
(1992) 01 KL CK 0040
In the High Court Of Kerala
Case No : O.P. No. 13419 of 1991

Choice Trading Corporation Pvt. Ltd.

APPELLANT

Vs

Greater Cochin Development Authority

RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 01 KL CK 0040

Hon'ble Judges : M. Jagannadha Rao, C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : K.S. Rajamony, K.K. Gopinathan Nair and S.M. Prem, for the Appellant; K.A. Abdul Gafoor, for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This writ petition has been referred to a Division Bench at the stage of admission on the ground that having regard to the stakes and questions involved it would be advantageous to have the matter heard in the first instance by a Division Bench. Petitioner, Choice Trading Corporation Pvt. Ltd., submitted its tender to the Respondent, Greater Cochin Development Authority, Cochin (hereinafter called G.C.D.A.) pursuant to notification published by the Respondent in the newspapers on 19th October 1990 for sale of 61 cents of land on Marine Drive at Cochin for construction of residential flats. The last date for receipt of tenders was 22nd November 1990 at 3 p.m. and the tenders were to be opened on the same day at 4 p.m. The Petitioner was the only tenderer. This particular property is notified as item 4 in the said notification. It is stated in the terms and conditions (Ext. P-3) that the tenderer should submit a minimum base price of Rs. 50,000 per cent and comply with the other conditions of Earnest Money Deposit etc. Clause 6 of the terms and conditions states that the Secretary of the G.C.D.A. reserves the right to reject any or all of the tenders without assigning any reason thereto, and the said decision shall be final and binding. Clause 7 states that subject to the above said Clause 6, the site shall be

allotted to the tenderers who quotes the highest amount above the minimum fixed for the site. Clause 8 states that the allottee shall construct the specified building in the site according to the architectural designs approved by the G.C.D.A. After various other terms and conditions, Clause 12 states that after the payment of the amount in full the sale deed shall be prepared in duplicate in accordance with the draft sale deed issued by the G.C.D.A. Clause 14 states that the allottee will be given possession of the plot allotted only after registration of the sale deed. Clause 15 states that the site shall be used only for the purpose for which it is allotted. It however contains a condition that any modification in the approved design, if required by the allottee shall be done only with the written approval of the Authority and the grant or refusal to grant, such modification shall be at the sole discretion of the Authority. The Petitioner made an offer as per Ext. P-4 and submitted a rate of Rs. 70,500 per cent in respect of the area with F.S.I. 1.56 and a rate of Rs. 75,500 per cent in respect of Anr. type of F.S.I. with a clause saying that "this offer is subject to our forwarding letter dated 22nd November 1990" (Ext. P-5). In the said letter Petitioner stated that the said tender is subject to the following terms and conditions:

1. This letter of ours forms part of this tender.
2. Our tender is based on the assumption that we would be allowed to create spaces for an air-conditioned auditorium and our Corporate office in the proposed building besides residential flats. Also, we have in our plans a basement mainly for the purpose of car parking.

Thereafter, the above-said letter Ext. P-5 contained a further clause, Clause 5, which reads as follows:

Our this tender is negotiable. We would request you to allow us an option for us to discuss with you and make amendments to facilitate an effective conclusion of the sale transaction between ourselves.

Thereafter, as per letter dated 5th December 1990, Ext. P-6, Respondent invited the Petitioner for certain negotiations on 12th December 1990. There was such a meeting on that day. After the said meeting Petitioner wrote Ext. P-7 letter dated 12th December 1990 stating that in the said meeting, Chairman of the G.C.D.A. had informed that there was no scope for accepting the Petitioner's request to have an enhanced F.S.I. for the project. They further stated that it was possible that the shape of the building and lay out arrangements could be got changed to suit the proposed construction provided such changes are acceptable to G.C.D.A. It was also stated that in the above discussions they were made to understand that their request to create office and auditorium spaces in addition to residential flats could be favourably considered. They also pleaded for payment of the amount in instalments agreeing to pay interest at 15 per cent. They reiterated towards the end of the said letter, Ext. P-7 that Ernakulam does not have an air-conditioned auditorium and it was their intention to provide one to the City. It is stated that this could not be done on the existing F.S.I. as it would make the

project unviable. It is therefore stated that they would request the G.C.D.A. to reconsider their appeal for a higher F.S.I. Thereafter, on 2nd, May 1991 G.C.D.A. write Ext. P-8 letter to the Petitioner stating that they had referred the matter to the Architect Sri Kuldip Singh at Delhi as per the resolution of the Executive Committee and the said Architect has now requested for two copies of the drawings in respect of the changes proposed by the Petitioner. G.C.D.A. therefore requested the Petitioner to send two such copies to the Architect. It was however, stated at the end of the letter as follows:

It may be noted that this will not amount to acceptance of tender with your terms and conditions.

