

(2018) 10 CAL CK 0024

In the Calcutta High Court

Case No : Writ Petition No.No.3297 (W) Of 2018

Pramod Kumar Jaiswal @APPELLANT@Hash Union of India & Ors

Date of Decision : 03-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0024

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Anjan Kumar Paul

Final Decision : Disposed Off

Judgement

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging inter alia a letter dated 21st January, 2018 issued by the respondent no.3 cancelling the lot

no. KGPM 1718-4005/7204 of 20 numbers of anvil blocks (in short, the said lot) sold to M/s. Sagar Traders on 6th December, 2017.

2. Mr. Chowdhury, learned advocate appearing for the petitioner submits that the petitioner is the proprietor of a firm, namely, M/s. Sagar Traders and

conducts a business of iron and steel scrap materials. The authorities of South-Eastern Railway scheduled an E-auction on 6th December, 2017 for

sale of the said lot, catalogue SI no. B2 comprising of 20 numbers of condemned scrap anvil block of hammer off sizes labelled on as is where is

basis and also subject to the conditions: (i) 80 days FDP shall be applicable for this lot as a special case due to involvement of digging, cutting and

dismantling of anvils (ii) loading will be done by purchasers own arrangement. The petitioner paid 10% of sale value as earnest money deposit and

inspected the lot and offered the highest bid. Such bid was accepted and accordingly, the petitioner paid the full consideration money of Rs.9 lakhs and

the delivery/sale release order was issued on 22nd December, 2017.

Thereafter, on 5th January, 2018 the petitioner deputed rented J.C.B. and other mechanical instruments with twenty labourers and started digging,

cutting and dismantling of the anvils comprised in the said lot sold to him and 5 numbers of anvils were made ready for lifting. By a letter dated 18th

January, 2018 the petitioner's firm was requested to weigh the empty lorry/truck at the time of entry and loaded lorry/truck after loading. But on

19th January, 2018 when the petitioner deputed one truck, the respondents did not permit the petitioner to load the said goods and to take delivery. By

a letter dated 20th January, 2018, the petitioner requested the respondents to fix a delivery programme and to permit the petitioner to take delivery of

the goods but with no effect. As such, the petitioner issued a letter dated 22nd January, 2018 through his learned advocate and a further letter dated

29th January, 2018. Thereafter, on 30th January, 2018 the petitioner was served with a letter dated 21st January, 2018 issued by the respondent no.3

stating that there is a dispute in the quantity of the lot in MT which was noticed after digging and dismantling of first few anvils and therefore the said

lot sold on 6th December, 2017 to M/s Sagar Traders, Howrah is cancelled on administrative ground.

3. Drawing the attention of this Court to the auction catalogue and the material description of the said lot, he submits that 20 numbers of condemned

scrap anvil block of hammer off sizes were labelled and described as in the Lot lying in different places of SSE-05/Smithy Shop No.5 to be

disposed of on as is where is basis. There was no dispute as regards quantification of the said lot but in the impugned letter of cancellation a

weight criterion was illegally introduced by stating that the anvil blocks weighed approximately 48.5 MT.

4. He further argues that the impugned order of cancellation dated 21st January, 2018 is a cryptic one containing no specific reason towards such

cancellation of the said lot. There should have been at least a brief discussion of facts and some reasons. Such abrupt cancellation of the said lot

without any reason is arbitrary and unreasonable.

5. He contends that upon acceptance of the bid amount, the delivery/sale release order was issued in favour of the petitioner on 22nd December, 2017

categorically specifying the lot material description. After issuance of the

said order, the petitioner became the owner of the materials

described therein and as such subsequent thereto, the respondents had no authority to pass the impugned order of cancellation of the said lot on 21st

January, 2018. In support of the arguments advanced, Mr. Chowdhury has placed reliance upon a judgment delivered in the case of Union of India Etc

â?"vs- Hariram Shamji Thakkar & Others, reported in 1974 UJ (SC) 562.

6. Per Contra Mr. Paul, learned advocate appearing for the respondents submits that initially a lot no.KGPM1718-4004 of 20 nos. weighing 48.5

metric tonne of scrap anvil blocks was included in the E-auction catalogue no. 1718 KGP 019, scheduled for auction on 7th November, 2017. For the

said lot, the Free Delivery Period (in short FDP) was applicable as 40 days. In the E-auction held on 7th November, 2017, the lot no. KGPM 1718-

4008 of 20 nos. scrap anvil blocks weighing 48.5MT was withdrawn from the catalogues but the contents of the lot description, the weight of the

materials were known to all the purchasers including the petitioner, who had not only participated in the auction held on 7th November, 2017 but had

also purchased two lots, as would be explicit from the E-auction catalogue report of 7th November, 2017. After getting the approval from the

competent authority for incorporation of special conditions for FDP, the lot of 20 nos. of scrap anvil blocks weighing 48.5 MT was re-included in

auction catalogue no. 1718 KGP 022 (under lot no. KGPM 1718-4005), scheduled for E-auction on 6th December, 2017 with revised condition of 80

days FDP period as a special case due to involvement of digging, cutting & dismantling of the anvil blocks which were deeply embedded with cement

grouting in the ground.

