
(2013) 03 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Appeal No. 55 of 2013

Ashutosh Vyas

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : AIR 2013 Chh 129 : (2013) 2 CGBCLJ 379 : (2013) 3 MPHT 43

Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J

Bench : Division Bench

Judgement

1. In these cases, the basic challenge is to the order of the Chhattisgarh Rajya Krishi Vipnan Board (the Board) dated 30.08.2012 cancelling the auction of 56 sundry shops held by the Krishi Upaz Mandi, Durg (the Committee); and the main point involved is,

Whether prior approval of the Board was necessary before executing the lease deeds of the shops or the approval already granted for the auction was sufficient.

THE FACTS

The Committee advertised for an auction of 56 sundry shops at the mandi campus on 10th and 11th of January, 2011. The basic price for each shop was fixed at Rs. 17,00,000/-.

2. The Appellants and the Petitioner (the successful-Bidders) deposited the security amount and submitted their bids. The bids were opened on 21.02.2011. They were successful.

3. The successful-Bidders further deposited a sum of Rs. 3,00,000/- on 07.03.2011. They were to deposit the remaining amount after the completion of certain developments. However, no agreement was entered into between the parties.

4. It appears that there were certain newspaper reports in which it was reported

that there was mishandling, under bidding in the auction. The Managing Director (the MD) of the Board wrote a letter to the Deputy Director on 11.05.2011 requiring him to submit a report.

5. The Joint Director of the Board also wrote a letter on 23.07.2011 to the Raipur Office to submit report in respect of the same in compliance of the letter dated 11.05.2011.

6. The Committee submitted its report on 11.08.2011. Thereafter, the Joint Director of the Board submitted a report to the MD of the Board on 17.08.2011.

7. Subsequently, the MD cancelled the auction on 30.08.2012 and ordered for re-auction. In compliance of the order, the Committee also cancelled the same by its order dated 01.09.2012.

8. The successful-Bidders filed writ petitions challenging the aforesaid orders cancelling the auction in their favour.

9. The writ petitions in the first 44 cases as well as some other writ petitions were consolidated and were dismissed by the single judge on 07.01.2013. Hence, the writ appeals.

10. The 45th case, namely the writ petition, was filed subsequently challenging the same orders. As the facts and points involved were the same, it was tagged with the appeals. With the consent of the parties, it is being decided along with the appeals.

SUCCESSFUL-BIDDERS" SUBMISSIONS

11. We have heard counsel for the parties. The counsel for the successful-Bidders submit that;

(i) No approval of the Board was necessary and the bids became final, as soon as they were accepted by the Committee;

(ii) There is no basis in the order dated 30.08.2012;

(iii) The reserve price was fixed was Rs. 17,00,000/-. The bids were for a price higher than Rs. 17,00,000/- and they could not be cancelled;

(iv) The contract was already accepted. The bids can not be cancelled.

1st SUBMISSION: APPROVAL NECESSARY

12. The counsel for the successful-Bidders brought to our notice the letters dated 06.01.2011 and 02.11.2011 and submit that:

(1) The auction was already approved by the Board;

(2) There was no necessity for taking separate permission before granting lease to the successful-Bidders.

13. It is correct that there was prior approval for the auction of the shops, but

the question here is, whether the approval of the Board was necessary before executing the individual lease deeds or not, or was approval for the auction enough?

14. The Committee as well as the Board have been established under the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 (the Act). Section 7 of the Act is titled "Establishment of Market Committee and its Incorporation". Its proviso (see below)¹ indicates that no immovable property shall be acquired, transferred by way of sale, lease or otherwise without the prior permission of the Managing Director in writing.

15. The fact that prior approval was necessary was also clarified by the earlier circular of the Board dated 23.11.2010 (the Circular). It was issued much before the auction was held.

16. The Circular is the general terms and conditions of the auction for the godown and sundry shops. Its paragraph 5 (see below)² clarifies that the prior approval had to be taken after the auction but before executing the lease deed. Admittedly, in the present case, no such approval was taken after the auction.

17. The counsel for the successful-Bidder brought to our notice the conditions 13 and 32 of the approved terms and conditions of the auction dated 07.01.2011 (see below)³ and submit that these conditions indicate that approval was to be granted by the Committee and not by the Board.

