpuri were invited through a Public Notice on 28-29/1/93. The last date for submission of tenders was 1.3.93 up to 1.00p.m. and the same were to be opened on the same day at 3.30 p.m. 2. The application forms along with the terms and conditions of allotment were made available to the intending purchasers w.e.f. 3.2.93. A copy of the application form along with the terms and conditions of tender is annexed. 3.41 tender forms were sold up to 22.2.93, which was the last date fixed for sale of application forms. This proves that there was ample publicity of the tender. 4. Two sealed tenders were received on the stipulated date and both these tenders were opened at 3.30p.m. on 1.3.93 in the presence of the tenderers. It was found that both these tenders pertain to the Hotel site at Vasant Kunj in the West of JNU. The tender furnished by Shri Arun K.Saraf and Shri Umesh Saraf was accompanied by bank drafts/pay orders worth Rs. 8,06,25,000.00 as earnest money equivalent to 25% of the tendered amount being Rs.32,25,00,000.00 , the reserve price of Rs.30 crores decided on 17.2.93. 5. Second offer was from M/s. Asian Consolidated Industries Ltd. accompanied with bank draft worth Rs. 1 lakh as earnest money against the tendered amount of Rs. 53,01,00,000.00 . The said tender was accompanied with application wherein the tenderer had offered to pay the earnest money equivalent to 25% of the tendered amount by 15th May '93 together with the interest @ 12% P.A. The said tenderer also stated that they were going to have a collaboration agreement with Western Hotels and resorts for the management and control of the proposed Hotel 6. Condition No. 2.6 of the terms and conditions of allotment envisages that a person submitting the tender shall pay as earnest money 25% of the tendered premium by bank drafts/pay order and shall enclose the draft/pay order with tender application form. It was further stipulated that the tenders not accompanied by the earnest money, is liable to be outright rejected. Since the tender application submitted by M/s. Asian Consolidated Industries Ltd was not accompanied with the requisite amount of earnest money, was invalid as not being in accordance with the terms and conditions of allotment. 7. Where the tenderers Shri Arun K.Saraf and Shri Umesh Saraf attached certificate along with their application form to the effect that one of the tenderer Shri Umesh Saraf is an active Director of M/s. Yaak & Yati Hotels Ltd. at Kathmandu which is a 5 Star Hotel and the other contender Shri Arun K Saraf is Executive Director of Asain Hotels Ltd. running Hotel Hyatt Regency in New Delhi which is also 5-Star Hotel.

