(2013) 02 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6719 of 2012

M/s. Jaiswal Traders APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : AIR 2013 Jhar 118

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rahul Kr. Gupta and Ms. Niyati Sah, for the Appellant;

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner has challenged the office order no. 953 dated 10th October 2012 issued by the Executive Engineer, Irrigation Mechanical Division, Ranchi, contained at annexure-6 whereby the Auction Notice No. 9/12-13 has been cancelled.

2. According to the petitioner, for auction sale of certain goods lying unused as waste material in the premises of the respondents in Dhurwa, Ranchi, a notice being Auction Notice No. 09/12-13 was issued vide annexure-1 whereunder the reserve price for the goods were fixed at Rs. 10,54,700/- and the bidder was required to deposit a sum of Rs. 2,63,700/- by way of advance/security money. Thereafter, on 22nd September 2012, by a corrigendum, interested bidders were informed that the reserve price of Rs. 10,54,700/- earlier fixed, has been enhanced to Rs. 13,34,985/- and the advance / security money has also been enhanced to Rs. 3,33,800/-. The terms and conditions of the auction notice are contained at annexure-3. The petitioner participated in the auction by depositing the advance money in the auction sale conducted on 04th of October 2012 in the premises of the respondent no. 5 - Superintending Engineer, Irrigation Department, Government of Jharkhand, Ranchi where 14 other bidders had also participated. According to the petitioner, auction sale was conducted in the presence of the Executive Engineer, Irrigation Mechanical Division, Ranchi, Office Staff of irrigation Mechanical Division, Ranchi, ASI of Dhurwa Police Station with

force and Videographer. The entire auction process was recorded through video camera. The petitioner was declared as a successful bidder by fall of hammer for putting highest price of Rs. 16,14,000/-. The petitioner thereafter deposited the balance bid amount of Rs. 12,80,000/- by a demand draft, for which receipt dated 9th October 2012 was also issued (annexure-4). The petitioner was thereafter asked to deposit the further sum of Rs. 80,700/- i.e. 5% towards value added tax (VAT) which he did by 11th of October 2012 by way of a demand draft. The petitioner, as per the terms and conditions of the auction notice, was required to lift the auctioned material within ten days thereafter, but it is alleged that the respondents did not enable the petitioner to lift the materials and suddenly he was served with an office order dated 19th of October 2012 issued under the signature of the respondent no. 5 informing that the auction notice has been cancelled by the department order dated 18th October 2012 (annexure-6).

3. Counsel for the petitioner has assailed the aforesaid cancellation order on the grounds that after he was declared as successful bidder and was asked to deposit the VAT amount, the auction sale has concluded and respondents had no basis or reason to cancel the auction sale thereafter and that too without any notice. Counsel for the petitioner has relied upon a judgment rendered by the Hon''ble Supreme Court in the case of Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, . It is submitted that this auction sale was not subjected to subsequent confirmation by any authority and even if it was subjected to any confirmation, after deposit of the balance of the bid amount treating him to be the highest bidder and therefore, the auction sale had stood concluded. It is further submitted on behalf of the petitioner that the respondents in their counter affidavit had also not been able to make out a case of fraud in the entire process and to enable them to justify their impugned action. Counsel for the petitioner further submits that the respondents have in their counter affidavit once again tried to make out a stand that the valuation of the goods was not undertaken earlier and after valuation, reserve price was re-fixed at Rs. 39,59,712/ and it has once again been enhanced to Rs. 41,23,712/-. It is the contention of the petitioner that the respondents themselves are not sure as to the exact reserve price which has been revised at least four times since the first auction notice took place.

4. On these grounds, counsel for the petitioner seeks quashing of the impugned order and has also sought stay of the Emergency Auction Notice dated 20th February 2013 contained at annexure-1 to the I.A. No. 927/13 which was issued during the pendency of this writ application despite there being an interim order dated 19th December 2012 prohibiting re-auction of the articles which were the subject matter of the earlier tender of earlier Tender No. 9/2012-13.

