(2014) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42140 of 2004

Pitam Singh — APPELLANT

Vs

Greater Noida Development Authority, Gautam Budh Nagar — RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1)(g)

Citation : (2015) 1 ADJ 499 : (2015) 108 ALR 840 : (2015) 1 AWC 824

Hon'ble Judges : Shashi Kant, J;Rajes Kumar, J

Bench : Division Bench

Advocate : Pankaj Mithal, Awadhesh Kumar Misra and Swapnil Kumar, Advocates for the Appellant; Pradeep Kumar, Ramendra Pratap Singh and S.C, Advocates for the Respondent

Judgement

Rajes Kumar, J.—Heard Sri Awadhesh Kumar Misra, learned counsel for the petitioner and Sri Ramendra Pratap Singh, learned counsel appearing on behalf of the respondent. The brief facts, giving rise to the present petition, are that the respondent has issued a tender inviting offers, in respect of the commercial built-up shops, kiosks and offices in Sector Beta-II and Toy City, shopping complex on a ninety years lease basis. The brochure in this regard, publishing terms and conditions for allotment of the shops, kiosks and offices, has been issued. As per the brochure, for the shops, kiosks and offices, in Sector Beta-II, the last date of submission of the tender form was 4th June, 2004 and the date of opening of the tender was also the same date at 04:00 p.m. The petitioner submitted the tender form for Shop No. G-1, in Sector Beta II, which was measuring 38.32 sq meters on the deposit of earnest money of Rs. 1,37,200/- and the reserved price of the said shop was fixed @ Rs. 35,800/- per sq. meter. The petitioner submitted the tender for Rs. 42,499/- per sq. meter. Apart from the petitioner''s tender, two other tenders were also submitted in respect of the above shop. One tender was @ Rs. 41,590/- per sq. meter and the other was @ Rs. 41,400/- per sq. meter. The tenders have been invited for other shops also.

2. It is the case of the petitioner that on 16th July, 2004, the respondent issued a list of all the successful bidders, who have submitted tenders, in respect of various shops/kiosks/offices, including the shop for which the petitioner submitted tender. In the said list, the name of the petitioner has also been shown as the successful bidder and the same was also duly notified on the notice board of the respondent. The case of the petitioner is that he has repeatedly approached the authorities for acceptance of the tender, but he has not received any positive response. On 24th September, 2004, he has been orally informed that he would not be issued any formal letter of acceptance of his tender inasmuch as the tender amount quoted by him was not sufficient. In respect of other tenders, the respondent on 23.9.2004 issued list of the successful bidders, but the names of the successful bidder in respect of shop in dispute has been withheld. However, nothing has been received from the respondents in writing, the petitioner approached this Court by filing the present writ petition, seeking a mandamus to the respondents to accept bid of the petitioner.

3. Counter and rejoinder affidavits have been exchanged.

4. With the consent of the learned counsel for the parties, the present petition is being disposed of.

5. Learned counsel for the petitioner submitted that the bid offered by the petitioner @ Rs. 42,499/- per sq. meter was much more than the reserved price fixed by the respondent-authority @ Rs. 35,800/- per sq. meter. There was no other application offering the bid more than the petitioner for the said shop and, therefore, the bid offered by the petitioner ought to have been accepted and the acceptance letter should have been issued. He submitted that in respect of various other shops the respondent has accepted the bid, but for no valid reason, petitioner bid has not been accepted. It is further submitted that no information has been given to the petitioner about rejection of his tender and the earnest money of Rs. 1,37,200/- has also yet not been refunded to the petitioner, which also shows that the bid of the petitioner has not been rejected. Learned counsel for the petitioner submitted that if bid of the petitioner would have been rejected, necessary information in this regard would have been given to the petitioner and the earnest money deposited by the petitioner would also have been refunded.

