
(1985) 07 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No's. 7454 of 1985

Prime Publicity

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-07-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (1986) ILR (Kar) 1610

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : V. Tarakaram and K.G. Raghavan, for the Appellant; Shivashankar Bhat, Senior Stg. Counsel for Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In all these Petitions under Articles 226 and 227 of the Constitution, the petitioners have sought for quashing the communication dated 3-5-1985 issued by the 2nd respondent informing the petitioners that the bids offered by them in respect of the various sites in the auction conducted on 15th and 16th April 1985 are not approved by the competent authority. They have also prayed for a declaration that the highest bids offered by them are final and conclusive and further to quash the notice dated 2-5-1985 issued by the 2nd respondent for holding re-auction of the sites in question on 23-5-1985. There is a further prayer made in these Petitions to direct the 2nd respondent to forbear from holding the re auction as notified under Annexure-D.

2. As far as the last prayer is concerned, it does not survive because the re-auction has taken place. The petitioners are the highest bidders in the re auction. The proceeding relating to confirmation or otherwise of the highest bids offered in the re-auction is held up because of the interim order passed in these Petitions.

3.1) The facts necessary to consider the contentions raised in these Petitions are not in dispute and the same are as follows :

There are 84 sites intended to be used for putting up advertisement boarding belonging to the Defence Department of Government of India. The right to put up the advertisement hoardings on these sites was auctioned on the 15th and 16th April 1985. The petitioners and several others participated in that auction. The bids offered in respect of the 42 sites have been accepted and the remaining 42 sites have not been accepted by the Central Government. As far as acceptance of the highest bids in relation to the 42 sites are concerned, it is not the subject matter of these Writ Petitions. We are only concerned in these Petitions with the remaining 42 sites in respect of which the bids are not accepted by the Central Government.

3.2) The petitioners were the highest bidders in the auction held on 15th and 16th April, 1985 in respect of the remaining 42 sites in question. As the bids were not accepted in respect of these sites the re-auction was ordered. Accordingly, re-auction was held on 23-5-1985. In that re-auction also the petitioners are the highest bidders in respect of various sites as mentioned in Annexure-4 filed by the respondents along with the statement of objections.

3.3) I have heard Sri V. Tarakaram and Sri K.G. Raghavan, Learned Counsel for the petitioners and Sri S. Shivashankar Bhat, Learned Senior Standing Counsel for Central Government for the respondents.

3.4) Three contentions are advanced on behalf of the petitioners :- (i) that the contract has concluded on the fall of the hammer by the Accepting Officer i.e., Defence Estate Officer; therefore there is no scope for rejecting or confirming the bids by the Central Government ; (ii) even if it is held that the acceptance of the bid by the Defence Estate Officer is subject to confirmation by the Central Government rejection of the bids is arbitrary ; (iii) that no reasons are contained in the communication sent to the petitioners informing them that the competent authority has not approved the bids; hence the rejection is bad in law.

4. Even if it is accepted for the sake of argument that the Defence Officer is Accepting-Officer, and accordingly he has accepted the bids such acceptance of the bids is only provisional and not final as it is subject to confirmation by the Central Government.

5. In order to appreciate the contentions, it is necessary to advert to the conditions of the auction. It is not a case in which the auction is governed by General law. It is a case in which the auction in question is governed by the terms and conditions contained in the Auction Notice. Those terms and conditions are as follows :

"12. Intending bidders will have to deposit a sum of Rs. 200/- only as earnest money which will be refunded immediately after the fall of hammer, except in case of successful bidder in whose case the amount will be adjusted towards the amount of highest bid. The earnest money of second highest bidder shall also be retained till the final approval is communicated to the highest bidder.

13. The successful bidder shall have to pay 25 % amount of highest bid at the fall of hammer failing which the earnest money deposited by him shall be forfeited to the Government of India. The balance amount will have to be deposited within 7 days from the date of communication to him regarding acceptance of bid by Government of India, Ministry of Defence.

14. In case the successful bidder fails to deposit the balance amount, within 7 days of communication of Government of India, Ministry of Defence acceptance of the highest bid to him, he shall forfeit 25 % of the deposit to the Government of India, and also forfeit any chance to bid at a later date. No extension of time shall be granted.

15. In case the highest bidder fails to deposit the full amount within the stipulated period, the second highest bidder shall be offered the site with the same terms and conditions as mentioned in SI. No. 13 or Defence Estates Officer will have the discretion to re-auction the site.

16. The full amount shall have to be paid for the period of two years within the stipulated period mentioned in SI. No.13.

17. The successful bidder shall enter into an agreement with Defence Estate Officer (Karnataka Circle) on a stamp paper of appropriate value the cost of which will borne by him.

