**(1984) 05 SHI CK 0001**

**In the High Court Of Himachal Pradesh**

**Case No :** C.W.P. No. 139 of 1984

Pradeep Timber Company, Dharampur and Another — APPELLANT

Vs

H.P. State Forest Corporation Ltd., Shimla — RESPONDENT

**Date of Decision :** 02-05-1984

**Acts Referred:**
Constitution of India, 1950 — Article 12, 14, 226

**Citation :** AIR 1985 HP 1 : (1984) 13 ILR HP 237

**Hon'ble Judges :** P.D. Desai, C.J;H.S. Thakur, J

**Bench :** Division Bench

**Advocate :** Devinder Gupta, for the Appellant; Hari Mohan Sharma, for the Respondent

**Final Decision :** Allowed

## Judgement

P.D. Desai, C.J.—This case illustrates how public authorities entrusted with discretion in wide terms sometimes act in the exercise of their powers and how such actions give rise to avoidable litigation.

2. On Jan. 19, 1984, an auction notice, Annexure PA, was issued by and on behalf of the respondent-Corporation for an open auction of the specified quantity of firewood, pulp-wood and charcoal in eight different lots and it was notified that the auction will be held on Feb. 19, 1984. By a subsequent notice issued on March 3, 1984, Annexure-PB, it was notified that the said auction would be held on March 19, 1984 instead of Feb. 19, 1984.

3. The conditions of the auction-sale (Annexure-PC), were duly notified. Amongst the conditions so notified four are material for the present purposes and they might be adverted to. First, the highest bid was liable to be rejected without assigning any reason by- the auctioning/sanctioning authority; secondly, the highest bidder(s) would be required to execute an agreement within a period of 7 days from the date of sanction; thirdly, on communication of the acceptance of the bid, the successful bidder(s) would be liable to pay the price of the auctioned

quantity of the material in two equal instalments; and fourthly, the bid shall remain open for a period of 20 days to enable the competent authority to accord sanction. All these conditions read together would indicate that: (1) the contract for sale was not to be taken to have concluded at the fall of the hammer; (2) the bid would remain open for a specified period to enable the competent authority to accord sanction; (3) even the highest bid could be rejected without assigning any reason, and (4) the highest bidder(s) would be required to execute an agreement and pay the price in instalments within the specified period from the date of sanction.

4. It appears that at the auction held on March 19, 1984, thirteen interested persons or parties were present. It is not in dispute, however, that about eight of them actually participated in the auction proceedings. Out of the participants, different persons or parties gave bids for different lots. For the purposes of the present petition, bids offered for lots Nos. 6 and 7 are material. So far as those two lots are concerned, five parties gave their bid for lot No. 6 and three parties gave their bid for lot No. 7. The highest offer with regard to lot No. 6 was that of the second petitioner and it was in the sum of Rs. 66/- per quintal on which basis the price works out to about Rs. 99,000/- for the entire lot. So ''far as lot No. 7 is concerned, the first petitioner gave bid at Rs. 42/- per quintal and on that basis the sale price for the entire tot works out to Rs. 84,000/-. Be- it stated that floor prices had been earlier fixed by the respondent-Corporation for all the lots. So far as lots Nos. 6 and 7 are concerned, the floor prices were Rs, 97,500/- and Rs. 88,000/-respectively. The petitioners having complied with the condition of auction With regard to the payment of the earnest money etc., the matter was placed before the competent authority for according sanction by acceptance of the bids. While the petitioners waited for the acceptance of their bids in respect of lots Nos. 6 and 7, a fresh notice for auction in respect of those two lots was issued on April 4, 1984 and it was notified that the fresh auction would be held on April 19, 1984 (Annexure-PE). The first petitioner thereupon made a representation on April 5, 1984 to the Chairman of the respondent-Corporation (Annexure-PF). The said petitioner stated that he had learnt that an interested party had deposited the full price of the lot auctioned in his favour and requested the respondent-Corporation to re-auction the said lot. The petitioner pointed out that since the auction was legally held, there was ho justification for re-auction and that it would be a wrong precedent to re-auction the goods merely on the basis of such actions actuated by professional rivalries. The petitioner submitted that the re-auction would lead to harassment of genuine parties and discourage them from participating in future auctions held by the respondent-Corporation. The petitioner, therefore, requested that necessary instructions be issued to the concerned officers/to refrain from holding fresh auction. No reply having been received from the respondent- Corporation, the present writ petition was instituted on April 16, 1984. The petition came on for preliminary hearing on April 18, 1984. The Court granted ad interim relief against the holding of fresh auction. The matter has reached fina! hearing before us today.

