
(1990) 12 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 295 of 1990

Dinesh L. Gaude

APPELLANT

Vs

Ponda Municipal Council and Another

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Evidence Act, 1872 — Section 115

Goa, Daman and Diu Municipalities Act, 1968 — Section 293, 298, 299, 306, 88(2)

Citation : (1991) 3 BomCR 440

Hon'ble Judges : Sujata Manohar, J; E.S. Da Silva, J

Bench : Division Bench

Advocate : S. Joshi, for the Appellant; F. Rebello, for the respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—The 1st respondent, Municipal Council, had issued an advertisement on 9-7-1990 inviting bids for the purpose of leasing six shops belonging to respondent No. 1. As per this advertisement, there were three shops in category "C" bearing Nos. C-1, C-2 and C-4, admeasurings 6.75 square metres each. There were three shops in "D" category bearing Nos. D-1, D-2 and D-3, each admeasuring 4.28 square metres. The minimum bid for shops in "C" category was Rs. 600/- per month while for "D" category, the minimum bid fixed was Rs. 300/- per month. The advertisement further stated that the Council reserves the right to reject or accept any or every bid. The interested bidders were also required to deposit earnest money of Rs. 3,000/- and a non-refundable participation fee of Rs. 50/-. Pursuant to this notice, an auction was held on 25-7-1990. The petitioner was the only bidder for shop No. D-2. The record of the auction has been produced before us. As per this record, the initial bid of the petitioner was Rs. 300/- which he raised to Rs. 350/-. The noting further states: "as he was the only bidder for this shop, matter was discussed with auction authority and accordingly, minimum offer was asked from the only bidder who offered Rs. 400/- during the auction."

2. On 17th August, 1990, the petitioner received a letter bearing the date 10-8-1990 from the respondent No. 1 informing the petitioner that the respondent No. 1 had decided to re-auction the shops on 28-8-1990 and that the petitioner could collect the security deposit within 15 days. He was also informed that he could take part in the auction if he was interested. Re-auction has, accordingly, been held on 28-8-1990 after issuing an advertisement which contained terms similar to earlier notice of 25-7-1990. In the meanwhile, the petitioner made an application before the Collector on 23-8-1990 u/s 293 of the Goa, Daman and Diu Municipalities Act, 1968. Under an interim Order of the Collector in this application, the re-auction of shop No. D-2 was stayed. Thereafter, the Collector after hearing both sides, by his order dated 12th October, 1990 has dismissed the application on the ground that the application does not come under the purview of section 293 of the Goa, Daman and Diu Municipalities Act of 1968. The petitioner has, thereafter, filed the present petition.

3. The 1st respondent Council is in the hands of the Administrator appointed u/s 298 of the Goa, Daman and Diu Municipalities Act, 1968. u/s 299, the Municipal Administrator so appointed is invested with all powers and functions, inter alia, of the Council as well as the Chief Officer. The respondents No. 1 has filed an affidavit-in-reply of the Chief Officer of the Municipal Council, in which he has set out that no contract has been entered into in the present case because the bids which were received at the auction held on 25-7-1990 were very low. The bids in respect of all the shops have, therefore, been rejected by the Administrator. He has set out in his affidavit the price for six shops fetched at an earlier auction. In respect of "D" type shops at an earlier auction the bids were as follows :---

Shop No. D-1 Rs. 1,030/-;

Shop No. D-2 Rs. 1,280/-;

Shop No. D-3 Rs. 1,280/-;

Since the highest bids received at the auction of 25-7-1990 were less than half the earlier ones, the Administrator decided to re-auction the shops. He has also stated that at the subsequent auction held on 28-8-1990 for shop No. D-1 the highest bid received is of Rs. 750/- and that a contract in respect of shop No. D-1 is already executed with the highest bidder. The 1st respondent has very fairly stated that they are willing to give shop No. D-2 to the petitioner at the same rate of Rs. 750/- per month. The petitioner, however, is not willing to accept this offer. It is stated on his behalf that the lease amount of Rs. 750/- is very much on the higher side and it will not be economical for him to run the shop at this rate.

