

(2010) 11 SC CK 0044

In the Supreme Court Of India

Case No : Civil Appeal No. 10015 of 2010 (Arising out of S.L.P. (C) No. 21458 of 2010)

Himachal Pradesh Housing and Urban Development Authority APPELLANT
Vs

Universal Estate and Another RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Himachal Pradesh Housing and Urban Development Authority (Allotment, Sale of Houses, Flats and Plots) Regulations, 2004 — Regulation 4
Himachal Pradesh Housing and Urban De

Citation : AIR 2011 SC 887 : (2011) AIRSCW 778 : (2011) AIRSCW 171 : (2011) 1 MLJ 1303 : (2011) 1 RCR(Civil) 950 : (2010) 12 SCALE 389

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : P.P. Rao and Y. Prabhakra Rao, for the Appellant; Ranjit Kumar Rakesh Khanna and Ashok K. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Leave granted.

2. Whether Chief Executive Officer of the Himachal Pradesh Housing and Urban Development Authority (hereinafter referred to as 'the Chief Executive Officer') could reject the highest bid given by respondent No. 1 in respect of commercial site measuring 9947 square meters situated at Parwanoo after it had deposited 10% of the bid money is the question which arises for consideration in this appeal filed against order dated 14.6.2010 passed by the Division Bench of the Himachal Pradesh High Court in CWP No. 607 of 2010.

3. The Chief Executive Officer invited sealed bids from the general public for allotment of 4 institutional/industrial/school plots at Atal Shiksha Kunj, Kallujhanda (Baddi), Bhatolikalan (Baddi) and Basal at Solan and two commercial sites at Parwanoo, one measuring 475.40 square meters and the other

measuring 9947 square meters on leasehold basis for 99 years. The reserve price of both the sites was shown as Rs. 9,000/- per square meter. Later on, the same was reduced to Rs. 6,000/- per square meter.

4. Respondent No. 1 gave bids for both the commercial sites. One, Chunni Lal Chauhan, who was partner of respondent No. 1 (averments to this effect have been made in paragraphs 3(i) and 4 of the rejoinder affidavit filed by the appellant to the counter affidavit of the respondents) also gave bid for the site measuring 475.40 square meters. The address disclosed in the bids given by respondent No. 1 and Chunni Lal Chauhan was the same (an averment to this effect is contained in paragraphs 11 and 12 of the reply filed by the appellants to the writ petition of respondent No. 1). Three other persons gave bids for the site measuring 9947 square meters. The rates quoted by four bidders were as under:

SR. NO.

NAME OF BIDDER

RESERVE PRICE

RATES PER SQM. QUOTED

PARTICIPATION BID MONEY DEPOSITED

1.

M/s. HPR INFRA

Rs.6000/-

Rs.6,131

Rs.60.00 lacs

2.

M/s. Universal Estates

Rs.6000/-

Rs.6,551

Rs.60.00 lacs

3

M/s. Bansal Industries

Rs.6000/-

Rs.6,022

Rs.60.00 lacs

4.

M/s. Aggarwal Sales Corporation

Rs.6000/-

Rs.6,101

Rs.60.00 lacs

5. All the bids were opened on 8.2.2010 and it was found that bid of Rs. 25,299/- per square meter given by Chunni Lal Chauhan for the site measuring 475.40 square meters was highest. However, instead of depositing 10% of the bid money as per the requirement of Clause 5(2) of the Himachal Pradesh Housing and Urban Development Authority (Allotment, Sale of Houses, Flats and Plots) Regulations, 2004 (for short, 'the Regulations'), Chunni Lal Chauhan withdrew his bid on that very day. As a consequence, participation money of all other bidders including respondent No. 1, who had offered to pay Rs. 20,335.00 per square meter was refunded. In respect of the second site, the bid of Rs. 6,551/- per square meter given by respondent No. 1 was found to be highest. The representative of respondent No. 1 who had already deposited Rs. 60 lacs as participation money, deposited another sum of Rs. 8,50,000/- to comply with the requirement of Clause 5(2) of the Regulations. However, before the bid could be accepted by the Chief Executive Officer, the State Government intervened in the matter because it had received information that the second commercial site was being disposed of at a low price and vide letter dated 10.2.2010, the Additional Chief Secretary (Housing) directed the Chief Executive Officer not to accept the bids and also give clarification on the following points:

- (i) In what circumstances were sealed bids invited when normally one would expect an open auction process to be resorted to in order to maximize return.
- (ii) Given the value of the land what steps were taken to ensure wide dissemination of the sale in Parwanoo, Himachal Pradesh and outside the State.
- (iii) What was the basis for the fixing of the reserve price and on what basis was it revised downwards.

