(2008) 06 CHH CK 0009

In the Chhattisgarh High Court

Bharat Kumar Prasad and Others APPELLANT

Vs

The State of Chhattisgarh and Another RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226

Citation : (2008) 5 MPHT 75

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—The above writ petitions are being disposed of by this common order as in all these petitions the common question is involved for adjudication. However, W.P. (C) No. 2356/08 is taken as a leading case and facts of this case are dealt with in this order.

2. Briefly stated facts of the case are that the respondent No. 2 issued an auction notice dated 13-1-2007 (Annexure P-6) in the newspaper for sale of 29 plots by public auction (17 plots of HIG Group & 12 plots of MIG Group). The petitioners participated in the auction held on 31-1-2007 and they were declared highest bidders for Plot Nos. MIG 26, 20, 22, 23 respectively. The reserved/upset price was fixed at Rs. 3,64,000/-, whereas, bids of the petitioners were at Rs. 4,92,000/-, Rs. 4,60,000/-, Rs. 4,99,000/- and Rs. 4,91,000/- respectively. The Mayor-in-Council of respondent-Corporation accorded approval to the offer of the petitioners on 19-3-2007 vide Annexure P-3, which was subsequently approved by the General Body of the Corporation on 29-3-2007 vide Annexure P-4. Thereafter, the matter was forwarded to respondent No. 1 vide Annexure P-7 for its approval as required u/s 80 of the C.G. Municipal Corporation Act, 1956 and C.G. Municipal (Transfer of Immovable Properties) Rules, 1994. However, respondent No. 1 accorded approval of the auction only for 20 plots out of 29 auctioned plots and cancelled the auction for remaining 9 plots vide order dated 3-12-2007 of Annexure P-1 on the ground that highest bid received in the

auction for remaining 9 plots is less.

3. Learned Counsel for the petitioner argued that respondent No. 1 ought to have accorded approval keeping in view that highest bid received was more than the reserved price and the price offered by the petitioners was higher than the valuation as per guidelines issued by the Collector. Respondent No. 1, without elaborating as to what should have been the expected highest price, has refused to accord approval by terming the price quoted by the petitioners as low. Order of Annexure P-1 is bad and arbitrary as the same is without any reason. Reliance is placed on AIR 2008 (NOC) 1387 between Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, between Kasturi Lal Lakshmi Reddy etc. v. The State of Jammu & Kashmir and Anr..

The learned Counsel for the petitioner is heard on admission.

4. The questions for consideration in these petitions are:

(i) Whether any right accrued to the highest bidder of public auction ? and;

(ii) What is the scope of judicial review under Article 226 of the Constitution of India, where the challenge is cancellation of public auction by public body ?

5. In the matter of Mohd. Abdul Zalil (supra), which is reported in brief in NOC section of the Law Journal, it appears that the petitioner was the highest bidder in a tender for settlement of market. Considering Section 109 (6) of the Assam Panchayat Act (18 of 1994) and Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002, it has been held that it is incumbent upon the Settling Authority to disclose good and reasonable ground for non-acceptance of highest bid, which market fetches. Since the statutory rules provides such a mandate where the bid is rejected without disclosing any reason and the matter is referred to the Government, it has been held that Settling Authority cannot shirk its responsibility as provided under Rule 47 (10). However, in the absence of detailed facts of the above case and relevant rules stated in the aforesaid judgment the ratio of law propounded in the judgment cannot be applied in the facts of the present case.

6. In the matter of Kasturi Lal Lakshmi Reddy (supra), the question before the Hon''ble Apex Court was regarding grant of largess by the Government and it has been held that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess. Unlike a private individual, the State cannot act as it pleases in the matter of giving largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion.

7. The above judgment relied by the petitioners is not applicable in the facts of the present case as the conditions of public auction (Annexure P-6) give discretion to the respondent Corporation to accept or reject the highest bid.

8. Though the Corporation had approved the price offered by the petitioners in the public auction, however, the State Government considering the comparative bid received in the auction, as detailed in Annexure P-1, rejected the bid for 9 plots including the plots of the petitioners with an observation that price quoted is less.

9. The Hon''ble Apex Court in its recent judgment in the matter of Rajasthan Housing Board and Another Vs. G.S. Investments and Another, has referred in Para 4 of the judgment in the matter of Laxmikant and others Vs. Satyawan and others, , with approval thus:

From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in Trilochan Mishra v. State of Orissa, State of Orissa v. Harinarayan Jaiswal, Union of India v. Bhimsen Walaiti Ram and State of U.P. v. Vijay Bahadur Singh. It has been repeatedly pointed out that State or the Authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case, no right had accrued to the respondent either on the basis of the statutory provision under Rule 4 (3) or under the conditions of the sale which had been notified before the public auction was held.

10. Further referring to Paras 11 to 15 of the judgment in the matter of Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, , it has been held that sale of plots by Rajasthan Housing Board by means of auction is essentially a commercial transaction. Even if some defect was found in the ultimate decision resulting in cancellation of the auction, the Court should exercise its discretionary power under Article 226 of the Constitution with great care & caution and should exercise it only in furtherance of public interest. The Court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority.

11. In the instant case, the respondent-Municipal Corporation by its public notification dated 13-1-2007 arranged a public auction of its plots. The petitioners participated in the said auction and they were the highest bidders for four plots notified for auction. The result of public auction was placed before the

Mayor-in-Council of the respondent-Corporation with recommendation that the rates quoted by the petitioners are more than the upset price and rates as per the Collector''s guidelines. Mayor-in-Council in its meeting dated 19-3-2007 recommended for approval and the matter was placed before the General Body of the respondent-Corporation, which was ultimately forwarded for approval by the Corporation to the State Government. However, the State Government accorded approval for 20 numbers of plots only and cancelled the auction of 9 plots on the ground that the highest bid is less. Thereafter, the respondent-Municipal Corporation vide its communication dated 19-12-2007 (Annexure P-11) informed the petitioners about the cancellation of auction and directed them to take back the earnest money deposited by them.

12. The conditions of the public auction clearly stipulate that the Commissioner, Municipal Corporation has right to accept or reject any bid.

13. It is settled law that in contractual/auction matters principle of judicial review would apply only to prevent arbitrariness or favouritism. There are inherent limitations in exercise of that power of judicial review. The Government is 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 tender is always available to the Government. There can be no question of infringement of Article 14 of the Constitution 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.

14. However, if the power is exercised for any collateral purpose, then only the interference is called for. The power under Article 226 of the Constitution is to be exercised with great caution and should be exercised only in the furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference the Court should interfere.

15. In the instant case, as already pointed out, the respondent State after considering the recommendation of the respondent-Municipal Corporation submitted for approval of sale of 29 plots by auction, accorded sanction for 20 plots only and refused to grant sanction for remaining 9 plots on the ground that the price quoted for the aforesaid plots was less. The discretion has been exercised by the respondent-State in the interest of public revenue. The Corporation is well within its power to refuse or accept the highest bid submitted by the petitioners and therefore, in the considered opinion of this Court no interference is called for in the exercise of writ jurisdiction under Article 226 of the Constitution of India against the decision of the respondent-State of Annexure P-1.

16. For the aforesaid reason, the instant petitions have no substance, the same deserve to be dismissed and accordingly, the same are dismissed at the admission stage itself. No order as to costs.