18. The Defence Estate Officer (Karnataka Circle) will be the Accepting Officer, hereinafter referred to as such for the purpose of this notice with the confirmation of Government of India, Ministry of Defence who may accept or reject the bid without assigning any reason."

6.1 The contention of learned Counsel for the petitioners is that as per Clause 18 of the terms and conditions of the auction, the Defence Estate Officer is constituted as the Accepting Officer and as per Clause 12, the acceptance becomes final on the fall of the hammer, therefore the highest bids offered by the petitioners must be deemed to have been accepted on the fall of the hammer, and as such the contract has stood concluded, therefore there is no question of confirmation or rejection of the bids which are accepted by the Estate Officer. It is not possible to accept this contention. The terms and conditions of the auction have to be read as a whole, unless it is otherwise warranted by the wordings contained therein. On a plain leading of the conditions of the auction it leaves no doubt whatsoever that the Defence Estate Officer is not constituted as the final authority to accept the highest bid whether the highest bid has to be accepted or not is a matter which is left to the decision of the Central Government by the terms and conditions of the auction sale.

6.2) Clause 12 of the conditions specifically says that on the fall of the hammer, the highest bidder has to deposit 25% of the bid amount. Thereafter, as per Clause 13, ha has to deposit the remaining sum within seven days from the date of the communication to him regarding acceptance of bid by Government of

India, Ministry of Defence. Clause 14 further provides that if the highest bidder whose bid is accepted by the Government of India fails to deposit within seven days of the communication to him of acceptance of the highest bid by the Government of India 25% of the amount deposited by him on the spot will be forfeited to Government of India and he will not be allowed to bid at a later date. Clause 15 further provides that on the failure of the highest bidder to deposit the full amount, within the stipulated period the contract will be offered to the next highest bidder on the same terms and conditions or re-auction will be held at the discretion of the Defence Estate Officer. Clause 18 on which much stress is laid, states that "the Defence Estate Officer (Karnataka Circle) will be the Accepting Officer, hereinafter referred to as such for the purpose of this notice with the confirmation of Government of India. Ministry of Defence, who may accept or reject the bid without assigning any reason." It is the contention of the petitioners that this clause constitutes the Defence Estate Officer as the Accepting Officer, who may accept or reject the bid without assigning any reason. It is not possible to accept the contention. A plain reading of the Clause makes it clear that no doubt the Defence Estate Officer (Karnataka Circle) is constituted as the Accepting Officer for the purpose of the auction in question, but he cannot accept or reject the bid without the approval of the Government of India. The words "with the confirmation of Government of India" are very material. In the context, these words are used, go to show that too Accepting Officer may accept or reject the bid without assigning any reason with the confirmation of Government of India, in other words, with the previous approval of the Government of India. Thus, the Accepting Officer has no final authority in the matter. Further, if the contention of the petitioners is accepted, it will render nugatory the material provisions contained in Clauses 12, 13 and 14 of the terms and conditions of the auction. An interpretation which renders the provisions of the statute, Rules, regulation or terms and conditions of the notice, must normally be avoided unless it is unavoidable. If the interpretation, as suggested by the petitioners is accepted, it is not possible to give any meaning to the words found in Clause 13 that the balance of the amount will have to be deposited within seven days from the date of communication regarding acceptance of bid by the Government of India, Ministry of Defence. Similarly, Clause 14 also refers to the communication of acceptance of highest bid, by the Government of India, Ministry of Defence. If the Accepting Officer is held to be the final authority to accept or reject the highest bid, Clauses 12, 13 and 14 will have no meaning whatsoever.

7. In addition to this, it is also pertinent to notice that Defence Estate Officer by himself or her self as the case may be (in the instant case, it is she), has no power to conduct the auctions and confirm the highest bids. She has been empowered to conduct the auction, by the Government of India, by the communication dated 8-3-1985, which reads thus :

"IN LIEU OF TELEGRAM FORM STATE EXPRESS DEBIT ARMY

DEFENCE ESTATE OFFICER : BANGALORE-42

Refer your BAN/GEN/16/AH FEB. 14 regarding Defence Land, Bangalore AAA Ministry decided to auction Hoarding sites at Bangalore by public auction for further period of two years starting from First April. Take immediate action and forward auction/proceedings paper for Ministry approval.

DIR CANTTS.

Not to be telegraphed Sd/- West Block-4, R.K. Puram, Asst. Director General New Delhi-66 Defence Lands and Cantonments (S.N. Chaturvedi) 8th March, 1985

MOST IMMEDIATE/QMS No. 724/6/L/L & C/83 Government of India Ministry of Defence,

DG DL & C, West Block 4, R.K. Puram, New Delhi-66 8 March, 1985 Copy by post in confirmation to :-

1. The D.E.O Bangalore:

W.r. to his Letter No BAN/GEN 16/AH/104 Dt. 14 Feb. 1985 Ministry desired that all the hoarding sites at Bangalore may be licenced for two years w.e.f. 1-4-1985. Please take immediate steps for the auction and forward us the auction/proceedings papers for Ministry approval and issue of Govt. sanction with your report. Fresh approval of Local Military authorities is not required.