6. Sri Ramendra Pratap Singh, learned counsel, appearing on behalf of the respondent-authority, submitted that the brochure, laying down the terms and conditions for the allotment of the shops/offices/kiosks, is annexed alongwith the supplementary affidavit where in Clause H it has been clearly provided that the Chief Executive Officer of the Authority may, without assigning any reason, withdraw all, or any one, or more, of the commercial shops/kiosks/offices from the offer/tender at any stage. Clause H(iv) provides that the Chief Executive Officer may accept or reject any offer, including the highest offer, after considering the recommendation of the concerned officer and his decision shall be conclusive final and binding. Clause W-1 provide that the Chief Executive

Officer of the Authority or any officer authorised by him has a right to make such conditions, alterations or modifications in the terms and conditions as he may consider just or expedient, vide Clause W-2, it has been provided that in case of any clarification or interpretation regarding terms and conditions, the decision of the Chief Executive Officer shall be final and binding on the applicant/allottee/ lessee. At the foot of the application form, the applicant was required to give a declaration that he has understood general and special terms and condition of the scheme and undertakes to abide by the same. It is further submitted that under the scheme, the authority has reserved the right to accept or reject any offer, including the highest offer and unless the offer is accepted, no vested right would accrue. He submitted that the Committee of the Deputy General Manager (Finance), Manager (Agriculture) and Manager Grade I (Commercial and Property) sent the report, making a recommendation therein not to finalise the bid of the petitioner for Shop No. G-1, Sector Beta-II for the reason that infront of the shop in question, which is meant for the fruit, vegetable and milk, there is a toilet, therefore, the allotment of the said shop be not made and after getting this serious defect removed by the Planning Department, tenders be again invited for allotment. Said report was considered by the Manager (Finance) and he forwarded the same to the General Manager (Finance), who forwarded the same to the Chief Executive Officer on 15th September, 2014, which has been accepted by the Chief Executive Officer on 18th September, 2014. In this way, the Chief Executive Officer has not accepted the offer of the petitioner. The detail of the entire proceeding is being annexed alongwith the supplementary affidavit.

7. So far as the refund of the earnest money, deposited by the petitioner, is concerned, he submitted that after the proceeding was over and process for the refund of the earnest money was going to be initiated, the petitioner filed the writ petition and, therefore, the same could not be refunded.

8. On the other hand, learned counsel for the petitioner pointed out that only with the intention to allot the said shop to some other influential person, the tender of the petitioner is not being accepted. He submitted that till date, the amount of earnest money has not been refunded and, therefore, the petitioner has every reason to believe that his tender has not been rejected.

9. We have considered rival submission and perused the record and we do not find any substance in the argument of learned counsel for the petitioner.

10. For the proper adjudication of the matter, Clauses H, J and W-1 and W-2 of the brochure are being reproduced below:

H. ACCEPTANCE OF TENDER

(i) The Chief Executive Officer of the Authority may without assigning any reason, withdraw all, or any one more, of the commercial shops/kiosks/offices from the offer/tender at any stage.

(ii) The office shall be for the amount of the premium offered for leasehold rights in the commercial shops/kiosks/offices.

(iii) The office conducting the tender shall provisionally accept for consideration such offer/tender as are complete in all respect. He shall thereafter submit a report with his recommendations for acceptance or rejection to the Chief Executive Officer.

(iv) The Chief Executive Officer may accept or reject any offer including the highest offer after considering the recommendations of the concerned Officer and his decision shall be conclusive, final and binding.

(v) Incomplete tender shall be summarily rejected.

(vi) The tenderer cannot withdraw offer/tender once made.

J. UNSUCCESSFUL TENDERERS

Earnest money draft shall be returned in original to the unsuccessful tenderer after completion of tender process, which normally takes one-month time. The processing fee is nonrefundable and non-adjustable.

W. OTHER CLAUSES:

W-1 The Chief Executive Officer or any authorized officer reserves the right to make such additions/alterations or modifications in the terms and conditions of allotment from time to time as he may consider just or/and expedient.

W-2 In case of any clarification or interpretation regarding these terms and conditions the decision of the Chief Executive Officer or the Authority shall be final and binding on the applicant/allottee/lessee.

11. Clause H(i) provides that the Chief Executive Officer of the Authority may without assigning any reason, withdraw all, or any one more, of the commercial shops/kiosks/offices from the offer/tender at any stage.

12. Clause H(iv) clearly provides that the Chief Executive Officer may accept or reject any offer including the highest offer after considering the recommendations of the concerned Officer and his decision shall be conclusive, final and binding.

