

(2013) 01 CHH CK 0007
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1602 of 2012

Gajanand Sahu

APPELLANT

Vs

The State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 8

Citation : AIR 2013 Chh 100

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prashant Jayaswal, with Mr. Saurabh Jain and Mr. Anshuman Shrivastava, Mr. P.S. Koshy with Mr. Ashish Surana and Mr. T.K. Tiwari, for the Appellant; Sumesh Bajaj, Government Advocate and Shri Pankaj Shrivastava, Panel Lawyer for the State, Shri Kishore Bhaduri, Advocate with Shri Manish Nigam and Shri Rahul Tamaskar, Advocates for the Respondent-Chhattisgarh Rajya Krishi Vivanan Board and Krishi Upaj Mandi Samiti, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—W.P. (C) Nos. 1602, 1585, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1690, 1691, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1831, 1839, 1842, 1843, 1844, 1845, 1846, 1862 and 1863 of 2012, involve common facts as well as one and the same question of law, require to be decided by common order. The cause of action, in all these petitions, arose from the order dated 30.08.2012, whereby auction of 56 shops of Krishi Upaj Mandi Samiti, Durg (for short "the Samiti"), was cancelled.

2. As all the facts are common, the facts and documents referred in the first petition, i.e. W.P. (C) No. 1602/2012, are being taken for consideration.

3. The Samiti issued a notice inviting offer (for short "the NIO") for leasing out

56 sundry shops in Navin Mandi Premises, Dhamdha Road, Durg on 07.01.2011 (Page 27). It was provided that the bid may be submitted by registered post on or before 29.01.2011 (Saturday) during office hours. There should be a separate bid for each sundry shop. The requisite fee will be deposited by 28.01.2011. The relevant conditions, inter alia, in the NIO was that the bid will be opened on 31.01.2011 at 11 O'clock in respect of Sundry Shops No. 1 to 28 and on 01.02.2011 at the same time, in respect of Sundry Shops No. 29 to 56. The successful bidders will be required to deposit a sum of Rs. 03 lacs as security amount within a period of 15 days from the date of information. The successful bidders were required to deposit the difference of caution money (Dharohar Rashi) and the security amount (total Rs. 05 lacs) and the bid amount after removal of the boundaries, and the agreement was to be executed within a period of 30 days. The petitioners were the successful bidders. According to the petitioners, the security amount of Rs. 03 lacs was deposited within a period of 15 days from the date of information to them. The remaining amount could not be deposited and the agreement was also not executed.

4. In the meantime, the impugned order dated 30.08.2012 (Annexure P/1) was passed, quashing the auction in question. Subsequently, by letter dated 01.09.2012 (Annexure P/2), the petitioners were informed in respect of cancellation of the auction proceedings of 56 sundry shops. Thus, these petitions.

5. Shri Prashant Jayaswal, learned Senior Advocate with Shri Saurabh Jain & Shri Anshuman Shrivastava, Shri P.S. Koshy with Shri Ashish Surana and Shri T.K. Tiwari, learned counsel appearing for the respective petitioners, would submit that the petitioners have deposited a sum of Rs. 03 lacs within a period of 15 days from the date they were informed by the Samiti. Initially, the petitioners were asked to deposit the difference of the total amount of bid. All the successful bidders formed an association namely; Krishi Upaj Mandi Vyapari Sangh, Durg (for short "the Association") on 08.09.2011 (Annexure - P/7). The Coordinator of the Association informed the Secretary of the Samiti objecting demand of balance amount before completion of the developmental work. The Secretary of the Samiti by letter dated 10.09.2011 (Annexure - P/8) granted one more month's time to deposit the required amount. On 28.9.2011 (Annexure - P/9), the Association wrote a letter to the Secretary of the Samiti not to demand the balance amount before developing the area. The Secretary of the Samiti issued a notice dated 25.10.2011 (Annexure - P/10) that new notices for depositing the balance amount will be issued after the work in the area is complete. Thereafter, the impugned order was passed. Learned counsel would further submit that there is no reason to cancel the auction wherein the petitioners had offered the price much above the reserved price i.e. minimum price, fixed for the shop and they have also deposited the security amount of Rs. 3.00 lacs within a period of 15 days. The remaining amount could not be deposited, as the Secretary of the Samiti himself has informed that a separate notice will be issued after developmental work. On 18.6.2012 (Annexure - P/13) the Secretary of the Samiti informed that the notice to deposit remaining amount and for execution of

the agreement will be issued after approval of the auction by the Managing Director of the Chhattisgarh Rajya Krishi Vipanan Board (for short "the Vipanan Board"), in response to the letter dated 13.06.2012 (Annexure P/12), sent by the member of the Association.

