
(1999) 10 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL OF INVESTIGATION And REGISTRATION	APPELLANT
Vs	
NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY	RESPONDENT

Date of Decision : 22-10-1999

Acts Referred:

Citation : 2002 1 CPJ 2

Hon'ble Judges : A.N.Divecha , Moksh Mahajan J.

Final Decision : NOE discharged

Judgement

1. THIS order disposes of the common issue pertaining to maintainability of proceedings raised in these three complaints, involving the same cause of action. The common order is passed for the sake of convenience.

2. FIRST the facts in brief. The three parties namely Shyam Garments Private Limited, Jaguar Estates (P) Limited, and Shri Jyoti Prasad filed their complaints charging the NOIDA with adoption of and indulgence in restrictive and unfair trade practices in terms of Section 10(a)(i), and Section 36A(i) of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the MRTTP Act). It is stated that in pursuance of announcement of Scheme bearing No. 95-96 XXX (14) for allotment of commercial plots in Sector- 18, P-Block and Sector-12, Y-Block, NOIDA, they applied for plots by submitting their respective tenders. While Shyam Garments Pvt. Limited made a bid for plot bearing No. P-20, Sector-18 quoting a rate of Rs. 50,100/- per sq. mtr.. Jaguar Estates Pvt. Ltd. made a bid for a plot bearing No. P-21, Sector-18, NOIDA quoting a rate of Rs. 69,155/- per sq. mtr. The latter also applied for two plots P-19 and P-21 for a price of Rs. 49,000/- and Rs. 50,000/- per sq. mtr. Shri Jyoti Prasad on the other hand filed a tender for a plot No, P-11, Sector 18 NOIDA quoting a rate of Rs. 54,190/- per sq, mtr. All the three parties were declared the highest bidders. Subsequently, the parties received the letters cancelling the allotment and refunding the security deposit without assigning any reasons thereto. It was thus prayed that an enquiry be instituted into the restrictive and unfair trade practices indulged in by the respondent Authority and the respondent be restrained from carrying on

such practice. The complaints as filed were treated as an information and Notices of Enquiry in all the three cases were issued under Section 10(a)(iv) and Section 36B(d) of the MRTP Act. In their respective replies, the averments as made in the complaints were denied on behalf of the respondent. It was stated therein that the highest bid in itself does not bestow any right on the person for allotment of plot. Nowhere the respondent has ever stated that the offer as made would be accepted specifically in the face of the decision of the Hon''ble High Court of Allahabad. It is also a prerogative of the respondent either to accept or reject the same. As the petitions on the same subject-matter came to be filed before the Hon''ble High Court of Allahabad by some of the tenderers which was dismissed ultimately, the respondent could not be charged with the adoption of and indulgence in an unfair and restrictive trade practice.

After completion of the pleadings, the issues framed in all the three cases were as under : (1) Whether the complaint is maintainable on the preliminary objections as raised in the reply to the NOE ? (2) Whether the respondent has indulged in the restrictive trade practices as alleged in the complaint ? (3) If so, whether such restrictive trade practices are not prejudicial to public interest ? (4) Whether such unfair trade practices are prejudicial to public interest or to the interest of consumers or consumers generally ? (5) Relief.

3. AS per the decision taken vide docket order dated 16.7.1999 the issue pertaining to the maintainability of the proceedings was to be decided first and thus the matter was placed before us for decision. Both the parties were heard through their Advocates. Mr. Astinder Kumar, Advocate for the respondent submitted that some of the tenderers took up the matter before the Hon''ble High Court of Allahabad. Initially the proceedings were stayed and the interim stay order was granted as in the case of Shri Mahesh Bansal in C.W.P. No. 4777 of 1996. Subsequently the petition came to be dismissed. Since the issue has been decided by the Hon''ble High Court of Allahabad, the proceedings before the Commission are not maintainable.