6. The Chief Executive Officer sent reply dated 17.2.2010 and justified disposal of various sites/plots by inviting sealed bids, but after two days he decided to reject the bid of respondent No. 1 on the ground that the rate offered by it was lower than the rate quoted for the other site. This was communicated to respondent No. 1 in the form of order dated 24.2.2010.

7. Respondent No. 1 challenged rejection of bid by filing a petition under Articles 226 and 227 of the Constitution of India mainly on the ground that the decision of the Chief Executive Officer was not only contrary to the statutory provisions but was totally arbitrary and unjustified. In the affidavit filed by respondent No. 2, it was averred that even though the bid of respondent No. 1 was highest and it had deposited 10% of the bid amount, the Chief Executive Officer arbitrarily cancelled the bid. In the reply affidavit filed on behalf of the appellant, an

objection was taken to the very maintainability of the writ petition on the ground that an effective alternative remedy is available by way of arbitration. On merits, it was pleaded that the highest bid of respondent No. 1 was rejected because the rate offered by it were on lower side as compared to other commercial site.

8. The Division Bench of the High Court allowed the writ petition and quashed order dated 24.2.2010 by observing that in view of Clause 11 of the Regulations, the lease will be deemed to have taken effect from the date of acceptance of bid and as soon as 10% amount approved by the Presiding Officer was deposited, the bid of respondent No. 1 stood accepted. The High Court further observed that after acceptance of 25% or 10% of the bid money, the Chief Executive Officer had no right to reject the bid.

9. Shri P.P. Rao, learned senior counsel appearing for the appellant argued that deposit of 10% of the bid money did not create any tangible right in favour of respondent No. 1 and the reasons assigned by the High Court for nullifying rejection of the bid of respondent No. 1 are legally unsustainable and the order under challenge is liable to be set aside. Learned senior counsel further argued that the High Court committed serious error by presuming acceptance of the bid ignoring that the allotment letter had not been issued in favour of respondent No. 1 in terms of Clause 5(2) of the Regulations. Shri Rao submitted that acceptance of the bid by the Chief Executive Officer is a condition precedent for issue of allotment letter and till that is done, he can reject the bid without assigning any reason. In the end, the learned senior counsel argued that the Chief Executive Officer did not commit any illegality by rejecting the bid because the price offered by respondent No. 1 was highly inadequate.

10. Shri Ranjit Kumar, learned senior counsel appearing for the respondents argued that the premise on which the Chief Executive Officer rejected the highest bid of respondent No. 1 was wholly erroneous and the High Court did not commit any error by quashing order dated 24.2.2010 because there was no significant difference in the price of the two sites. Shri Ranjit Kumar submitted that the price offered for the two commercial sites was bound to be different because of huge difference in their size and the fact that they were located at different places and the Chief Executive Officer was not at all justified in rejecting the bid given by respondent No. 1 for 9947 square meters land by comparing it with the bid given for a small plot measuring 475.40 square meters. Learned senior counsel referred to the documents filed with the counter affidavit to show that HIMUDA had allotted/disposed of various sites between 2007 and 2010 at substantially lower price and argued that cancellation of the bid of respondent No. 1 was rightly annulled by the High Court because the Chief Executive Officer had not applied his mind and mechanically passed order under the dictates of the State Government.

11. We have considered the respective submissions. HIMUDA is an Authority established u/s 3 of the Himachal Pradesh Housing and Urban Development Authority Act, 2004 (for short, 'the Act') for planning and development of land

and creation of infrastructure to meet the housing needs of different income groups and to provide for development schemes, for mobilizing public and private resources for the promotion of housing colonies and related infrastructure and to provide for the creation of appropriate Authority and mechanism for planned development of housing colonies. Section 33 of the Act empowers the Authority to dispose of by way of sale, exchange, lease or auction any land acquired by it or transferred to it by the State Government after undertaking or carrying out such development as provided in housing and development schemes. The exercise of power under Sub-section (1) is subject to any direction which may be issued by the State Government u/s 43. Section 51(1) lays down that the Authority can, with the prior approval of the State Government, make regulations consistent with the provisions of the Act and the Rules made thereunder.

12. For the sake of convenient reference, Section 33 of the Act is reproduced below:

33. Disposal of land.- (1) Subject to any direction issued by the State Government under this Act, the Authority may dispose of by way of sale, exchange, lease or auction any land acquired by it or transferred to it by the State Government after undertaking or carrying out such development as provided in housing and development scheme, in such manner, as may be prescribed and subject to such terms and conditions, as it thinks fit.