Thus, the stipulation of requisite experience in running of 3/4/5-Star Hotels was satisfied only by the Saraf Brothers and not by M/s. Asian Consolidated Industries 8. The offer given by Shri Arun K. Saraf and Shri Umesh Saraf was complete in all respects. The said tender has been approved by the Competent Authority which is the vice-Chairman, DDA. The same was put up to the Chairman, DDA/L.G., Delhi and his approval/concurrence has also been received. 9. As per the terms and conditions of tender, the communication with regard to acceptance/rejection of the tender is to be sent within 15 days from the date of opening of the tender. As such the last date for communicating the approval/rejection is 15.3.93. In case the decision in the matter is not reached by 13.3.93 (14th being Sunday), the tenderer has option to withdraw the offer on 15th March, 93. This may lead to financial loss to the Dda and also invite major objection from the C.A.G. either if the property remains undisposed or a Lesser amount is received in future bids. 10. At this point of time the financial position of Dda is not very stable and the market trend in the past few months has shown only 25% disposal of commercial properties and only 15% disposal of commercial lands. The real estate market at this point of time is also not very buoyant and the bid (tender) was considered very good as per market trend and hence it was accepted by the competent authority after due scrutiny by the Administration Branch and the Finance Wing, DDA. In the present case, there were not one but two bidders, but there was only one valid offer. There is no legal bar in receiving or accepting a single valid offer. Moreover, as many as 41 prospective bidders had purchased tender forms but only two parties chose to respond, which reflects the present trend in the real estate market. 11. Possibility of the valid tenderer approaching a Court and the property getting begged down in long term litigation may also be kept in mind. 12. Under the circumstances, decision of the Govt. may be communicated by 13-3-93 so that deadline of 15 days from the date of opening of tender can be adhered to." Office of the MOS(UD) It is no doubt correct that Govt. generally should not interfere in acceptance or otherwise of tenders floated by its subordinate organizations ,but when public interest demands, the duty of the Govt to safeguard the interest of revenue cannot be ignored. In the instant case the size of the plot is 4 hectares and the only valid bid received is for Rs. 32.25 crores. In other words, the bidder is offering a price of Rs. 6000.00 per sq. yard for the plot. The market price of residential plots in Vasant Kunj area is reportedly not less than Rs. 15,000.00 per sq. yard. Hotel industry is a commercial activity and as such normally the price of such plots should be much higher. Even if allowance is made for higher size of the instant plot price of Rupees 6000.00 per sq. yard offered for a 5 Star Hotel in an area like Vasant Kunj cannot be easily accepted. I am not too sure whether adequate publicity was given while inviting tenders and whether it was a global tender or not which should have been done to attract Nri investment. NRIs, I feel, would definitely be interested in a project like 5-Star Hotel in an area like Vasant Kunj. Clause 2 (vi) of the tender document clearly states that the tender can be rejected in case the price is found not to be competitive enough to reflect the market value of the Hotel plot. In view of the above mentioned facts, the

offer made by the sole bidder can easily be rejected on this ground alone. As only one valid tender has been received and the price offered by the tenderer appears to be quite low as compared to the market value of the land, I feel that we should give a directive to the Dda not to accept the bid. The argument that tender should be accepted because the financial position of the Dda is not very sound, does not appear logical to me as far as this very reason alone, Dda cannot be allowed to sell its properties at the throw away prices. Another argument raised is that in case the tender is rejected, lower quotations may come at a later date and thus criticism attracted from audit. Audit is a wing to safeguard the interest of revenue and if we are taking a step in that direction only, audit would not come in the way and question our bonafides Dda need not worry on that ground at all. In view of the above, I suggest that immediately a directive may be given to Dda not to accept this single bid. sd/- Mos (UD) 12-3-93 UDM"

(10) The Vice-Chairman had requested the Secretary, Ministry of Urban Development that the decision of the Government be communicated on or before 13-3-93. In the file of the Ministry, there is nothing on record as to on what basis the State Ministry for Urban Development issued the direction to the Dda not to accept the valid bid. When the reserved price has specifically mentioned and adequate publicity had been made and the tender was accepted following the procedure with the approval of the Lg of Delhi who is Chairman of Dda and the Dda itself has represented to the Ministry that if this tender is not accepted the Dda is apprehensive that there would be financial loss leading to the audit and other objections. The Secretary has also opined that the Government should not interfere in this matter.

(11) We feel that the action of the State Minister in issuing a directive u/s 41 of the Dda Act was rather arbitrary. No material whatsoever was with him to move in such a manner. Normally such a note by the Ministry should show as to how he got the information and whether he considered the same to be reliable. Minister should have been aware that Dda is a creation of statute of the Parliament and there has to be no interference by the Central Government otherwise as provided by law, i.e. Dda Act, particularly in matters which have been examined at all level by appropriate authority and no mala fide is alleged or involved. Undue interference by the Central Government in areas which are occupied by rules and regulations of Dda is to be avoided otherwise the whole purpose of enacting a Central Act and to incorporate a statutory body would become redundant and nugatory. This may result in uncalled for decision and arbitrary actions. In the circumstances of the case, we find the impugned action of the Central Government neither fair nor just and rather arbitrary.