4. THE learned Advocate for the DG Mr. C. Badrinath Babu on the other hand stated that the issue of Notices of Enquiry prima facie establishes that there is a case of unfair/restrictive trade practices on the part of the respondent Authority. This is also evident from the interim relief allowed to the parties vide order dated 17.8.1999 whereby the respondent Authority was restrained from "completing the sale transaction if someone else's bid is accepted and from transferring possession of the plot in favour of anyone else pending the hearing and final disposal of this application by this Commission". Accordingly, the proceedings should be taken to their logical conclusion. We have considered the rival submissions. On facts it appears that subsequent to the announcement of a Scheme bearing No. 95-96 XXX(14), some of the tenderers namely Shri Rajinder Prasad and Mahesh Bansal filed petitions before the Hon''ble High Court of Allahabad. Shri Rajinder Prasad in its petition bearing C.W.P. No. 4778 of 1996 claimed himself to be the highest bidder on the previous occasion and prayed

that the respondent Authority should not be allowed to allot the plot to any other person. This was in respect of plot No. P-20, Sector-18, NOIDA. The Hon"ble High Court of Allahabad vide its order dated 9.2.1996 was pleased to, grant an interim stay order in favour of Shri Rajinder Prasad. The stay order was later on modified to the extent that the respondent Authority was allowed to continue with the subsequent allotment subject to the final decision of the writ petition. Another tenderer Shri Mahesh Bansal also filed similar petition under C.W.P. No. 4777 of 1996 challenging the allotment of plot No. P-II, Sector -18, NOIDA. These two petitions subsequently came to be dismissed by the Hon"ble High Court of Allahabad vide their order dated 4.5.1998. This was done after following the order of the Division Bench passed in W.P. No. 976 of 1996 in the case of Virat Bhusan v. NOIDA, decided on 21.8.1997. (A Photostat copy of the same has been placed on record). Perusal of the order passed in W.P. No. 976 of 1996 shows that the writ petition filed was for the relief that the advertisement dated 21.1.1996 inviting fresh tenders for plot Nos. P-12 and P-14 in Sector 18, NOIDA may be quashed. Their Lordships after observing that the aforesaid party was declared as the highest bidder on the previous occasion held as under : "We have considered the submissions of the learned Counsel for the petitioner. However, in view of the settled legal position that by merely making highest offer, no right accrues in favour of the tendered, submission cannot be accepted. For this Surendra Pal Singh v. Zila Parishad, Muzaffarnagar, reported in 1991 (2) UPLBEC 925; As is Foundation Construction Ltd. v. Trafalgar House Construction (I) Ltd. & Ors. reported in (1997) 1 Supreme Court Cases 738; State of U.P. & Ors. v. Vijay Bahadur Singh & Ors., reported in AIR 1981 SC 1254, and Agra Cantt. Vendors Co-operative Society Ltd., Agra v. The Union of India & Ors., reported in 1984 UPLBEC, may be referred. In the circumstances, we do not find any merit in this writ petition. If any amount deposited by the petitioner in pursuance of his bid, is lying with the respondents, it shall be returned to him within a month from today. The writ petition is, accordingly, rejected."

On facts as stated hereinabove it is clear that the Hon"ble High Court of Allahabad was seized of the same matter as before us. The subject-matter of the petition in C.W.P. Nos. 4778 and 4777 pertains to the allotment of plots in P-11 in the case of Mahesh Bansal and P-18, Sector-18, NOIDA in the case of Jaguar Estates Pvt. Limited. It may be noted that both Jyoti Prasad as well as Jaguar Estates Pvt. Ltd. also filed the applications under Order 1 Rule 10 of the Civil Procedure Code before the Hon"ble High Court of Judicature at Allahabad seeking impleadment as respondents in the respective writ petitions. Thus apart from the cause of action being the same, parties had also intervened in the proceedings before the Hon"ble High Court of Allahabad. In view of these facts the question arises is whether in the face of the decision of the Hon"ble High Court of Allahabad, the matter can be proceeded with before the Commission. The aforesaid ruling of the High Court is binding to the Commission in view of the Full Bench ruling of the Commission in the case of Director General (I and R) : "The seat of this Commission is in Delhi. The jurisdiction of this Commission is

throughout the whole of India. If the order of this Commission affects a party residing anywhere in India, such party can invoke the jurisdiction of the High Court exercising jurisdiction over the area with respect to the order of this Commission though the seat of this Commission is in Delhi. It is thus clear that this Commission is subject to the writ jurisdiction of every High Court in this country."