(2) Subject to the provisions, of Sub-section (1), the Authority may sell, lease or otherwise transfer whether by auction or allotment any land or building belonging to it on such terms and conditions as it may, from time to time, determine.

(3) The consideration money for any transfer under this section shall be paid to the Authority, in such manner, as may be prescribed by regulations.

(4) Any land or building, or both, as the case may be, shall continue to belong to the Authority until the entire consideration money together with interest and any other amount, if any, due to the Authority, on account of the transfer of such land or building or both, is paid.

(5) Subject to the provisions of regulations, the transferee shall not further transfer any of his rights in the land or buildings except with the prior permission of the Authority on an application accompanied by such fees, as may be prescribed.

13. In exercise of the power vested in it u/s 51(1) of the Act, the Authority framed the regulations, the relevant clauses of which are reproduced below:

2. Definitions.- In these regulations, unless the context otherwise requires,-

(c) "Authority" means the Himachal Pradesh Housing and Urban Development Authority established u/s 3 of the Act.

(e) "allotment letter" means a letter in such a form as may be specified by the Authority from time to time, making allotment of a particular house or plot to an applicant.

3. Mode of disposal.- Subject to any direction issued by the State Government under Sub-section (1) of Section 33 of the Act,-

(a) the Authority may dispose of any land belonging to it in developed or an underdeveloped form;

(b) the Authority may dispose of any land or building of the Authority by way of sale or lease or exchange by the creation of any easement right or privilege or otherwise;

(c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

4. Fixation of tentative price/premium.- The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the Costing Committee taking into consideration the cost of land estimated cost of development, cost of buildings and other direct and indirect charges, as may be determined by the Costing Committee from time to time.

5. Sale or lease of house or plot by auction.- (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) Ten percent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft payable to the Chief Executive Officer and drawn on any scheduled bank situated at Shimla. The successful bidder shall be issued allotment letter by registered post and another fifteen percent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Executive Officer, failing which the ten percent amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the house or plot auctioned.

(3) xx xx xx xx xx

(4) xx xx xx xx xx

(5) The general terms and conditions of auction shall be such as may be framed by the Chief Executive Officer from time to time and announced to the public before auction on the spot.

8. Issue of notice for inviting applications and power of Authority to allot houses or plots.- (1) The Authority shall issue a public notice in such newspapers having wide circulation in the area as it may think fit or inviting applications for

allotment of houses or plots offered under any scheme before such date as may be specified in the notice.

(2) The notice shall specify the location of the houses or plots, their tentative costs, details of approximate accommodation, area available for allotment and the class of persons to whom houses or plots under any scheme are reserved and the payment Schedule.

(3) Every applicant shall deposit the earnest money in the office of the Authority and shall enclose with his application the receipt obtained in token of such deposit. The earnest money shall be refunded to the applicant at any time without interest and after deduction of administrative charges if he requests in writing for the refund. If he is allotted house or plot, the earnest money shall be adjustable against cost.

Paragraphs 3, 10, 11 and 13 of the terms and conditions for sale of commercial sites laid down by the Chief Executive Officer under Clause 5(5) of the Regulations read as under:

3. The Estate Manager reserves to himself the right to withdraw any number of Commercial sites that may have been announced for auction and to accept or reject the highest bid without assigning any reason.

10. The successful bidder shall have to pay 25% of the amount of bid on the spot at the fall of hammer in cash or by means of demand draft drawn in favour of the Estate Manager, HP Housing and Urban Development Authority on any scheduled bank at Shimla. Payment by cheque shall not be accepted. However, the Presiding Officer as a special case may allow the successful bidder to deposit not less than 10% of the bid on the condition that the difference between the amount deposited and 25% of the bid shall be deposited in the same manner within 30 days from the issue of allotment letter. The remaining 75% premium is to be paid in accordance with the condition No. 11 (eleven) below.

11. The lease shall be deemed to have taken effect from the date of bid acceptance and from this date the interest @ 12; shall be charged on the 75% balance of the premium. The balance 75% premium can be paid in lump sum within 30 days from the date of acceptance of bid without interest or with 12; per annum interest in three annual installments, first instalment being payable within one year from the date of the allotment along with lease rent. It will be the responsibility of the lessees to pay annual instalment without waiting for any notice and the Authority will not be under any obligation to issue any demand notice.

