(1995) 08 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16282 of 1995

M.S. Shyam APPELLANT

Vs

The A.P. State Financial Corporation and Others RESPONDENT

Date of Decision : 17-08-1995

Acts Referred:

Citation : (1995) 3 ALT 55 : (1995) 2 APLJ 421

Hon'ble Judges : T.N.C. Ranga Rajan, J

Bench : Single Bench

Advocate : M. Ravinder Reddy and P. Keshava Rao, for the Appellant; Y.N. Lohita, S.C. for Respondents Nos. 1 to 3 and E. Ellareddy, for the Respondent

Final Decision : Dismissed

Judgement

T.N.C. Ranga Rajan, J.—This Writ Petition challenges the sale of the unit by the A.P. State Financial Corporation.

According to the petitioner, the industrial unit of M/s. Vajra Chemicals (Private) Limited which has been seized by the A.P. State Financial Corporation was advertised for sale and tenders were called for with an earnest money deposit of Rs. 50,000/-. The auction was to be held on 17-8-1994 and the petitioner gave his tender on the forenoon of that date offering Rs. 16 Lakhs. There were four other bids and at the negotiation thereafter the petitioner offered a highest bid of Rs. 23.5 lakhs. Subsequently, a fresh advertisement was made putting the unit for sale with a lower earnest money deposit of Rs. 30,000/-. The petitioner again made a bid for Rs. 23 lakhs and in the negotiations thereafter the fourth respondent was the highest bidder for Rs. 26 lakhs. According to the petitioner all the earnest money deposits were returned with the information that a fresh sale will be notified, but on 11-7-1995 he came to know that the sale had been confirmed in favour of the fourth respondent for Rs. 28 lakhs and the unit was handed over on 28-6-1995. The petitioner challenges that sale by contending that finalising the sale in favour of the fourth respondent without notifying the other tenderers for negotiation, was arbitrary and amounted to favourtism. The petitioner also stated that the fourth respondent was demolishing the sheds and prayed for an interim direction to maintain status quo which was granted on 27-7-1995. The respondents have filed counters and prayed for vacating the interim direction and so, the learned counsel for the petitioner argued the Writ Petition itself.

2. In its counter the Corporation stated that in respect of the first auction the petitioner had taken away the earnest money deposit and in respect of the second auction he refused to raise the bid and thereby retired from the competition. It is stated that since the fourth respondent was the only person giving the highest bid, further negotiations were held with him and the sale was finalised. The fourth respondent has also filed a counter-affidavit practically repeating the same information, and also pointing out that the petitioner was the brother-in-law of the owner of Vajra Chemicals and hence this petition was only an attempt to scuttle the efforts of the first respondent to recover the amounts due. In the reply affidavit, the petitioner stated that all the earnest money deposits were returned to the tenderers on 13-3-1995 and therefore further negotiation with the fourth respondent was untenable. In the additional counter-affidavit filed by the first respondent, it was stated that the negotiation was actually with Mr. G.V.G. Chaudhary of Vasanth Chemicals limited and after the finalisation of the same with him at his request, the transfer was made in favour of Vasant Organics Limited in which he was the Managing Director.

3. The learned counsel for the petitioner submitted that the bid was made by Vasant Chemicals and therefore the final negotiation and sale to Vasant Organics was clearly artibrary and had been done in a secretive manner. He pointed out to certain contradictions in the counter-affidavit of the first respondent viz., that in the original counter-affidavit there was a reference to the sale to the fourth respondent and not Mr. Chaudhary and that there was an averment that the earnest money deposit had been returned in respect of the first auction whereas no earnest money deposit and been taken from Vasant Chemicals for the second auction, and thirdly, that the original counter- affidavit stated that the bid was made by Vasant Chemicals whereas the additional affidavati stated that it-was made by Mr. Chaudhary. The learned counsel argued that once the unit was seized by the Financial Corporation, it became a public property and any sale of public property must be made only by a public auction and not by private negotiation as held by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, ; Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, . It was also submitted that the resolution indicated that the facility of staggering payment of balance consideration was given to the fourth respondent which if had been known earlier, the petitioner could have also raised his bid. The learned counsel for the petitioner vehimently argued that the Court should probe into the matter by looking into the records in which event it will be revealed that there was something hanky-panky in the negotiation.

