(2021) 02 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 1305 Of 2014, IA No. 1772 Of 2014

Ashu Deep Kohli APPELLANT

Vs

State Of J&K And Another RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:
Constitution Of India, 1950 — Article 14, 31

Citation : (2021) 02 J&K CK 0058

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : G. S. Thakur, S. S. Nanda, Anil Khajuria

Final Decision : Dismissed

Judgement

1. In this petition, the petitioner on the foundation of the case setup implores the following reliefs:-

â??Writ of mandamus commanding the respondents to finalize the auction of Shop No. 5 situated in Sector No. 1 Housing Colony Channi Himmat

with respect to which auction notice was issued by the respondent No. 2 vide No. DIP/J-398-P dated 15.07.2014.

With further writ of mandamus commanding the respondents to exeute the lease deed in favour of the petitioner with respect to the Shop No. 5 Sector

No. 1, Opposite Plot No. 384, Housing Colony Channi Himmat being only the highest bidder participated and submitted the bid pursuant to the

notification issued by respondent No. 2 on 15.07.2014 for leasing out the shop.â??

2. The background facts under the cover of which the petitioner claims the aforesaid reliefs are that the respondent No. 2- J&K Housing Board (for

brevity â??Board?) got a notification published in daily newspaper of J&K for allotment of a shop No. 5, in Sector No. 1, at Housing Colony Channi

Himmat, Jammu.

3. Petitioner states to have responded to the said notification and submitted his bid thereto along with relevant documents including registration fee.

The petitioner states to have submitted a bid for the shop in question for an amount of Rs. 5,00,500/- as against minimum reserved bid of Rs.

4,75,000/-. A demand draft of Rs. 72,000/- i.e., 15% of the total bid amount is also stated to have been pledged in the name of Financial Advisor of the

Board. It is being stated that the bid was opened on 12th August, 2014 and the petitioner was found to be the only bidder thereto. It is being stated that

the petitioner despite being the lone highest bidder, as such, was required to have been allotted the shop in question by the respondent-Board which,

however, is stated not have been done by the respondent-Board. The failure of the respondents thus, in this regard is urged in the ground of the

petition as bad in law and violative of Article 14 of the Constitution, besides being arbitrarily and tainted with malice. It is also being urged in the

grounds that the respondent No. 2 infact intended to allot the shop in question to his blue eyed person and that the respondents action is bad inasmuch

as, smacks arbitrariness and discrimination, besides violating Article 31 of the Constitution.

4. Per contra, the respondents have filed objections in opposition to the writ petition where under the contentions and grounds raised and urged in the

petition are being resisted and controverted, to the extent that even though the petitioner submitted his bid for the shop in question, yet the petitioner

was lone bidder necessitating recalling the process of bidding, in that as per the norms for such kind of bid at least three tenderers/bidders must

participate in the process of bidding. It is being stated in the objections that the respondent â?"Board is a public organization and for auctioning of

public property is governed by the principle based on public policy. The alleged violation of any of the rights much less those contended in the writ

petition are denied.

5. Heard learned counsel for the parties and considered the matter.

6. The wharf and whoof under the shade of which the entire controversy raised in this petition revolves is that, as to whether any indefeasible right

vested unto the petitioner upon responding to the notification issued by the respondent-Board qua the allotment of shop in question and non-finalization

of the process of bidding by the respondents upon finding the petitioner to be lone bidder for the shop in question, on the fundamental principle of public

policy and violated any such right of the petitioner.

7. Before dealing with the said question, it would be appropriate and advantageous to refer hereunder a judgment of the Hon?ble Apex Court, being

relevant and germane hereto:-

8. The Hon?ble Apex Court in Rishi Kiran Logistics Pvt. Ltd. vs. Board of Trustees of Kandla Port Trust and others,2014 Supreme (SC) 324,

reported in Supreme Today, in para 20 has noticed as follows:-

â??20.Lucid enunciation on the scope of judicial review of administrative action, that too in tender matters can be found in Tata Cellular v. Union of

India (1994 (6) SCC 651), where following discussion is worthy of extraction:

â??70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to

prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review.

Government is the guardian of the finances of the state. It is expected to protect the financial interest of the State. The right to refuse the lowest or

any other tneder is always available to the Government. But the principles laid down in Article 14 of the Constitution have to be kept in view while

accepting or refusing a tender. There can be no question of infringement of Article 14 if the government tries to get the best person or the best

quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the

exercise of that power will be struck down. Judicial review is concerned with reviewing not the merits of the decision in support of which the

application for judicial review is made, but the decision making process itself.

The duty of the court is to confine itself to the question of legality. Its concern should be:

(i) Whether a decision making authority exceeded its powers?

(ii) Committed an error of law,

(iii) Committed a breach of rules of natural justice,

(iv) reached a decision which no reasonable tribunal would have reached or,

(v) Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the

grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationally, namely Wednesbury unreasonableness.

(iii) Procedural impropriety.â??

9. The Hon?ble Apex Court in 2016 (14) SCC 172, State of Jharkhand and others vs. M/s CWE-Soma Consortium, in para 12 has noticed as follows:-

â??12. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest

tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the

person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been

accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant and Ors. v. Satyawan and Ors.

(1996) 4 SCC 208; Rajasthan Housing Board and Anr. v. G.S. Investments and Anr. (2007) 1 SCC 477 and Uttar Pradesh Avas Evam Vikash

Parishad and Ors. v. Om Prakash Sharma (2013) 5 SCC 182).â??

10. What emerges from the perusal of the judgments (supra) is that the disposal of the public property by the State or its instrumentalities partak the

character of a trust. The method to be adopted for disposal of public property must be fair and transparent as also to protect the financial interest of

the State as the government being the guardian of the finances of the State.

11. The right to refuse the lowest or any other tender is always available to the government and even if a public auction had been completed and a

person found to be highest bidder no right accrued to the highest bidder till the confirmation letter is issued to him.

12. In the instant petition for the allotment of the shop in question, the respondents seemingly have found it reasonable and fair not to proceed with the

process of bidding with only one responsive bid. The said process manifestly, has been followed in order to generate a healthy competition and

ultimately good revenue for the respondent-organization. No indefeasible right thus qua the shop in question would be said to have accurred to the

petitioner, as also keeping in view the conduct of the petitioner having withheld the information from this Court that 15% of the bid amount registration

amount stands remitted back to the petitioner, inasmuch as, another shop allotted to him.

13. Viewed thus, no interference is found to be warranted in the facts and circumstances of the case while exercising extra ordinary jurisdiction.

14. The petition thus entails dismissal and is, accordingly, dismissed, along with all connected IA(s).