Thereafter the Petitioner wrote Anr. letter, Ext. P-9 dated 8th May 1991 stating that their proposals may be favourably considered, that they were willing to send plans to the Architect and that they expect that their proposals would be favourably considered so that the project could be economically viable. There was a further meeting between the parties on 18th June 1991 and the Petitioner wrote Ext. P-10 thereafter stating that they had sent drawings to the Architect at Delhi. Under Ext. P-11 dated 8th July 1991, G.C.D.A. informed the Petitioner that the Architect had further requested the Petitioner to produce a copy of the schedule of the proposed project and that the same may be forwarded. The Petitioner then wrote Ext. P-12 letter dated 23rd July 1991 and pleaded that pending further decision land may be allotted to them. It is stated that the land may be allotted "in accordance with the terms of our offer", without further delay. As per Ext. P-13 dated 31st July 1991 Petitioner submitted necessary papers asked for as well as area calculations. Under Ext. P-14 dated 4th September 1991 Petitioner informed the G.C.D.A. that urgent action may be taken since costs were escalating. On 4th October 1991, Kuldip Singh, Architect at Delhi, happened to be at Cochin and the Petitioner met him and discussed the matter. Ext. P-15 letter was written on 5th October 1991 stating that they had met the Architect and they have also explained that submission of revised drawings was not a pre-requisite for the tender. They also stated that during the discussions they had informed G.C.D.A. of their "Willingness to modify the drawings so as to ensure the specifications to be acceptable to Mr. Kuldip Singh." They further stated that if the G.C.D.A. did not conform to the acceptable specifications, Petitioner was "willing to delete what is not acceptable" They further stated that if the G.C.D.A. does not find it to be feasible, Petitioner may be informed so that it could "mobilise, sufficient funds enabling us to withdraw our request in this context", and are, "agreeable to accept your (G.C.D.A.'s) decision on the mode of payment."

2. After the above correspondence between the parties, G.C.D.A. considered the entire aspect of the matter and issued proceedings, Ext. P-16 dated 5th October 1991, rejecting the Petitioner's offer and describing it as a "conditional offer". Ext. P-16 reads as follows:

Referring to the above, I am to inform you that your tender for plot No. 2 at

Marine Drive Scheme area has been examined in detail it is noticed from the drawings submitted by you that the total area of the proposed construction work works out to 5269.25 sq.m. which is 112.1 sq.m. more than the permissible area of 5157.15 sq.m. It is further seen that the design has been made with provision for shops on the ground floor and top 2 floors a club above with a capsule lift going directly from ground to the club level. This indicates that this facility is meant for people other than residents of the flat.

Since the area of proposed building exceeds the permissible limit and non-conforming area as stated supra are incorporated in the drawings, the conditional tender submitted by you for plot No. 2 at Marine Drive is hereby rejected. You may apply for getting refunded the EMD.

The Petitioner then wrote a lengthy letter Ext. P-17 dated 14th October 1991 to the G.C.D.A. stating that it was wrong to describe their original offer being "conditional" offer, that they have never imposed any condition, that the proposals for modifications which they have made were negotiable and they were also prepared to accept whatever decision that may be taken by the G.C.D.A. or the Architect. They once again stated that they were willing to accept the suggestions and were also agreeable to directly conform to the requirements of the G.C.D.A. Petitioner characterised Ext. P-16 rejection as arbitrary and as being not consistent with the correspondence between the parties over a year. It therefore requested the G.C.D.A. to re-consider the matter and expressed its willingness to conform to the ideas of Mr. Kuldip Singh and said that it would only construct on the basis of plans approved by him. After the receipt of Ext. P-16, the G.C.D.A. reconsidered the matter and once again rejected the Petitioner's offer on 23rd November 1991 as per Ext. P-18. The contents of Ext. P-16 read as follows:

Referring to the above, I am to inform you that the decision to reject the tender for plot No. 2 at Marine Drive was taken after detailed examination of all the aspects, relating to receipt and acceptance of tender. When drawings based on the details in your tender were called for it was specifically told that it will not amount to acceptance of tender. Your reply dated 16th October 1991 was considered in detail by the Executive Committee. After careful examination of the points contained in the reply the Executive Committee has also come to the conclusion that the tender was rejected on substantial grounds and therefore no reconsideration of decision already taken is required. Therefore it is informed that the decision in the matter of rejection of tender dated 22nd January 1990 for plot No. 2 in Cochin Marine Drive Scheme is final and the matter is treated as closed.