7. He contends that the respondents has every authority to cancel the lot at any point of time as per the general terms and conditions for auction sale

and as such it cannot be contended that the impugned order of cancellation suffers from any jurisdictional error.

8. He further submits that the work of digging and dismantling of anvil blocks was started by the petitioner in smithy shop no.5 under supervision of

stock holder. After digging and dismantling of first 05 nos. of anvil blocks it was observed by the stock holder (i.e.Dy.CME Prod- KGP) that the

weight of those 05 anvils blocks was more than what was initially assessed. The weight of the remaining anvil blocks would be distinctly higher than

48.5 MT as initially assessed in the process of auction, hence the delivery was denied on 18th January, 2018 by the stock holder who, in turn, advised

the respondents to take suitable action to protect the interest of railways and to prevent monetary loss which may be caused if delivery of the anvil

blocks continued. On receipt of such advice from stock holder, the cancellation advice dated 21st January, 2018 was issued. There was an error on

the part of the authorities to assess the correct weight of the materials in the said lot.

9. Mr. Paul further submits that the auction process is conducted on the basis of the general and special terms and conditions which are binding upon

the parties and are in the realm of contract and the Writ Court in exercise of its discretionary jurisdiction cannot interfere in the same.

10. In reply, Mr. Chowdhury submits that State action is not exempt from the purview of judicial review. Any arbitrariness or unreasonableness in the

decision making process warrants interference of this Court.

11. Upon acceptance of the bid amount, the respondents issued the delivery/sale release order on 23rd December, 2017 and the lot was sold to the

petitioner. In the auction catalogue as well as in the delivery/sale release order, the description of lot material was on the basis of quantity and not on

the basis of weight, as stands admitted by the respondents in paragraph 10 of the affidavit-in-opposition wherein it has been categorically stated

“only one unit either MT or Nos. Could have been adopted for this lot. Unit was adopted as nos. since the Anvil Blocks with numbering was 20

nos, only”.

12. I find substance in the argument of Mr. Chowdhury, that the respondents could not have introduced a new criterion of weight in the auction

process after such process was over and the materials were sold to the petitioner inasmuch as it is well-settled that the rules of the game cannot be

altered after the game is over.

13. In para 2 of the general terms and conditions it has been stated that “in case of dispute, the Special Conditions of Sale by Auction will have

precedence over the General Conditions of Sale by Auction in relevant context”. The special conditions of sale were that the materials in the said lot

would be quantified and would be sold on “as is where is basis” and such special conditions would have precedence over the general conditions

of sale and as such the respondents could not have cancelled the said lot as per the general conditions, deviating from the special conditions.

14. A perusal of the contents of the order of cancellation reveals that the cancellation has been effected "on administrative ground", without

detailing the said grounds and as such the same being a cryptic one, is unsustainable in law. One of the salutary requirements of natural justice is

spelling out reasons for the order made. Right to reason is an indispensable part of a sound judicial system and failure to give reasons amounts to

denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

15. As the controversy does not involve disputed questions of fact, it would not be proper in requiring the party to seek relief by the somewhat lengthy,

dilatory and expensive process by a civil suit against a public body.

16. State actions cannot be excluded from the purview of judicial review, in the event it fails to satisfy the test of reasonableness. The respondents had

proceeded in derogation to the special conditions of sale by auction and have sought to frustrate the petitioner's claim by introducing a fresh

criterion towards weight in the auction process. The respondents have deviated from the special terms and conditions and cancelled the

petitioner's claim through introduction of a new criterion and that too in a perfunctory manner. The arbitrariness and unreasonableness is apparent

from the face of the records and does not require any lengthy procedure to decipher the same.

17. Accordingly, the impugned order dated 21st January, 2018 issued by the respondent no.3 is set aside.

18. Within a period of two weeks from the date of communication of the order, the respondents shall, upon fixing a delivery programme and specifying

the free delivery period, allow the petitioner to lift the materials as sold and as incorporated in delivery/sale release order dated 22nd December, 2017.

19. With the above observations and directions, the writ petition is disposed of. There shall, however, be no order as to costs. Urgent Photostat

certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in

this regard.