2. Director, DL & C. Southern Command, Poona

W.r. to above and his letter No. 8708 / BAN / A Hoarding/DLC, dt. 21 Feb. 1985.

sd/- for Director General Defence Lands & Cantonments

It is in pursuance of this communication, the Defence Estate Officer has issued the auction notice-Annexure 1. Thus, it is clear that auctions are conducted subject to approval by the Defence Ministry, Government of India.

8. Thus, on a reading of Clauses 12 to 18, there is no escape from the conclusions that the acceptance by the Defence Estate Officer that such and such bidder is the highest bidder does not amount to, nor is it intended to amount to, final acceptance of the highest bid. The effect of it is that such and such bidder is the highest bidder. Whether such a bid has to be accepted and confirmed or not, is left to the final authority, i.e., the Government of India. Hence, it is not possible to hold that on the fall of the hammer, the highest bid has stood accepted by the Defence Estate Officer and thereby the concluded contract has emerged. Accordingly, the first contention is rejected.

9.1) On the facts and circumstances of this case, it is also not possible to hold that the Government of India has acted arbitrarily in not accepting the highest bids offered by the petitioners. In this regard, the contention of the petitioners is that the respondents have acted arbitrarily and their action is hit by Article 14 of the Constitution. It is specifically contended by Sri K.G. Raghavan, learned

Counsel for the petitioners in the second batch of Writ Petitions, that there is no minimum amount fixed, Therefore, there is no standard or criteria fixed for the respondent for coming to the conclusion that the highest bids are inadequate. Therefore, it is submitted that rejection of these bids is nothing but arbitrary.

9.2) In this connection, the stand taken by the respondents is found in para-12 of the statement of objections. It is stated as follows :

"Since the so called highest bids offered by the petitioners was found to be grossly inadequate and having regard to the prominent location of the sites in question, the 2nd Respondent recommended to the Government of India to reject (not to confirm) those bids in respect of the sites referred to in para-6 of the Writ Petitions, The confirming authority (called the Competent Authority) directed the 2nd Respondent not to accept these bids, and accordingly, the petitioners were informed of the non-confirmation of these bids. Annexure-2 is the communication dated 27-4-85 received from the Government confirming the 42 bids and rejection of other 42 bids which includes the sites involved in these Writ Petitions."

9.3) Annexure-2 which is the communication sent by the Director General, Defence Lands and Cantonments intimates the Defence Estate Officer regarding the acceptance and rejection of the bids, reads thus :

"To

The D.E.O. Bangalore.

Sub :- Auction of Advertising Hoarding Sites on Defence Lands at Bangalore.

Ref :- Your letter No. BAN / GEN / 16-AH, Dated 19 April, 1985

The matter has been considered by the Government who have approved your recommendation regarding approval of bids in respect of 42 sites and rejection of bids in respect of 42 sites as per statement sent by you.

Action may be taken to re-auction the remaining 42 sites after following usual procedure under intimation to all concerned.

Sanction for the defence of the Writ Petition Nos. 5595 to 5061 of 1985 is under issue."

9.4) From the aforesaid communication-Annexure 2, it is clear that the Defence Estate Officer after conducting the auction, sent up the proposal to the Ministry for acceptance of certain bids and rejection of certain bids through the letter dated 19th April, 1985. On consideration of that letter, the Director General of Defence Lands and Cantonments has approved the recommendation made by the Defence Estate Officer for accepting the highest bids relating to 42 sites and rejecting the highest bids pertaining to the remaining 42 sites. It is contended by the petitioners that the letter dated 19th April, 1985 written by the Defence Estate Officer is not produced; therefore, on what grounds the Defence Estate

Officer has recommended for rejection of the bids in respect of the 42 sites in question, is not known. It is also contended by Sri V. Tarakaram, Learned Counsel for the petitioners that the Defence Estate Officer has no justification to recommend for rejection of the highest bids. As far as the latter contention is concerned, while considering the first contention, I have pointed out that the Defence Estate Officer though appointed as Accepting Officer for the purpose of conducting auction proceeding, but she is not vested with final authority to accept or reject the highest bids; The Defence Estate Officer is required to seek the approval from the Government of India. Therefore, it is not possible to hold that, it is not open to the Defence Estate Officer to send the proposals to the Ministry of Defence regarding acceptance or rejection of the highest bids.