You may collect cheque for refund of E.M.D. amounting to Rs. 50,000 for which you may send original receipt issued from this office together with an advance stamped receipt.

Exts. P-16 and P-18 are questioned in the Writ Petition. It appears that

subsequently G.C.D.A. issued a fresh notification on 30th November 1991 fixing the base price per cent at Rs. 70,000 and invited fresh tenders. The notification was modified on 2nd December 1991 by enhancing the base price to Rs. 1,05,000 per cent.

3. Subsequent to the filing of the Writ Petition by the Petitioner on 19th December 1991, the position is that as against the Petitioner's tender of Rs. 70,500 and Rs. 75,500 per cent fresh tenders have been submitted by various parties and the base price offered by three other tenderers are:

(i) Rs. 1,65,111 per cent

(ii) Rs. 1,55,001 per cent

(iii) Rs. 1,45,101 per cent.

Petitioner, without prejudice to its claims under the earlier tender, again submitted tenders making the following offers:

Rs. 1,06,000 and alternatively.

Rs. 70,000 subject to certain other terms.

4. As already stated, the writ petition was filed on 19th December 1991 and was referred to a Division Bench on 7th January 1992. In the meantime, the G.C.D.A. filed a counter stating that the rejection of the Petitioner's tender as per Exts. P-16 and P-18 cannot be characterised as arbitrary and that the letter Ext. P-5 and the subsequent correspondence between the parties would show that Petitioner's offer was conditional, that the Petitioner wanted F.S.I. to be increased so as to include auditorium and corporate office in the building, and that the matter was bona fide referred to the Respondent's Architect who did not accept the suggestions of the Petitioner. The Architect of the Respondent had advised them that the proposals of the Petitioner were not in conformity with the master plan inasmuch as the project was intended for residential purpose and could not include any portion to be used for commercial purposes. The Executive Committee of the G.C.D.A. had considered the matter in detail and had rejected the matter by giving valid reasons. It was stated that these are not matters to be agitated under Article 226 of the Constitution of India. It is also stated that the delay in the matter would cause "heavy financial loss" to the Authority which has to honour several commitments including several decrees of Court.

5. The point for consideration arising in this Writ Petition is whether rejection by the G.C.D.A. as per Exts. P-16 and P-18 of the sole tender of the Petitioner for construction of flats at Cochin Marine Drive pursuant to notification dated 19th October 1990 (Ext. P-1), could be struck down as being arbitrary and violative of Article 14 of the Constitution of India?

6. At the outset, it has to be noticed that in the notification dated 19th October 1990 (Ext. P-1) inviting tenders, the G.C.D.A. fixed the minimum base price for sale of the land at Rs. 50,000 per cent and the Petitioner's offer was Rs. 70,500

per cent in respect of the area with F.S.I. 1.56 and Rs. 75,500 per cent in respect of Anr. type of F.S.I. After the rejection of the sole offer of the Petitioner (there being no other offer) and the fresh notification inviting for offers on 30th November 1991 (as modified by erratum notification on 2nd December 1991 fixing the base price at Rs. 1,05,000 per cent), the fact remains that the present offers are:

(i) Rs. 1,65,111 per cent

(ii) Rs. 1,55,001 per cent

(iii) Rs. 1,45,101 per cent

by three different tenderers. Petitioner had also submitted its offer, without prejudice to its contentions in regard to the earlier tender, with two offers, one at Rs. 1,06,000 per cent and Anr. at Rs. 70,000 per cent subject to certain, conditions.

7. Therefore this Court cannot ignore the fact that the offers in December 1991 when compared to the sole offer of the Petitioner in November 1990, were more than double. The G.C.D.A. being a public authority, it is definitely entitled to take into account that the property may fetch a higher price on account of the delay in the negotiations which got prolonged" for one year. These negotiations were prolonged because of the Petitioner proposing certain modifications. No doubt the Petitioner was suffixing a clause to the modifications suggested by him that the modifications were negotiable and could be withdrawn by it if insisted upon by the G.C.D.A. But, in our view, the G.C.D.A. cannot be blamed for bona fide considering the modifications and referring the same to their Architect at Delhi. The Architect had given valid reasons as to why the modifications suggested by the Petitioner could not be accepted because they do not conform to the F.S.I. and also because the alternative proposal would convert the project partly into a commercial one while the project was intended purely for residential purposes. These negotiations lasted for more than a year and ultimately the Architect refused to accept the modifications suggested by the Petitioner. Therefore, in our view, it cannot be said that G.C.D.A. was wrong in thinking that the property may fetch a higher price. The question of rejection of the Petitioner's tender as per Exts. P-16 and P-18, will have to be considered in the light of the above facts.