4. I found it unnecessary to hear the other side after looking into the file. The record shows that the advertisement itself clearly stated that the Corporation reserved its rights to vary the terms of the advertisement/sale without notice at its discretion. Though public auction is universally recognised to be the best and most fair method and private negotiation should be avoided as it cannot withstand the public trust, further negotiation with the highest bidder to obtain the best competitive price has not been held to be illegal. The Supreme Court has said that it should be resorted to rarely only if sale by public auction is an impossibility. In the present case, on 11-3-1995 the bid made by the petitioner was Rs. 24 lakhs as against Rs. 18 lakhs by the fourth respondent. On 13-3-1995, negotiations were held with all the bidders and at that point of time Vasant Chemicals enhanced the offer to Rs. 26 lakhs whereas the petitioner and others refused to raise their bid and signed the same. Thereafter, by a telegram dated 24-3-1995, Mr. G.K.B. Chaudhary of Vasanth Chemicals (Private) Limited was called for negotiation on 29-3-1995. The sale was then finalised for a higher amount of Rs. 28 lakhs with a down payment of 35% of the outstanding balance on the loan account of Vajra Chemicals Limited together with 100% excess sale consideration and treat the balance consideration as termloan. Mr. Chaudhary requested that the sale may be made in favour of Vasant Organics which was a sister-concern, which was accepted by the first respondent and the unit was delivered to Mr. Chaudhary on 21-6-1995. It is quite clear from the above narration that the petitioner withdrew from the competition on 11-3-1995 and hence was not entitled for being called for any further discussion. The learned counsel for the petitioner submitted that it was Vasant Chemicals which had made the bid and therefore the sale to Vasant Organics is illegal. I am unable to accept this contention because the negotiation was held with Mr. Chaudhary who was the Managing Director of Vasanth Chemicals and at his request the sale was made to Vasant Organics. Even if it was Vasant Chemicals which had made the tender initially, there is nothing wrong in the highest bidder asking that the sale should be made in favour of his nominee as the first respondent is required only to see that the consideration agreed to is paid. The learned counsel for the petitioners also pointed out that Vasant Chemicals had not paid the earnest money deposit for the second auction, but I find that there is a letter on record filed along with the second tender requesting that the earnest money deposit of Rs. 50,000/- given earlier should be treated as the earnest money deposit for the second auction even though the second auction required an eanest money deposit of Rs. 30,000/- only. The learned counsel for the petitioner further submitted that on 13-3-95 it was understood by the petitioner and others that none of the bids had been accepted and therefore the telegram calling Mr. Chaudhary for further negotiation was an afterthought and was not in continuation of the second auction proceedings. I am unable to accept this contention because I find that the telegram requiring Mr. Chaudhary to come for negotiations is after all in continuation of the proceedings since it was given subsequent to the negotiations on 11-3-1995 where Vasant Chemicals enhanced its offer to Rs. 24 lakhs and the others refused to raise their bids. The case of the

respondent is that the offer was transmitted to the Head Office who had decided to call Mr. Chaudhary for further negotiation in an attempt to increase the bid further from the highest bidder.

5. Even assuming that Mr. Chaudhary with whom the negotiation was made, or Vasant Organics with whom the sale was ultimately concluded were not the bidders in the auction, it would not lead to a conclusion that the sale was illegal in any manner. Section 29 only provides that the Corporation may transfer by way of lease or sale and realise the debt. In other words, it is clearly a right of private sale. But, because the Corporation is a public body, the Supreme Court held in Mahesh Chandra''s case (1 supra) that its transaction should be transparent and an attempt should be made to get the maximum price by public auction. But; even public auctions may not yield the highest price in which case further negotiation with the highest bidder cannot be ruled out. In a recent decision in Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, the Supreme Court held that a sale cannot be held to be invalid for the reason that the guidelines given by the Supreme Court in Mahesh Chandra''s case (1 supra) were not followed and the validity of such sale will have to be considered in the light of the facts and circumstances of the particular case. We must also bear in mind that this exercise is only for realising the debt and the competing interest of the Corporation to realise its debt can be offset; only by the right of the owner of the unit to say that it is under-sold. In the present case, the owner of the unit has not made any such complaint so far that the sale was not bona fide. It is also admitted that the price fetched is more than the debt due. In this circumstance, there can be nothing arbitrary in a negotiation for obtaining an amount higher than the highest bid even if it is from someone other than the highest bidder. In any event the other bidders who withdrew from the competition can have no grievance at all because the validity of the process followed has to be tested with reference to the purpose viz., realisation of the debt and not the incidental benefit of a prospective purchaser.

6. The learned counsel for the petitioner submitted that if the petitioner had known that the terms offered to Mr. Chaudhry were available, he might have come up with higher bid. As noted from the advertisement itself the terms were subject to change and any change subsequent to the withdrawal of the bid by the petitioner cannot confer right to participate in the further negotiation proceedings. Moreover, the terms which were offered were nothing unusual inasmuch as it requires the amount offered over and above the loan amount to be paid in full and after paying 35% of the loan outstanding the balance was treated as loan. In other words, the purchaser was put in the place of the original owner of the unit so far as the loan is concerned, in view of the confidence of the Corporation that the purchaser would continue to repay the loan from the point of default by the original owner. This again is in conformity with the objective of the Corporation which is for financing the industrial development. Therefore, I see nothing wrong in the terms of the sale to the fourth respondent.

7. On a consideration of the entire material on record I am convinced that the petitioner had no locus standi, having withdrawn from the competition, to question the ultimate sale to the fourth respondent. Writ petition is, therefore, dismissed with costs Rs. 1,000/-.