 

5. In the affidavit-in-reply, which is supplemented at the hearing by a statement submitted on behalf of the respondent-Corporation which is taken on record with the consent of parties, the respondent-Corporation has substantially pleaded that the decision to re-auction lots Nos. 6 and 7 was taken because a complaint was received, before sanction was accorded by the competent authority, that the petitioners had formed a pool with a few other persons/parties present at the auction, while offering bids for lots Nos. 6 and 7, and that consequently only three or four persons/parties "participated in the auction of lots Nos. 6 and 7 and that in that manner a fraud was played upon the respondent-Corporation. The complaint was received from M/s Jain Timbers and others and on the basis of such complaint, re-auction was ordered subject to the condition that the persons who had made the aforesaid complaint should deposit with the respondent-Corporation the sale price fetched at the auction/for the two lots in question. Accordingly, M/s Jain Timber were asked to deposit the amount equal to such sale price and the said party deposited Rs. 99,000 + Rs. 84,000/- with the respondent-Corporation. Thereupon it was ordered that re-auction should take place on April 19, 1984. The respondent-Corporation relied upon the conditions, which were duly intimated to the participants before the auction was held, whereunder the bids were to remain open for a period of 20 days to enable the competent authority to accord the sanction and such authority had the power to reject even the highest bid without assigning any reason.

6. Now, the respondent-corporation is indubitably competent to auction firewood, timber, resin ''etc. and to protect its interest by securing the best price. It is also competent to decide whether, the price offered at the auction is adequate or not and whether the bid should be accepted or rejected. The mere offer of a bid does not create any vested right in the bidder, because under the terms and conditions usually prescribed in such tenders, the competent authority is required to accord sanction and such authority is empowered to reject even the highest bid without assigning any reason. Though the power to accept or reject the bid is usually couched in such wide terms, it is not to be regarded as unregulated or uncanalised. Adequate price being the principal factor to be considered in according sanction to a bid, it would ordinarily provide the primary guideline for the guidance of the authority entrusted with the power of sanctioning the bid. Whether or not the price offered is adequate is a question of fact to be decided in each case. However, the decision on the said question is to be arrived at reasonably and not capriciously and it has to be based on objective facts and not on facts drawn from imaginary sources or unverified" information emanating from sources which are not authentic. Where no reason to the contrary exists, ordinarily, the highest bid, if apparently adequate, should be accepted. Two ''important and relevant considerations, amongst similar others, may, however, weigh with the authority entrusted with the power to sanction the bid, while considering the question whether or not to accept the highest bid. First, bids obviously in excess of fair market value which emanate on account of speculation or rivalry may be eliminated. The acceptance of such bid may prove risky

 

because the possibility of the bidders not fulfilling their engagements cannot be altogether ruled out and, even if the bidders fulfil their engagements, such bids might ultimately prove injurious to the interest of the consumer and, in its turn, to the public interest. Secondly, the sanctioning authority must guard against the acceptance of bids which are the proven product of organised syndicates operating in concert resulting in overt or covert monopoly at auctions. When, after doe weight has been given to such or similar considerations, the highest bid which has been provisionally accepted at an auction should not ordinarily be rejected merely on account of conjectures, suspicion or subsequent better offers in respect of the same goods. The practice of nominally accepting a bid made at an auction and then negotiating privately with other competitors for higher offers is legally indefensible, morally reprehensible, commercially unsound and in all respects unjust and objectionable on the part of public corporations. Bona fide competitors must feel assured that when once a bid is accepted, the matter will not be reopened without a just and sufficient cause duly established on objective facts and that the lot for which bids were offered would not be withdrawn for resale, otherwise that in bona fide exercise of power on rational grounds.