8. Learned Counsel for the Petitioner Sri K.S. Rajamony placed strong reliance on the decision of the Supreme Court in *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, . It is stated in that case that if an offer is rejected by the State, there should be cogent and valid reasons for such rejection inspite of a clause in the terms and conditions that the tenders could be rejected by the State without assigning any reason. When there is a clause which states that tenders could be rejected without assigning any reason, it would, in our opinion, only mean that the person who issues tender states that he need not necessarily communicate the reasons for the rejection to the tenderers. That would be proper meaning of the words

"assigning" any reason. This does not however mean that the records of the State need not contain any reasons. In fact, records must contain reasons and the reasons must be available for judicial scrutiny. In the above case the Supreme Court confirmed the judgment of the Bombay High Court which dismissed" the writ petition filed by the Appellant in limine. The Bombay High Court held, that there was no arbitrariness in the Respondent No. 1 "trying to get proper price for its plots." The Supreme Court while stating that the rejection of tenders must be for sufficient and valid reasons and cannot be arbitrary, also observed in paragraph 8 of the judgment as follows:

The State is certainly entitled to look for the best deal in regard to its properties. This has been accepted by several decisions of this Court with reference to Station action under the Excise Laws. There is no allegation of mala fides in the conduct of Respondent No. 1 in refusing to accept the highest offer. We must, therefore, proceed on the footing that Respondent No. 1 acted bona fide and in refusing to accept the highest offers of the Appellants in regard to specific plots has been actuated by the consideration of looking for better offers for the specific plot in the economic interests of Respondent No. 1.

The above observations in the above decision 1990 (2) S.C.C. 280 cited by the learned Counsel would, in fact, go against his contentions. When there is no allegation of mala fides or proof of mala fides, there is nothing wrong in an authority which is a state rejecting an offer on the basis among other things, that the price offered, even if the said offer was the highest offer is not the proper price of the property and would result in "financial loss". It has been stated so in the last paragraph of the counter-affidavit.

9. Another aspect of the matter is that in law, calling for tenders is nothing but an invitation to offer. As long as the offer is not accepted and the tenderer puts forward an offer with certain modifications and the same remains under consideration, it cannot be said that the Authority which invited tenders should be pinned down to any particular offer. Otherwise it may result in compelling the State to enter into a contract the terms of which may be to the detriment of public interest. It should be open to the State to consider that the prices have escalated and therefore to seek to obtain the highest price before the actual acceptance of an offer. In fact, in the present case the prices had gone up by 100 per cent as revealed from the subsequent offers of 1991.

10. In this context, we may also refer to the leading decision of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, wherein it is said that the State, cannot be compelled to enter into a contract. In the above decision the Supreme Court referred to its earlier decision in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, wherein Ray, C.J. had observed as follows:

The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with

anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.

(emphasis supplied)

Bhagwati, J. (as he then was) further observed in the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, at page 1643 as follows:

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and nondiscriminatory ground.

(emphasis supplied)

11. In Anr. case *Ram and Shyam Company Vs. State of Haryana and Others*, the Supreme Court reviewed the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, as well as the decision in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and extracted the following observations from the latter decision:

The Government, therefore, cannot for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

Having extracted the above observations, the Supreme Court observed that there could be no doubt that the Appellant whose highest bid was rejected by the Government, should have an opportunity to improve upon his bid, more so when his bid was rejected on the ground that it did not represent adequate market price.

12. From the aforesaid decisions, the following principles can be summarised: When the State proposes to sell its property by public auction or by way of tenders, it is entitled to sell it for the highest price. Normally the highest tenders will be accepted if there are no other valid considerations as to why the highest tender should be rejected. There is no rule that the highest tender must always be accepted. Depending upon the nature of the work, the efficiency of the tenderer and the previous complaints against him or on account of various other relevant facts, the highest tender can be rejected. Again, if the highest tender does not, according to the State, represent the true market value of the property the same can be rejected. If the highest tenderer proposes certain modifications and the consideration of such proposals bona fide drags on for a long time and in

the meantime price of the property has escalated, the State cannot be pinned down to the highest offer that has been made by one party at an earlier point of time, which offer had not been accepted by the State. Before acceptance of an offer, it would be open to the State to take into account the escalation of the prices and to consider that it would be more advantageous to public interest if the property is put up for fresh auction. After all, a tender is an invitation to offer and no tenderer can compel the court under Article 226 of the Constitution of India to direct the State to accept a particular tender if there are valid grounds available from the records of the State as to why the said tender should not be accepted, even if it be the highest. Public interest plays an important role when the court proceeds to review the action of the State under the court's power of judicial review. The position where all the tenders are rejected or the sole tender is rejected is different from a case where some tenders are rejected and one tender is accepted and the tenderers whose tenders are rejected come to court questioning the validity of the acceptance of the tender of Anr. person. In a case where the sole tender is rejected or all the tenders are rejected on the ground of escalation of prices or other valid reasons as mentioned above, the court cannot issue any writ directing the State to accept a particular tender even if there be escalation of price during the period of negotiations.