6. Learned counsel would next submit that the impugned order is illegal, arbitrary and violative of constitutional mandate of Article 14 of the Constitution of India. The observation of the respondent authorities that there was a lack of competition is without any basis, as the same is based on assumptions and presumptions. The minimum bid price was fixed at Rs. 17 Lacs and the offer made by the petitioners and others were more than Rs. 17 lacs, thus, the holding that there was no sufficient competition is unreasonable and arbitrary. Once the petitioners have deposited a sum of Rs. 03 lacs after having been declared as successful bidders and thereafter, the Secretary of the Samiti has not intimated the time for depositing the balance amount, and also for executing the agreement, the contract was complete, as contemplated u/s 8 of the Indian Contract Act, 1872.

7. Shri Tiwari, learned counsel for the petitioners would submit that in such a situation, where contract was almost complete, the impugned order canceling the auction was prejudicial and violative of principles of natural justice.

8. Shri Koshy, learned counsel appearing with Shri Ashish Surana, learned Advocate, in addition to the above, would submit that the respondents have right to cancel the agreement, but for specific reasons, showing that there was some irregularity or illegality or the required minimum price was not offered, but not in these cases, the offer of the petitioners was more than the minimum price fixed by the respondent authorities. Thus, the impugned order be quashed and the respondent authorities be directed to execute the agreement after depositing the balance amount by the petitioners and hand over possession of the concerned shops to them.

9. Shri Koshy would further submit that the reasons shown by the authorities are not sufficient to come to the conclusion that the competitive price in auction was not available and on that ground the entire auction proceedings cannot be set aside, keeping in view the fact that minimum price was offered and the petitioners were held successful in case of respective shops.

10. Learned counsel placed reliance on Tata Cellular Vs. Union of India, , Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., and Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others,

11. On the other hand, Shri Bhaduri, learned counsel appearing with Shri Manish Nigam and Shri Rahul Tamaskar, learned Advocates, for the respondent/Vipnan Board and the Samiti, would submit that in clause 11 of the NIO, it was clearly stated that the detailed terms and conditions has been provided separately and the same is available with the office of the Samiti. The Samiti cannot transfer, allot or lease an immovable property of the Samiti without the prior approval of

the Managing Director of the Vipnan Board and even thereafter, the auction will not be complete unless the successful bids are approved by the Managing Director of the Vipnan Board.

12. Shri Bhaduri would further submit that section 7 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 (for short "the Act, 1972") provides 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. In the cases on hand, the list of successful bidders was never approved by the Managing Director of the Vipnan Board. Shri Bhaduri would rely on the detailed rules, regulations (Annexure - R/1), which was referred in clause 11 of the NIO.

13. Clause 5 of the circular dated 23.11.2010 (Annexure R/1) filed by the Vipnan Board, clearly provides that after auction, the lease will be placed before the Managing Director of the Vipnan Board for approval. Thereafter, agreement/ lease will be executed. In the cases on hand, successful bids in the auction was not approved and as such, no right has accrued in favour of the writ petitioners.

14. Shri Bhaduri would next submit that the price offered by the petitioners was not competitive as in most of the cases, as per list (Annexure R/2) filed by the Vipnan Board, except for shop No. 2, 13, 15, 27, 33 and 51, the offers made by the petitioners ranges from Rs. 17.05 lacs to 17.41 lacs. In fact, it appears that all the petitioners grouped together and decided to offer just few thousands more than the minimum price and obtained the bid. It is further found that for 34 shops, only 01 offer was made for each shop, for 18 shops, 02 offers were made and for remaining 04 shops, 03 offers were made. This fact also indicates that there was no competition and competitive price was not offered as 1, 2, 3 applications for all the shops, as aforesaid, have been made.

15. Shri Bhaduri would submit that after receiving the report by the Joint Director (Regulation), proper enquiry was made and it was found that the auction was a sham and there was no competition to obtain maximum price on auction of 56 shops. Thus, it was decided to cancel the entire auction proceedings and to hold a fresh auction.

16. Shri Bhaduri would lastly submit that the contract was not complete and as such, the petitioners have not acquired any right to allotment on the basis of deposit of caution money and security amount, as the balance amount was not deposited and the agreement was also not executed between the parties.

17. Shri Bajaj, learned Government Advocate with Shri Pankaj Shrivastava, learned Panel Lawyer appearing for the State, would adopt the arguments advanced by learned counsel for the respondent Vipnanan Board and Samiti.

18. Indisputably, the offers were invited after obtaining prior permission of the Managing Director of the Vipnan Board for leasing out 56 sundry shops situated in Navin Mandi Premises, Dhamdha Road, Durg. The petitioners, along with few others offered bids and they were found successful, being the highest bidders in

the respective shops. As aforesaid, on examination of the records, it was found that there was only one offer for 34 shops, two offers for 18 shops and three offers were made for 04 shops. The prices offered by the petitioners, except in six cases, were 17.05 lacs to 17.41 lacs. For shop No. 2, the offer was 20.51 lacs, for shop No. 13, it was Rs. 18.81 lacs, for shop No. 15, it was Rs. 18.25 lacs, for shop No. 27, it was Rs. 18.33 lacs, for shop No. 33, it was Rs. 20.01 lacs and for shop No. 51, it was Rs. 18.61 lacs.