7. It would be pertinent to recall that in the present case the price offered by the second petitioner with regard to lot No. 6, which was the highest, was above the floor price by about Rs. 1500/- whereas similar offer of the first petitioner with regard to lot No. 7 fell below the floor price by about Rs. 4000/-. It is relevant to point out in this connection that bids in respect of lots Nos. 2-A and 4 also fell short of the floor prices respectively fixed for each of those lots by about Rs. 5000/- and Rs. 6000/- respectively. It is material to note also that auction of all the lots was conducted on the same occasion and that it was open to all the parties present to bid for all the lots. In fact, out of the eight participants, five had offered their bids for lot No. 6 and three for lot No. 7. It is significant that M/s. Jain Timbers, on whose complaint the impugned decision to re-auction lots Nos. 6 and 7 is taken, was one of the interested parties present at the auction. However, its representative voluntarily withdrew from the auction, when a request made on its behalf that condition No. 6 of the auction sale (which provided that the auctioned material at the road-side depot shall remain at the risk and cost of the buyer from the date when payment became due or the date of release, whichever is earlier) be deleted as the same was unacceptable to the said party, was rejected. It is not known whether the representative of M/s Jain Timbers had remained present during the auction proceedings even after such withdrawal.

Be that as it may, no complaint with regard to any malpractice alleged to have been committed at the auction is shown to have been made by any person or party including M/s. Jain Timbers while the auction was in progress or soonest after it concluded. The complaint appears to have been made for the first time 3 or 4 days after the auction concluded. Besides, if the respondent-Corporation was truly defrauded on account of any organised operation in concert resulting in inadequate price being fetched for lots Nos. 6 & 7, the same should ordinarily hold good for the auction in respect of all the other lots or at least in respect of the auction of lots Nos. 2-A and 4 which has manifestly brought prices lower than those fixed as floor price. It is pertinent to note in this connection that the first petitioner had also offered the highest bid in respect of another lot auctioned on the same occasion and that no such complaint is shown to have been received in regard to such bid which appears to have been accepted and sanctioned.

8. Against this factual background, it is difficult to appreciate how, merely on the basis of complaints received and, that too, one from a party who, though apparently interested, had admittedly refrained from participating in the auction on grounds not related to the complaint, the respondent-Corporation could have cancelled the bids offered by the two petitioners without admittedly holding any enquiry into the validity of those complaints, simply because the said party subsequently agreed to deposit the amount equivalent to the price fetched at the auction for the lots in question. If the respondent-Corporation had taken the action in question after holding an enquiry and after being bona fide satisfied on objective facts duly established that the complaint was well-founded, the decision could have been looked upon as having been properly arrived at in law. In the absence of such an enquiry and against the aforesaid background, in our opinion, the impugned action of the respondent-Corporation is, to say the least, arbitrary, irrational and unsupportable on evidence.

9. For the foregoing reasons, the impugned decision of the respondent-Corporation to hold a fresh auction in Respect of lots Nos. 6 and 7 is quashed and set aside. It is made clear, however, that this decision will not prevent the respondent-Corporation from arriving at a fresh decision in accordance with law and in light of the observations made, in this judgment:

10. Before parting with the matter, we may point out that before admitting the petition for final hearing a suggestion was made by the Court to the respondent-Corporation, with the consent of the petitioners, that a fresh auction be held in respect of lots Nos. 6 and 7 but the same may be confined to the eight persons who participated at the original auction in order to avoid a futile and purposeless litigation. The suggestion did not find favour with respondent-Corporation for reasons which, to our mind, are unintelligible and capable of bearing no scrutiny.

11. Rule made absolute accordingly. The respondent-Corporation will pay costs of this petition to the petitioners which are quantified at Rs. 350/-.