13. Apart from the decisions referred to above, we may also point out that the Madras High Court" has taken a similar view in *Andhra Civil Construction Co. v. Government of India* AIR 1991 Mad 119, wherein escalation of prices after the offer of tenders was treated as a valid ground for rejection of the Petitioner's tender.

14. As to what is to be considered unreasonable in the context of administrative action, the Supreme Court has recently considered the question in *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, Venkatachaliah, J.* considered the question of arbitrariness in administrative action, as distinct from reasonableness or arbitrariness in other laws or the law of Torts. His Lordship quoted Prof. Wade's *Administrative Law* 6th Edn. p. 407, to say that within the bounds of reasonableness there is an area in which the administrative authority has free discretion. If it passes the bounds, it acts *ultra vires*. The court must resist the temptation to draw bounds too tightly, merely according to its opinion. It must strive to apply an objective standard. While decisions which are extravagant or capricious cannot be legitimate, if the decision is within the confines of reasonableness, it is no part of the court's function to look into its merits. His Lordship observed: (at page 1164).

In the arguments there is some general misapprehension of the scope of the "reasonableness"--test in administrative law. By whose standards of reasonableness that a matter is to be tested. Some phrases which pass from one branch of law" to Anr. --as did the expressions "void" and "voidable" from private law areas to public law situations--carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the

words "reasonable" "reasonableness" etc.

After stating that the court must distinguish the standard of the man on the "Clapham omnibus" in the law of torts, and also the constitutional standards of reasonableness while considering restrictions on the fundamental rights as being distinct, Venkatachaliah, J. again quoted Prof. Wade (at p. 407) to say that for purposes, of judging the reasonableness of administrative action, the test is not the standard applied in the law of torts. The test is whether there is proper use or abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called "Wednesbury unreasonableness" where Lord Greene laid the said test. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1948 (1) K.B. 223. His Lordship referred to "Legal Control of Government" by Bernard Schwartz and H.W.R. Wade (p. 253) to say that confusion has perhaps arisen because the test of reasonableness in this context is not as in the law of tort and elsewhere. In the law of torts and other areas,

...the judge merely enforces what he thinks is reasonable. But in condemning unreasonable administrative action, he asks, himself whether the decision is one which a reasonable body could have reached. In other words, he allows some latitude for the range of differing opinions which may fall within the bounds of reasonableness....

That is the essence of Lord Greene's dictum. Venkatachaliah, J. therefore emphasised that for purposes of administrative law, the test is not whether the Judge would consider an administrative decision as unreasonable but whether he would think that the decision is one which a reasonable body would not have taken. In the latter sense, the Judge allows greater latitude to the authority. Prof. Wade is again referred (p. 408) to for explaining what could be unreasonableness in administrative law:

Unreasonableness has thus become generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described, as "irrelevant considerations", and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question....

In *Nottinghamshire County Council v. Secretary of State for Environment* 1986 A.C. 240 at 247 (quoted by Venkatachaliah, J.) Lord Scarman said that the court would be justified in reviewing administrative action--

Only if a prima facie case is shown that the Secretary of State had acted in bad faith, or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses.

15. Following the above-said principles laid by the Supreme Court, we are of the view that the rejection of the Petitioner's tender as per Exts. P-16 and P-18 is

certainly valid particularly having regard to the fact that between October," 1990 and December. 1991, the offer which was at Rs. 70,000 per cent had now gone upto Rs. 1,65,111 per cent. The fact remains that Petitioner has to blame itself for the delay caused on account of the consideration of its alternate proposals. Petitioner was no doubt stating at every stage that the modifications were negotiable and it was willing to withdraw the same. But this cannot help the Petitioner inasmuch as it was the delay in the negotiations which resulted in escalation of prices. There is nothing wrong on the part of the G.C.D.A. to consider the escalation of price and seek to get better price for its property. In the last paragraph of the counter-affidavit it is stated that further delay would cause heavy financial loss to the authority which has to honour several commitments including several decrees.

16. We therefore find that this is not a fit case for interference. For the aforesaid reasons the writ petition fails and is dismissed.