(12) Mr. Jaitely has challenged the act of the Central Government to be not in conformity with Section 41 of the Act. His argument advanced on behalf of the petitioner is that any direction from the Central Government in the present case u/s 41(1) of the Delhi Development Act read with Section 41 (3) of the Act, requires that the party whose right is being affected has to be given a reasonable

opportunity of being heard. According to him in the instant case the Central Government could not have issued directive to Dda not to sell the plot of land without hearing the petitioners, there has been denial of natural justice to the petitioners according to learned Council for the petitioners. We would like to deal with this aspect of the matter.

"CONTROL by Central Government-(1) The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act. (2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Central Government the decision of the Central Government of such dispute shall be final. (3) The Central Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:- Provided that the Central Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard."

(13) The proviso to Sub-section (3) of Section 41 makes it clear that the Central Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard. The letter No. D.O.No. F. 100(23)93/CL dated March 12, 1993 by Shri S.P. Jakhanwal, Vice-Chairman Dda addressed to Shri K.J. Reddy, Secretary (UD), Government of India, Nirman Bhavan, New Delhi read as under:-

"DEAR Shri Reddy. Kindly refer to your note dated 11.3.93 regarding disposal of 5 Star Hotel sites through tender which was received late in the evening. As desired, a detailed note indicating the factual position is annexed. In this context, it is relevant to mention that the Hon"ble Lt. Governor has already taken a decision for acceptance of the highest valid tender pertaining to Shri Arun K. Saraf and Shri Umesh Saraf. The decision of the Lt. Governor with regard to the acceptance of the tender by V.C. was in the process of being conveyed to the concerned party when the note referred to above, was received in the Dda and consequently the communication of acceptance has been withheld. As per the terms and conditions of tender, Dda is required to communicate the acceptance or rejection of the tender within 15 days from the date of tender. Therefore, the decision in this case may be communicated latest by 13-3-93 to avoid any legal complications. 2. I would also suggest that Secretary. Mud may speak or discuss the matter with Vice-Chairman, DDA/Lt. Governor, Delhi as the matter has huge financial implications. 3. I shall, Therefore, be grateful if the decision of the Govt. is communicated on or before 13-3-93. With regards, Yours sincerely, sd/- (S.P. Jakhanwal)"

(14) Normally, the inter se correspondence between the department does not give a right to the party to claim that any decision has been arrived at in its

favor. But here it is a peculiar case wherein Dda as competent authority to take decision regarding sale of plot of land had taken a decision. That decision was taken by the Vice-Chairman of Dda and approved by the Lg as Chairman of DDA. It is admitted by the Dda in the aforesaid letter that this decision was to be communicated to the petitioners. But for the interference by the Central Government, which we do not find to be valid, the petitioners would have been communicated the acceptance.

(15) In any case we are of the opinion that once the decision was taken by the Lg as well as by the Vice Chairman of Dda accepting the highest valid tender pertaining to the petitioners and the same was admittedly in the process of being conveyed to the petitioners in all fairness the Central Government shall have afforded reasonable opportunity of being heard. The petitioners rightly had the legitimate expectation of being sold the plot for construction of 5-Star Hotel being the successful bidder. Even the interpretation of Section 41 supports the case of the petitioners that without affording reasonable opportunity as contemplated in Sub-sec.(3) of Sec 41 the Central Government should not have unilaterally ordered for reauctioning of the said plot. However, as we have slated earlier that mindful of the fact some time parties are formed to deprive the public authorities its right price This Court has not granted stay against reauctioning of the plot but the result was that no fresh applicant came forward before the Dda to enhance the bid price. Already much delay has been caused which has resulted in loss of revenue to the DDA. We do not approve of the decision on the part of the Central Government in this matter of issuance of direction not to offer the plot to the highest bidder without objective material before them and without affording reasonable opportunity to the petitioners of being heard. In the special facts and circumstances of this case, we allow the petition, quash the letter dated 15-3-93, set aside the direction of the Central Government and direct the respondents to accept the tender of the petitioners, re-furnishing the bank draft of Rs. 8,06.25,000.00 within a period of two weeks from today. In the circumstances of the case, we impose no costs.