4. In these circumstances, the first question which we have to decide is whether at the auction held on 25-7-1990 there was any concluded contract between the petitioner and the respondent No. 1. The auction notice very clearly states that the Council has reserved the right to accept or reject any bid. In the present

case, the auction officer was the Chief Officer and the auction was conducted in accordance with the Government of Goa, Daman and Diu Municipalities (Transfer of Immovable Property) Rules, 1970 which are issued u/s 306 r/w section 88(2) of the said Municipalities Act of 1968. u/s 89, sub-section (2) of the said Municipalities Act of 1968, every contract under or for the purposes of this Act shall be made on behalf of the Council by the Chief Officer. In view, however, of the fact that an Administrator has been appointed, by virtue of section 299, all powers of the Council as well as of the Chief Officer vest in the Administrator. With the result that the contract has to be entered into by the Administrator. Notice of the auction very clearly states that the Council has reserved the right to accept or reject a bid. In these circumstances, it cannot be said that on the petitioner offering the bid of Rs. 400/- per month to the Chief Officer who conducted the auction, a concluded contract came into existence. All the bids which were recorded at the auction were subject to the acceptance of the Administrator. Since the Administrator has not accepted the bid, no concluded contract has come into existence.

5. The petitioner contends that no reasons have been given to him for rejection of his bid. The action of the Administrator in rejecting all bids is arbitrary and against public interest. Hence, this auction is not valid and must be set aside. In this connection, he relies upon the observations of the Supreme Court in the case of *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, . The Supreme Court in that case has observed that the State is entitled to receive the highest bid in regard to its properties. It is held in that case that the respondent had acted bona fide in refusing to accept the highest offers and deciding to look for better offers in the economic interest of the respondent. The Supreme Court has observed in this connection that when the highest offers of the type in question (involving large amounts) are rejected, reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily, the same should be communicated to the concerned parties unless there be any specific justification not to do so. In the case of *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, , the Supreme Court has observed that fairness in administrative action is an essential requirement to exercise the executive power of the State in entering or not entering into contracts and it is also subject to Article 14 and the manner, the method and the motive of the decision of entering or not entering into contract are subject to judicial review of the touchstone of the relevance, reasonableness, fair play, natural justice and equality. Though it may not be necessary to give reasons in the field of this nature, fairness must be there to the parties concerned. In the present case, the respondents, in their affidavit-in-reply, filed before the Collector, have set out the reasons for not accepting any of the bids offered at the auction held on 25-7-1990. These bids were rejected in view of the fact that they were considered by the respondent No. 1 to be very low looking to the offers accepted earlier in respect of the same shops for an earlier period. In our view, looking to the figures given by the

respondent No. 1 in his affidavit, the reason offered by the respondent No. 1 for not accepting any bids at the auction on 25-7-1990 appears to be reasonable. There are no mala fides alleged against the respondent No. 1 in this connection. The motive of the respondent No. 1 in trying to secure the best economical returns for his property cannot be faulted on any count.

6. It was also submitted on behalf of the petitioner that the first respondent had fixed a minimum price in respect of these shops. Therefore, there was an implied representation on the part of the respondent No. 1 that any bid above this minimum would be acceptable to respondent No. 1. He has acted on this representation to his prejudice because after giving the bid for Rs. 400/- which was the only bid, he has proceeded to place an order for furniture and counters for his shop and has paid an advance of Rs. 7,500/- to a furniture supplier in anticipation of the shop being given to him on lease. He therefore contends that the respondent No. 1 is now estopped from going back on his representations. In our view, the petitioner, if he has given an advance of Rs. 7,500/- to any furniture supplier, seems to have acted in anticipation of a contract being awarded to him, forgetting the terms on which offers were invited by respondent No. 1. Respondent No. 1 has very clearly stated that it had the right to accept or reject any bid. If the petitioner has suffered any loss, it is on account of his own actions for which the respondent No. 1 cannot be held responsible. The question of promissory estoppel does not arise in the present case at all.

7. The petitioner has also challenged in this petition the Order of the Collector dated 12-10-1990 dismissing his application u/s 293 of the Municipalities Act, 1968. u/s 293 of the said Municipalities Act, if in the opinion of the Collector, the execution of any order or the resolution of a Council is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of peace or is unlawful, he may suspend the execution or prohibit the doing thereof. In our view, the Collector has rightly come to the conclusion that the action of the Council in rejecting all bids does not fall within these provisions of section 293, since it is not likely to cause any injury or annoyance to the public or lead to any breach of peace or is, in any manner unlawful or against the public interest. We agree with the reasoning and conclusion arrived at by the Collector in this connection.

8. In the premises, the petition is dismissed. In the circumstances, there will be no order as to costs.

We may add that the petition was placed on Board and taken up for final hearing today by consent of both the parties.