13. The entire proceeding in respect of the processing of the tender of the petitioner is enclosed alongwith the supplementary affidavit filed by the respondent. The report of the Committee is enclosed as CA-2 to the supplementary affidavit. The Committee in its report dated 12th August, 2004 in respect of Shop No. G-1, Sector Beta-II has stated that shop No. G-1, Sector Beta-II is meant for fruits, vegetable and Milk and infront of the said shop there is a toilet and adjacent to this shop, there is a shop of Barber and there is no frontage and recommended for its allotment. When the report has been placed before the Chief Executive Officer, he sought further details in respect of such shop on 19th August, 2004. Thereafter, a fresh report has been given, which has been endorsed by the General Manager (Finance) on 15th September, 2004. In

this report, so far as present shop is concerned, it was stated that Shop No. G-1, Sector Beta II is meant for fruits, vegetable and Milk and infront of the said shop there is a toilet and adjacent to this shop there is a shop of Barber and there is no frontage. It has been recommended that the said defect be got removed from the Planning Department and thereafter again tenders be invited.

14. This report has been endorsed by the Deputy Chief Executive Officer as well as by the Chief Executive Officer on 18th September, 2004. In this view of the matter, the offer/bid of the petitioner has not been accepted by the Chief Executive Officer on the recommendation of the Committee and on the further report of the higher officers. We are of the view that in the absence of any acceptance of the bid of the petitioner by the authority concerned, no right accrued to the petitioner. Under Clause H(iv), the Chief Executive Officer has exclusive power to accept or reject even the highest offer and his decision shall be final and binding. Therefore, it is not open to the petitioner to challenge the decision of the Chief Executive Officer declining to accept the offer of the petitioner. We are of the view that the decision of the Chief Executive Officer, declining to accept the offer of the petitioner is based on reasonable grounds and was not arbitrary and without any basis. No case of unequal and unfair treatment has been made out.

Our view finds force from the following decisions of the Apex Court:

The Apex Court, in the case of Rajasthan Housing Board and Another Vs. G.S. Investments and Another, , has held as follows:

"The auction notice dated 3.2.2002 contained a condition to the effect that the Chairman of the Housing Board shall have the final authority regarding acceptance of the bid. The second auction notice issued on 19.2.2000 mentioned that the conditions of the auction will be same as mentioned in the earlier auction notice. In view of this condition in auction notice it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction concluded in his favour until the Chairman of the Housing Board had passed an order to that effect. Of course the Chairman of the Housing Board could not exercise his power in an arbitrary manner but so long as an order regarding final acceptance of the bid had not been passed by the Chairman, the highest bidder acquired no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. What are the rights of an auction bidder has been considered in several decisions of the this Court. However, we will refer to only one such decision, viz., Laxmikant and others Vs. Satyawan and others, , which is almost identical on facts as it related to auction of a plot by Nagpur Improvement Trust. The auction notice in this case contained a condition that the acceptance of the highest bid shall depend upon the Board of Trustees and further the person making the highest bid shall have no right to take back his bid and the decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. After taking note of the aforesaid conditions it was held:

"From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The condition of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bedder at public auctions in the cases of Trilochan Mishra, etc. Vs. State of Orissa and Others, . State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, and State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, . It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution of is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provisions under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."

This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court."

15. In the case of U.P. Avas Evam Vikas Parishad and Others Vs. Om Prakash Sharma, , the Apex Court held as follows: (Para-27, 28, 29, 30 and 31)

"It is an undisputed fact that public auction was held in relation to the property of the first defendant vide public notice dated 4.3.1977 published in the local newspapers by the Parishad for auction of nine shops and the plot earmarked for cinema hall measuring 3441 sq. m. The auction was supervised and conducted on 11.3.1977 by on Mr. Ram Kumar Singh Bisen, the then Assistant Housing Commissioner. It was also an admitted fact that the plaintiff was the highest bidder as he had quoted Rs. 1,31,500 in relation to the plot and he has deposited a sum of Rs. 26,500, that is, 20% of the amount of bid plus Rs. 500 as earnest money.

It is also an undisputed fact that the offer of the plaintiff is highest as per the terms of the conditions of the sale of plot in question by public auction are concerned, 20% of the bid amount deposited by him that by itself does not amount to accepting his bid by the competent authority for grant of leasehold rights of plot in his favour.