5. Respondent State have appeared and and filed their counter affidavit wherein they have tried to make out a ground that after the auction process was over on 04th of October 2012, complaints were made by one M/s. Zubir Alam and nine other persons that atmosphere of fear was created preventing them from

participating in the auction process and that had led to cause financial loss to the Government. Respondents have thereafter taken a stand that the Principal Secretary of the Department had directed the concerned officer i.e. the Superintending Engineer to conduct an inquiry and submit a report. It has been reported that the Government material was not properly valued before auction and it should be property valued. Thereafter, a committee was constituted to undertake the valuation of the Government material relating to auction in question which submitted a report with a recommendation that the reserve price of the articles should be Rs. 39.60 lakhs. Counsel for the respondents has relied upon Clause-10 of the auction notice to submit that the respondents have a right to cancel the auction or change the date of auction. It is therefore submitted that the action of the respondents are wholly justified within the terms and conditions of the auction notice and is intended to fetch highest price of the articles belonging to the Government for which on proper valuation, the reserve price has been enhanced to Rs. 41,24,000/- as would also appear from the last auction notice dated 28th February 2013.

6. I have heard counsel for the parties at length and gone through the relevant materials on record including the impugned order as also the auction notice dated 20th February 2013.

7. The facts which have been narrated herein above, reveal that the petitioner had participated in the auction notice where original reserve price was quoted at Rs. 10,54,700/- which was revised to Rs. 13,34,985/- by a corrigendum issued by the respondents. The petitioner was found to have fetched highest bid of Rs. 16,14,000/-. The petitioner thereafter deposited the balance amount by a demand draft on 9th of October 2012. Thereafter, respondent themselves issued a letter on the same day wherein it has been categorically indicated that the petitioner having been declared the highest bidder in the auction notice, he was required to deposit the VAT amount of Rs. 80,700/- in the office of the Executive Engineer, Irrigation Mechanical Division, Ranchi by 11th October 2012 after the deposit of the total bid amount made earlier by him in terms of the auction notice. From the aforesaid communication also, it appears that the petitioner had been treated as the highest bidder and had been asked to complete the formality by even depositing the VAT amount by letter dated 9th October 2012. Thereafter, the auction notice has been cancelled by the impugned letter dated 19th October 2012 and that too without giving any notice to the petitioner.

8. An inquiry thereafter was conducted by the Flying Squad of the respondent Irrigation Department on the complaints lodged by other bidders who participated in the auction process alleging some fraud in the auction process. Inquiry report vide annexure-D was submitted. Perusal of paragraphs-9, 10 & 11 clearly discloses that there was no incidence of any fraud or fear or any unpleasant incident having occurred during the course of auction which was itself video recorded in the presence of the official of the respondent department.

9. It further appears that upon direction of the concerned Principal Secretary of

the Department, the valuation process was undertaken and the amount of reserve price was enhanced to Rs. 39,59,713/- vide valuation report dated 31st December 2012. It further appears that it has once again been revised to Rs. 41,24,000/- as per the communication dated 20th February 2013 annexed to the I.A. No. 927/13. The successive revision of the reserve price clearly shows that the respondents themselves were not sure about the valuation of the property for which the reserve price is quoted, which had already been revised under which the auction took place by enhancing it to Rs. 13,34,985/-.

10. The auction sale also appears to have been concluded by the action taken subsequent to the auction by asking the petitioner to deposit the VAT amount on being declared successful bidder. The judgment relied upon by the petitioner appears to be applicable to the instant case as well as in the facts of the case, no grounds of fraud are made out by the respondents to enable them to cancel the concluded auction sale. Paragraphs- 27, 28, 29 & 30 of the judgment in the case of Valji Khimji and Company (Supra) is quoted herein-below:

27. In our opinion the decision of this Court in Divya Mfg. Co. (P) Ltd. cannot be treated as laying down any absolute rule that a confirmed sale can be set aside in all circumstances. As observed by one of us (Hon''ble Katju, J), in his judgment in Rajbir Singh Dalai (Dr.) v. Chaudhari Devi Lal University, a decision of a court cannot be treated as Euclid''s formula and read and understood mechanically. A decision must be considered on the facts of that particular case.

28. If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed if they do not come forward to bid at the time of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs. 1 crore, and subsequently somebody turns up offering Rs. 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs. 10 crores, then an inference can be drawn that an attempt had been made to acquire that property / asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.

29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types - (I) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to

subsequent confirmation by some authority after the auction is held.

30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

Moreover, it also appears that no opportunity was afforded to the petitioner before the order cancelling the auction notice was passed. The impugned action of the respondents are therefore arbitrary, unreasonable and cannot be sustained in law as well as on facts. Accordingly, the impugned office order dated 19th of October 2012 contained at annexure-6, is hereby quashed. Consequently, the Emergency Auction Notice No. 17/12 - 13 dated 20th February 2013 is held to be of no effect. Consequent upon quashing of the impugned order, the petitioner would be entitled to lift the material auction sold to him as per the original auction notice.

The writ petition is allowed.