9.5) Non-production of the letter dated 19th April, 1985 written by the Defence Estate Officer cannot be held to have affected the case of the respondents. The very officer has sworn to the affidavit filed in support of the statement of objections filed by the respondents setting forth all the details. As it is already pointed out in the statement of objections, it is specifically stated that on the inadequacy of the amount offered as highest bid, recommendations were made for rejection of such of those highest bids offered in respect of 42 sites in question.

9.6) The final authority to confirm the highest bids as per the terms of the auction, vests with the Government of India. The adequacy or inadequacy of the bid amount is one of the relevant considerations for accepting or rejecting the bids. Therefore, it is not possible to hold that the respondents have acted arbitrarily in rejecting the highest bids offered in respect of the 42 sites in question.

9.7) It is revealing in this case, if one looks at the highest bids offered on 15th and 16th April, 1984 in respect of the remaining 42 sites in question and the highest bids offered in respect of the other 42 sites which are confirmed. The figures in respect of most of those sites are in five digits ; whereas in respect of the 42 sites in question they are only in four digits. That makes a world of difference. The right to put up the hoardings on the sites in question is auctioned not for a period of one year but it is for a period of two years. Therefore, it is not possible to hold that the respondents have acted arbitrarily in rejecting the highest bids offered for the 42 sites in question. The whole purpose of conducting the auction is to obtain as much money as possible. A judicial notice can also be taken of the fact that lot of money is involved in advertisement business. In fact, the modern trade and commerce and industry largely depend upon the advertisement. Therefore, it appears to me that the bids offered in respect of 42 sites in question, are very very low. Therefore, the rejection of the same is Justified.

9.8) This conclusion of mine is further fortified by the bids offered by the petitioners themselves in the re-auction which are also found in Annexure-4. The minimum bid offered in the re-auction is Rs. 5,100/- and the highest one is Rs.

14,000/-. Therefore, it is not possible to bold that the respondents have acted arbitrarily. In this regard it is also relevant to notice the decision of the Supreme Court in *Excise Commissioner of U.P. and Others Vs. Manminder Singh and Others*, . On the recommendation of the Excise Commissioner, the re-auction was ordered. It was challenged before the High Court which confirmed the proposal for re-auction. The matter was carried to the Supreme Court. On considering the contentions relating to rejection of the bid and the proposal to re auction, the Supreme Court has held as follows :

"The Excise Commissioner on a consideration of all the circumstances came to the conclusion that it was in the best interest of the revenue to order reauction, it was not for the High Court to interfere with the discretion of the Excise Commissioner in a proceeding under Article 226 of the Constitution."

9.9) However, Sri K.G. Raghavan, Learned Counsel, has placed reliance on a Division Bench decision of the High Court of Allahabad in *Durga Associates, Raipur Vs. State of U.P. and Another*, . He has laid stress on paras-11 and 12 of the Judgment. The decision follows the decision of the Supreme Court, in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and ultimately it is held therein that :

"The State has the right to trade and is under an obligation to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. It follows that though the State is entitled to accept or reject the highest bid, it cannot act arbitrarily and choose any person it likes for entering into contractual relationship. In such circumstances the State action must be in conformity with some standard or principle which meet the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

In the instant case, I have found that as a matter of fact, those is no arbitrariness on the part of the respondents in rejecting the highest bids offered by the petitioners in the auction held on 15th and 16th April, 1985. Therefore, no sustenance can be drawn from the aforesaid decision by the petitioners. Accordingly the second contention is also rejected.

10. The last contention relates to the impugned orders, it is contended that the impugned orders do not contain reasons ; therefore, it is not open to the respondents to supply the reasons either by production of the records or by way of pleading The Court is required to find out whether the decision of the authority to reject the highest bids is supported by the reasons or is arbitrary. It is an administrative decision and not a judicial or quasi judicial decision. Therefore, in the absence of the reasons contained in the order, it is open to and it becomes incumbent upon, the authority to prove to the satisfaction of the Court that such

a decision is informed by the reasons and it is not arrived at arbitrarily. This can be done by raising appropriate pleas and placing the entire records in support thereof. The respondents as it is already pointed out have specifically pleaded in paragraph 12 of the statement of objections that on the ground of inadequacy of the bids the Defence Estate Officer has in her recommendation stated that the bids in respect of the sites in question are inadequate and the same may not be accepted. It is this proposal that is accepted by the Government of India. If that be so, it is not possible to hold that bids are rejected without any reason and arbitrarily as it is proved that such a decision is arrived at on consideration of the relevant factors. Therefore, it is not possible to hold that the communication sent to the petitioners intimating them that the Competent Authority has not approved the bids, is bad in law.

All the contentions raised by the petitioners fail and the same are rejected. Consequently, the Writ Petitions are liable to be dismissed. The same are dismissed.