This Court in Meerut Development Authority Vs. Association of Management Studies and Another, , has laid down the legal principle that the bidder who has participated in tender process has no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to the notice inviting tenders in a transparent manner and free from hidden agenda. The relevant paragraphs are extracted hereunder: (SCC p. 182, paras 27 & 29)

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiation unless the terms and conditions of notice so provided for such negotiations.

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."

16. In support of the said proposition, the learned Senior Counsel for the defendant, Mr. Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, . The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case which reads as under: (SCC p.483, para 9)

"9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not in the function of the High Court."

17. The law laid down by this Court in the aforesaid paragraph in support of the proposition of law that so long as an order regarding final acceptance of the bid had not been passed by the Chairman of the Housing Board, the highest bidder acquire no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. Further, he has placed reliance on another decision of this Court in Laxmikant referred to supra. In support of the proposition of law this Court has rightly pointed out that the "State" or the

authority, which can be held to the "State" within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender/offer or bid and the Government could validly retain its power to accept or reject the highest bid in the interest of public revenue. In support of this contention, he has placed reliance on State of Orissa v. Harinarayan Jaiswal case, relevant paragraph of which reads as under: (SCC pp.44-45, para 13)

"13. Even apart from the power conferred on the Government under Sections 22 and 29, we fail to see how the power retained by the Government under clause (6) of its order, dated 6.1.1971, can be considered as unconstitutional. As held by this Court in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, , one of the important purpose of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State''s revenue. The Government is the guardian of the finance of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction-sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government''s power to sell the exclusive privileges set out in Section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram). By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is concerned. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or right belonging to the Government-nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of Sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in Cooverjee B. Bharucha v. Excise Commr. case was one of the important purposes of which provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the

Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power. If that power is exercise for any collateral purposes, the exercise of the power will be struck down. It may also be remembered that herein we are not dealing with a delegated power but with a power conferred by the legislature.

18. The High Court erroneously thought that the Government was bound to satisfy the Court that there was collusion between the bidders. The High Court was not sitting on appeal against the order made by the Government. The inference of the Government that there was a collusion among the bidders may be right or wrong. But that was not open to judicial review so long as it is not proved that it was a make-believe one. The real opinion formed by the Government was that the price fetched was not adequate. That conclusion is taken on the basis of Government expectations. The conclusion reached by the Government does not affect any one''s right. Hence, in our opinion, the High Court misapplied the ratio of the decision of this Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, and Rohtas Industries Vs. S.D. Agarwal and Others, .

19. In view of the law laid down by this Court in aforesaid decisions, the learned Senior Counsel Mr. Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount alongwith earnest money with the Board. In the acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26.5.1977 and 8.7.1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.

20. Learned counsel for the petitioner has relied upon a decision of the Apex Court in the case of Kalu Ram and another v. Delhi Development Authority and another, (2008) 10 SCC 696. In the said case, the highest bid in an auction of plot by the Delhi Development Authority has been rejected without any reason. The Apex Court has quashed the order of the Delhi Development Authority on the ground that the highest bid has been rejected without assigning any reason.

21. We are of the view that this decision is not applicable in the present case. In the case in hand, the bid of the petitioner has not been accepted for the reason that the shop in question was meant for fruits, vegetable and milk etc. and infront of the shop, there was a toilet and adjacent to the shop there was a shop of hair cutting shop and there was not frontage also and therefore, the Committee of the Officer has recommended that the defect be got removed from

the planning department and thereafter fresh bids/tenders be invited and, therefore, non-acceptance of the petitioner''s bid/offer cannot be said to be without any basis.

22. In view of what has been discussed above, we do not find any reason so as to issue mandamus sought for by the petitioner for acceptance of his bid inasmuch as no vested right accrued to the petitioner in view of the law laid down by the Apex Court, referred hereinabove.

23. So far as the refund of the earnest money, deposited by the petitioner, is concerned, we are of the view that the amount of earnest money be refunded to the petitioner within a period of one month from the date of presentation of a certified copy of this order, alongwith the interest @ 12% per annum, from the date of deposit, till the date of payment.

24. In the result, the writ petition being devoid of merits, fails and is dismissed with the aforesaid directions. No order as to cost.