13. After making payment of 25% of the premium, lessee shall execute a lease deed in the prescribed form in such manner as may be directed by the Estate Manager within one month of the date of allotment or with in such extended period as may be allowed by the Estate Manager, failing which the Estate Manager may cancel allotment and forfeit 25% of the premium. The lessee shall

bear and pay all expenses in respect of execution of lease deed i.e. the stamp duty & registration fee payable thereof in accordance with the Law in force at the time of execution of lease deed.

14. A careful reading of the relevant clauses of the Regulations shows that the Authority is bestowed with the power to dispose of any land or building by way of sale or lease either by allotment or by auction. The exercise of this power is subject to any direction which may be issued by the State Government u/s 33(1) of the Act. The tentative price/premium for disposal of land or building is required to be determined by the Costing Committee which, in turn, has to take into consideration the cost of land, the estimated cost of development, cost of building and other direct and indirect charges to be determined by the Costing Committee from time to time. Clause 5(1) of the Regulations provides for determination of reserve price/premium by taking into consideration the factors enumerated in Clause 4 of the Regulations. When any land or building is sold or leased out by open auction, the priceless premium to be charged is the reserve price/premium or any higher amount offered by the highest bidder. In terms of Clause 5(2) of the Regulations, the highest bidder is required to deposit 10% of the bid on the spot either in cash or in the form of demand draft. Thereafter, the Chief Executive Officer has to take a decision on the issue of acceptance of bid. This necessarily involves application of mind by the concerned officer to the relevant factors, the most dominant being the public interest. The Chief Executive Officer has to ensure that the land or building belonging to the Authority is sold or leased out or otherwise transferred at the maximum price. If the Chief Executive Officer finds that the bidders have formed a cartel or joined hands to manipulate the price or have done anything which is detrimental to the interest of the Authority or public interest, he is not only entitled but is duty bound to reject the highest bid. Once the bid is accepted, the allotment letter is required to be issued to the bidder by registered post. The issue of allotment letter is a strong indication of acceptance of bid by the competent authority i.e., the Chief Executive Officer. By virtue of the deeming provision contained in paragraph 11 of the terms and conditions laid down by the Chief Executive Officer for sale of commercial sites, the lease becomes effective from the date of acceptance of the bid. There is nothing in the plain language of Clause 5(2) from which it can be inferred that the highest bid is deemed to have been accepted on receipt of 10% of the bid money. The Regulations do not contain any time schedule within which the Chief Executive Officer is required to take a decision on the issue of acceptance or rejection of the bid. therefore, his inaction in the matter or failure to pass a positive order within a specified time cannot lead to an inference that the highest bid has been accepted and the lease has become effective.

15. In view of the above, it must be held that the Division Bench of the High Court was clearly wrong in declaring that the bid of respondent No. 1 stood accepted as soon as 10% amount approved by the Presiding Officer of the Auction Committee was deposited and that the Chief Executive Officer had no

right to reject the bid after acceptance of 10% of the bid money.

16. We shall now consider whether the action of the Chief Executive Officer to reject the bid of respondent No. 1 was arbitrary, unfair, unreasonable and amounted to violation of Article 14 of the Constitution, but before doing that we deem it proper to observe that the scope of judicial review in such matters is very limited and the Court will exercise its discretion only when it is satisfied that the action of the public authority is detrimental to public interest. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , the Court while dealing with a matter involving award of contract, made it clear that the public authority is free not to accept the highest or the lowest offer and the scope of judicial review is confined to the scrutiny of decision making process, which can be annulled if the same is found to be vitiated by malafides, arbitrariness or total unreasonableness. Some of the observations made in the judgment are extracted below:

The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in 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 intervene.

(Emphasis supplied)

In *Jagdish Mandal v. State of Orissa* (2007) 14 SCC 517, a two-Judge Bench, after taking note of the propositions laid down in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, , *Tata Cellular Vs. Union of India*, , *Air India Ltd. v. Cochin International Airport Ltd.* (supra) and *B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others*, observed:

Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

Meerut Development Authority Vs. Association of Management Studies and Another, is a case arising out of the demand of the respondent for allotment of land. Initially, the respondent had given tender for allotment of plot measuring 37,000 square meters at the rate of Rs. 500 per square meter. The appellant offered the plot at the rate of Rs. 690 per square meter because other parties were prepared to take the land at that price. Later on, the Authority decided to issue open tender-cum-auction notice. Officer's Class Housing Society of the Canal Colony offered to pay Rs. 775 per square meter. At that stage, the

respondent indicated its willingness to purchase the land at Rs. 690 per square meter. The appellant did not accept the respondent's prayer for transfer of land at that rate. Thereupon, the respondent filed writ petition for issue of a direction to the appellant to allot land at the rate of Rs. 690 per square meter. By an interim order dated 7.5.2002, the High Court allowed the appellant to allot the land pursuant to advertisement dated 15.4.2002 but made it subject to the decision of the writ petition. Shri Pawan Kumar Agarwal gave an offer of Rs. 1365 per square meter. This was accepted by the appellant. But, after some time, the allotment made in favour of Pawan Kumar Agarwal was cancelled. The High Court allowed the writ petition filed by the respondent and dismissed the one filed by Pawan Kumar Agarwal. This Court allowed the appeal and reversed the order of the High Court insofar as it related to the respondent and observed that the decision taken by the appellant was neither arbitrary nor vitiated due to mala fides and the respondent did not have any right to be allotted land. The Bench relied on the principles laid down in several decisions and reiterated the following observations in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, :

...It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. 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.

17. The ostensible reason given by the Chief Executive Officer for rejecting the bid of respondent No. 1 was that the price offered by it was less than the price quoted for the commercial site measuring 475.40 square meters. If that reason is considered in isolation, one may reasonably conclude that the decision of the Chief Executive Officer to reject the bid was arbitrary because while comparing the price of the two sites, he ignored that there was huge difference in the size of the two plots and they were located in different sectors of Parwanoo. However, if the said reason is scrutinized in the backdrop of the fact that an attempt was made by respondent No. 1 to subvert the effort of the Authority to get the appropriate price, rejection of the bid cannot be dubbed as arbitrary or unreasonable. The averments contained in the written statement filed by the appellant before the High Court and the rejoinder affidavit filed in this Court, which have remained uncontroverted show that respondent No. 1 had manipulated offer of a lower price. It had given bids for both the sites and one of its partners, namely, Chunni Lal Chauhan gave bid for the smaller plot. The highest bid for the smaller site was given by Chunni Lal Chauhan but without any rhyme and reason, he withdrew his offer on the same day. Respondent No. 1, whose bid was the next highest did not press for acceptance of its bid and willingly accepted the refund of participation money. This was quite unusual. For

the other site, the bid of respondent No. 1 was higher than the other bids by few hundred rupees only, the maximum difference being Rs. 529/-. The State Government must have sensed the mischief and realised that an attempt was being made to grab a commercial site measuring 9947 square meters with huge potential for development at a very low price. This is the reason why the Chief Executive Officer was directed not to confirm the bid and give clarification on three issues. Initially, he tried to justify the methodology adopted for disposal of the commercial sites but finally realised that adequate price has not been offered for the site and, therefore, he rejected the bid of respondent No. 1. The direction given by the State Government through Additional Chief Secretary (Housing) was in conformity with Section 33(1) and the Chief Executive Officer did not commit any illegality by taking action in furtherance of that direction. There cannot be any manner of doubt that if instead of inviting sealed bids, the Chief Executive Officer had resorted to open auction process, the site measuring 9947 square meters would have fetched much higher price and that would have certainly been in the interest of the Authority and public interest.

18. The arguments of Shri Ranjit Kumar that the rate offered by respondent No. 1 was commensurate with the price at which HIMUDA had disposed of several plots does not commend acceptance. The first transaction relates to plot measuring 164 square meters which was leased out to M/s. Multi Color Cartons at the rate of Rs. 6,000/- per square meter. This plot is located in Sector-II, Parwanoo on hill side and requires lot of development. The second transaction relates to plot measuring 454.2 square meters adjoining Block No. 22, Sector-VI, Parwanoo. It was sold to Balvinder Singh Matharoo for residential purpose. This plot is situated far away from the second commercial site for which respondent No. 1 had given the bid of Rs. 6651/- per square meter. The third document relates to plot measuring 53 square meters. For this plot leasehold rights were given at the rate of Rs. 12,000/- per square meter. This plot was taken by the owner of the house for laying access road. The last transaction by HIMUDA involves sale of plot measuring 721.87 square meters. This plot was sold in 2007 at the rate of Rs. 5625/- per square meter. In our view, none of the transactions can be relied upon for nullifying the decision of the Chief Executive Officer to reject the bid of respondent No. 1 because the size and location of the various plots were different, the last one of which was sold more than two years and almost six months prior to consideration of the bid given by respondent No. 1.

19. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondents is dismissed. The parties are left to bear their own costs. If respondent No. 1 has so far not taken the refund of Rs. 68,50,000/-, then the appellant shall refund the amount within one month from today.