19. The contention of learned counsel for the petitioners that reasons were not sufficient to come to the conclusion that competitive price was not available, does not merit acceptance. From the aforesaid facts, it is clear that there was only one offer for 34 shops and also the difference of price offered was ranging between Rs. 5000 to Rs. 41000/- only, more than the minimum price. Thus, sufficient reasons were available to hold that the price offered by the participants was not competitive. There cannot be a quarrel on the proposition of law, as laid down by the Supreme Court in *Kranti Associates Private Limited* (supra). Sufficient reasons are available in the present cases.

20. Thus, the respondent No. 1 has rightly come to the conclusion that for want of competitive price, as the purpose was to obtain maximum price on leasing out the shops constructed by the Samiti, the auction deserves to be cancelled and accordingly, it was cancelled.

21. The contention of the learned counsel for the respective petitioners that the contract was complete, is noticed to be rejected, as indisputably, the petitioners have not deposited the remaining balance amount, which may be for one or other reason and also not executed the agreement. The confirmation of the auction was subject to approval of the Managing Director of the Vipan Board, which was clearly provided in the detailed terms and conditions as is evident from the clause 5.0 of the circular dated 23.11.2000, which reads as under:

Thus, the contract was not complete and before confirmation of the auction and deposit of the total amount as well as execution of the lease agreement, the petitioners have not acquired any legal right which can be enforced in exercise of power under Article 226 of the Constitution of India.

22. Section of 7 of the Act, 1972 reads as under:

7. 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 purpose 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 purpose, be deemed to be a local authority.

Proviso to sub-section (2) of Section 7, which is mandatory, provides 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. In the case on hand, prior permission for the NIO was obtained; however, the final bids were not approved by the Managing Director. This was clarified in the circular dated 23.11.2010, also.

23. The petitioners have pleaded mildly the issue of promissory estoppel and legitimate expectation. It is well settled provision of law that the plea of promissory estoppel or legitimate expectation cannot be allowed to be raised, unless the factual foundation for the same is laid in the pleadings. In the pleadings, no foundation has been laid, except during the course of argument and also in the written statement filed, thereafter. (See: Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, State of Arunachal Pradesh Vs. Nezone Law House, Assam, , and Shree Sidhballi Steels Ltd. and Others Vs. State of U.P. and Others,

24. In Collector, Distt. Gwalior and Another Vs. Cine Exhibitors P. Ltd. and Another, , the Supreme Court observed that the principle of promissory estoppel cannot be soundly embedded or treated to be sacrosanct when a public authority carries out a representation or a promise which is prohibited by law or is devoid of the authority of law.

25. In order to claim the doctrine of legitimate expectation, the petitioners have to satisfy that they have relied on the representation and the denial of expectation has worked to their detriment. (See: Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others,

26. In these cases, the petitioners were declared as successful bidders, however, the same was not complete, as success of the bid was subject to approval of the Managing Director of the Vipnan Board. The petitioners have also failed to establish that cancellation of auction proceedings has worked to the detriment of the petitioners, as the petitioners have right to participate in the auction proceedings again under competitive atmosphere to offer proper market price in public interest. Thus, the ground of promissory estoppel as well as legitimate expectation fail in the facts of the present cases.

27. Further contention of the petitioners that once the auction has taken place and more than the minimum price has been offered, the same could not be reviewed by the superior authority, is not sustainable. It is a trite law that

judicial review in case of contract is not permissible unless mala fide, arbitrariness and irregularity has been pleaded and proved. It is a case where the Vipnan Board, a competent authority, has scrutinized the auction process and found that there was no sufficient competition, and as such, good price could not be obtained. In such circumstances, judicial review is not permissible, as the petitioners have failed to establish that the decision was not bona fide and was also not in public interest. (See: Siemens Public Communication Networks Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , relied on by the petitioners). There was no colourable exercise of power or any arbitrariness, mala fide in the entire process.

28. In Rajasthan Housing Board and Another Vs. G.S. Investments and Another, it was clearly observed that 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. Discretionary power under Article 226 of the Constitution, should be exercised with great care and caution and only in furtherance of public interest.

29. Further, in Meerut Development Authority Vs. Association of Management Studies and Another, the Supreme Court observed as under:

28. It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favoritism.

30. For the reasons mentioned hereinabove and from the finding of the Managing Director of the Vipnan Board, it is evident that there was no sufficient competitive price. Thus, the decision taken by the respondent authorities is just, proper and warrants no interference of this Court.

31. As a sequel, all the writ petitions being devoid of merit, are liable to be and are hereby dismissed. No order as to costs.