In view of above we hold that the proceedings as initiated against the parties are not maintainable and hence Notices of Enquiry would stand discharged in case of all the parties. No order as to costs in view of the facts and circumstances of the case. Further Order (Per Chairman)

5. MT. Justice A.N. Divecha, Chairman-I have an occasion to read the order passed by my learned Bench-mate. While agreeing with the conclusion reached by her, I have thought it fit to add a few lines of mine.

6. THE subject-matter of all these three proceedings is one Scheme bearing No. 95-96 XXX(14) (the Scheme for convenience) for allotment of commercial plots in Section 18, P Block and Sector 12, Y Block in NOIDA. THE cause of action in each proceeding is non- allotment of any plot despite quoting the highest bid on invitation of tenders therefor and refund of the security deposit. Common questions of law and fact are found arising in all these three proceedings and my learned Bench-mate has rightly thought it fit to dispose of all these three proceedings by our common order. It is not necessary to set out in detail facts giving rise to these three proceedings. My learned Bench-mate has succinctly summarised the same and I need not burden this order of mine by repeaking it all over again. Suffice it to note that the Scheme was announced and tenders were invited for allotment of commercial plots. The applicants in all these three proceedings are stated to have quoted the highest bids. Their bids were not accepted and the security deposit to them came to be refunded.

On the pleadings of the parties the issues were framed and one issue was with respect to the maintainability of the proceeding in each case. That issue was ordered to be tried as a preliminary issue by the order passed by this Commission on 16th July, 1999, The question before us is whether or not acceptance of the highest bid and refund of the security deposit would amount to any kind of restrictive and/or unfair trade practices on the part of the respondent.

7. IT may be noted that the Scheme was under consideration before the High Court of Allahabad in two writ petitions bearing C.W.P. Nos. 4777 and 4778 of 1996. The question raised. before the High Court of Allahabad was also with respect to non-acceptance of the highest offer or highest bid for allotment of commercial plots under the scheme. On examination of the case law on the point and relying on certain rulings of the Hon"ble Supreme Court, the High Court of Allahabad has rejected both the writ petitions. IT has been held therein that it is not necessary that the highest bid need be accepted. The aforesaid ruling of the High Court of Allahabad is binding to this Commission in view of its Full Bench-

ruling in the case of The Director General (Investigation and Registration) v. Holy Angels School, reported in (1998) 6 CTJ at P. 129. the aforesaid ruling of the High Court of Allahabad has been handed down relying on the binding rulings of the Hon''ble Supreme Court. In that view of the matter, the respondent cannot be said to be bound to accept highest bids for commercial plots in the Scheme. We are, therefore, of the view that non-acceptance of the highest bids for commercial plots and refund of the security deposit would not amount to any kind of restrictive and/or unfair trade practices on the part of the respondent in view of the aforesaid binding ruling of the High Court of Allahabad. If the impugned action on the-part of the respondent would not amount to restrictive and/or unfair trade practices within their respective meanings contained in the Monopolies and Restrictive Trade Practices Act, 1969, this Commission cannot and will not have any jurisdiction to try these proceedings. We are, therefore, of the opinion that these proceedings are not maintainable in law. We accordingly answer the preliminary issue in favour of the respondent and against the complainants.

8. IN the result, these three complaint applications fail. They are hereby rejected, however, with no order as to costs on the facts in the circumstances of the cases. NOE discharged.