18. Paragraph 13 and 32 of the approved terms and conditions of the auction indicate that the Committee could refuse to accept any offer without assigning any reason. This gives right to Committee to reject the offer. This does not mean that approval of the Board was not necessary before leasing the shops.

19. The conditions mentioned in paragraph 13 and 32 of the terms and conditions are normally given to the person holding the auction. This does not mean that statutory provision requiring prior approval is to be ignored. In any case, these conditions cannot over-ride the statutory provision.

20. It is relevant to point out that there is no condition stating that prior approval of the Board was not required before executing the lease deeds. Had this been mentioned, then there could be some substance in the submissions. However, in such an event, the conditions would have been liable to be struck down as contrary to statutory provisions.

21. In our opinion, approval of the Board was required before executing the lease deed. The first submission has no merit. 3 Paragraph 13 and 32 of terms and conditions for holding the auction are as follows:

2nd SUBMISSION: THERE WAS BASIS

22. The Respondents had filed the details of the persons, who had tendered in the bid and the entire records were produced. Eighty five tenders were submitted for fifty six shops. There were,

- ? three tenders in respect of four shops;
- ? two tenderers in respect of eighteen shops;
- ? one tender for thirty-four shops.

23. The aforesaid figures show that there was no sufficient competition in the auction. In view of this, it cannot be said the order dated 30.08.2012 has no basis.

24. In our opinion, there was basis for the order dated 30.08.2012.

3rd SUBMISSION: NOT NECESSARY TO ACCEPT

25. The shops are similarly situate. The reserve price for them was Rs. 17,00,000/-. In many cases, the shops were sold at Rs. 17,01,000/-. In one case the price fetched was Rs. 22,50,000/-.

26. The price of one shop is Rs. 22,50,000/- itself shows that perhaps there was no proper competition for the shops. And it is for this reason, that only Rs. 17,01,000/- was received.

27. Merely fixing of reserved price does not mean that it was mandatory to accept the price higher than this. In case the approving authority thinks that-

- ? Sufficient numbers of offers were not received due to non-competitiveness; and
- ? More revenue can be earned than the offers received:-

Then it can always disapprove the auction.

28. In our opinion, it was not mandatory to accept the price higher than the reserve price.

4th SUBMISSION: CONTRACT WAS NOT ACCEPTED

29. The counsel for the successful-Bidders have placed reliance on Bharat Petroleum Corporation Ltd. Vs. The Great Eastern Shipping Co. Ltd., (the shipping-Company case) and submit that;

- ? There was a contract between the parties; and
- ? The contract can be inferred from the conduct of the parties.

30. In the shipping-Company case, it is mentioned that acceptance for a contract can be inferred from the conduct of the parties.

31. In this case the prior approval of the Board was necessary. In case, there was no prior approval then, no contract can be inferred. This shipping-Company case is not applicable here.

32. In our opinion, no contract can be inferred unless there was prior approval by the Board.

CONCLUSION

Our conclusions are as follows:

- (a) Prior approval of the Board is necessary before leasing out the shops;
- (b) There was basis for the cancellation order dated 30.08.2012 by the Board;
- (c) A contract can not be inferred between the parties, unless there was prior approval of the Board;
- (d) The order of the Single Judge dated 07.01.2013 or of the Board dated 30.08.2012 or of the Committee dated 01.09.2012 cannot be faulted.

The writ appeals as well as the writ petition have no merit and they are dismissed.

17. Establishment of Market Committee and its incorporation--(1) For every market area, there shall be a Market Committee having jurisdiction over the entire market area.

(2) Every market Committee shall be a body corporate by the name specified in the notification u/s 4. It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall subject to such restrictions as are imposed by or under this Act, be competent to contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purposes of this Act:

Provided that no immovable property shall be acquired, transferred by way of sale, lease or otherwise without the prior permission of the Managing Director in writing.

(3) Notwithstanding anything contained in any enactment for the time being in force, every Market Committee shall, for all purposes, be deemed to be a local authority.

2 Paragraph 5 of the circular dated 23.11.2010 is as follows:

3 Paragraph 13 and 32 of terms and conditions for holding the auction areas follows: