

(2024) 02 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No.2647 Of 2022

Raviprakash Chaturdeo Patel

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 14-02-2024

Acts Referred:

Citation : (2024) 02 BOM CK 0021

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ; Arif S. Doctor, J

Bench : Division Bench

Advocate : Ritika Agarwal, Ayesha S. Ansari, Sandesh P. Salunkhe, O. A. Chandurkar, R. A. Salunkhe, G. S. Hegde, P. M. Bhansali

Final Decision : Dismissed

Judgement

Arif S. Doctor, J

1. Rule. Rule made returnable forthwith.
2. With the consent of the Learned Counsel for the parties, the present Writ Petition is taken up for final hearing.
3. By the present Writ Petition, the Petitioner seeks the following reliefs :-
"a) To issue a writ of Mandamus or any other writ, order or direction in the nature of writ of mandamus, holding the impugned cancellation letter dated 08.12.2021 issued by Respondent no.4 invalid and void ab initio;
b) To issue a writ of Mandamus or any other writ, order or direction in the nature of writ of mandamus, directing Respondent no.3 to issue an allotment letter in respect of the subject plot in favour of the Petitioner in view of the auction result in which the Petitioner has been declared as the highest bidder;"
4. The facts, in order to appreciate the controversy at hand, lie within a very narrow compass, and shorn of unnecessary details are as follows, viz.

(i) City and Industrial Development Corporation Limited ("CIDCO") joined through Respondent Nos.2 to 4 had in the year 2021-22 published Scheme No.MM/SCH-18A/2021-22 for the sale through E-tender of several plots of land including Plot No.B (130+131), Sector 13, Kalamboli, Navi Mumbai, having an area of 117.53 sq. mts. ("the said plot").

(ii) The Petitioner placed its bid of Rs.43,333/- for the said plot on 12th October 2021 against the reserve price of Rs.26,202/-. The Petitioner also on the same day made payment of the Earnest Money Deposit ("EMD") of Rs.3,07,952/-, which was duly accepted by the CIDCO.

(iii) Thereafter, on 19th October 2021, the Petitioner was declared the highest bidder in respect of the said plot. As per the terms of the process manual issued by CIDCO, Respondent No.3 was to issue an allotment letter within 3 days. Since the Petitioner did not receive any allotment letter in the prescribed time, the Petitioner addressed a letter dated 3rd December 2021 to Respondent No.2 requesting for issuance of such allotment letter since the Petitioner has been declared as the highest bidder.

(iv) It was in response to the aforesaid letter that the Petitioner received the Impugned Communication dated 8th December 2021 addressed by Respondent No.4 to the Petitioner by which the Petitioner was informed that the Petitioner's bid had been rejected. It is this communication that the Petitioner has impugned.

5. Ms. Agarwal, Learned Counsel appearing on behalf of the Petitioner submitted that the CIDCO had acted in a completely arbitrary, unreasonable and unfair manner by rejecting the Petitioner's bid in the manner that they had done. She submitted that CIDCO had previously attempted twice to auction the said plot and both attempts had proved unsuccessful. She submitted that CIDCO had thus revised the reserve price to Rs.26,202/- per sq. mts. and that despite the fact that the Petitioner's bid of Rs.43,333/- per sq. mts. was Rs.17,131/- higher than the reserve price, its bid was not accepted. She submitted that though the Petitioner had been declared the highest bidder, CIDCO had gone on to reject the Petitioner's bid in the most arbitrary and cryptic manner without assigning any reason or even giving any opportunity to the Petitioner of being heard. She submitted that the rejection of the Petitioner's bid was therefore not only arbitrary, unfair and unreasonable but also in complete violation of the principles of natural justice.

6. Ms. Agarwal then submitted that CIDCO had by rejecting the Petitioner's bid caused a loss to the public exchequer. In support of her contention, she first invited our attention to a handwritten note dated 27th August 2021 on the Proposal for Scheme No.18-A dated 12th August 2021 which recorded that the expected revenue from the present scheme was Rs.55.56 Crores. She then pointed out that the present scheme had put up 143 plots for auction, out of which bids were received for only 70 plots and the scheme remained fruitless for the balance 73 plots. She submitted that out of the 70 plots for which bids were

received, CIDCO had decided to allot only eight plots and re-tender the balance. She pointed out that the base price for 70 plots in respect of which bids were received was Rs.40 Crores which amounted to 72% of the target of Rs.55.56 Crores sought to be achieved by CIDCO as per the handwritten endorsement on the Proposal for Scheme No.18-A dated 12th August 2021. She submitted that had CIDCO accepted the bids in respect of all the 70 plots CIDCO would have achieved 72% of its target from the sale of less than half the plots. She submitted that CIDCO by rejecting the Petitioner's bid, had thus caused a direct loss of Rs.50,92,927/- to the public exchequer since the same was highest among three bids and 65% higher than the base price.

7. She then submitted that the entire E-tender process was itself subject to the provisions of Revised Land, Pricing and Land Disposal Policy, 2015 and the Process Manual framed by CIDCO. She submitted that CIDCO had failed to inter alia follow the timelines set out in the said process manual and thus the entire conduct of CIDCO was patently arbitrary, unreasonable, and high handed.

8. Basis the above, she submitted that the present Writ Petition be allowed, and the Impugned Communication be quashed and set aside.

9. Per contra, Mr. Hegde, the Learned Senior Counsel appearing on behalf of the CIDCO, at the outset, submitted that the Petition was entirely misconceived. He submitted that CIDCO had merely invited bids/offers for the various plots in Scheme 18A and there was absolutely no compulsion, much less any obligation on CIDCO to accept any of the bids/offers received. He then invited our attention to the scheme booklet and pointed out that the terms contained in Part B "Invitation to offer", specifically reserved the right of CIDCO to inter alia reject any or all the offers without assigning any reason. He thus submitted that CIDCO had invited offers from prospective bidders making it abundantly clear that CIDCO had the express right to cancel/reject any offer. Mr. Hegde then took pains to point out that there was no letter of allotment/award of the said plot in favour of the Petitioner and consequently, no contract had come into force between the Petitioner and CIDCO and thus the Petitioner did not have any vested or for that matter any right at all qua the said plot. He therefore submitted that the question of the grant of any reliefs in favour of the Petitioner did not arise.

10. Mr. Hegde then submitted that the reason why CIDCO had accepted only 8 of the 70 bids/offers received was because all of the other bids/offers were well below the market price of the said plots. He then invited our attention to the Memo dated 27th October 2021 where the reasons for accepting only 8 bids out of 70 and rejecting the rest had expressly been set out in writing which he pointed out were as follows,

"After perusal of Table-A on N/10, it is observed that out of 33 plots, the rates received for 08 plots i.e. at Sr.No.11, 16, 21, 22, 23, 25, 26 & 27 are comparatively good.

In table – B, there are 37 plots where less than three bids are received and the rates received are not satisfactory. Thus we may allot 08 plots and retender remaining plots.”

Basis the above, he submitted that the Petitioner’s contention that CIDCO had acted in an arbitrary, unreasonably, and unfair manner was entirely baseless and without substance.

11. He then, in dealing with the Petitioner’s contention that CIDCO had acted in violation of its process manual, invited our attention to the scheme booklet Part A of Clause 7, which specifically provided that a bid once made would remain valid for acceptance by CIDCO for a period of 90 days. He submitted that CIDCO having rejected the Petitioner’s bid well within 90 days and refunded the entire EMD, could not be stated to have acted in violation of the process in an arbitrary, unfair or unreasonable manner. He submitted that insofar as the Petitioner was concerned, CIDCO had to act as per the terms of the tender conditions, which it had undeniably done.

12. Basis the above, Mr. Hegde submitted that CIDCO’s decision to reject the Petitioner’s bid was a reasoned decision taking into account the fact that CIDCO had found that the Petitioner’s bid was well below the prevalent market price of land in the same area. This he submitted was a decision which was entirely within CIDCO’s discretion, to which the Petitioner had absolutely no say. He reiterated that the Petitioner had absolutely no right, title or interest in the said plot since the Petitioner was only the bidder, and nothing more. He reiterated that CIDCO had every right to reject the Petitioner’s bid in terms of the tender document, for which no reason was required to be given by CIDCO. Mr. Hegde thus submitted that the present Petition was therefore required to be dismissed.

13. After having heard Learned Counsel for the parties at length, we find that the following two questions fall for our consideration (i) whether it was incumbent upon CIDCO to have accepted the Petitioner’s bid/offer since it was the highest and (ii) whether CIDCO’s rejection of the Petitioner bid/offer was arbitrary, unfair and unreasonable. After having considered the rival contentions as also perused the relevant documents, more particularly the tender conditions and the reasons given by CIDCO as stated on Memo dated 27th October 2021 for not accepting the Petitioner’s bid, we have no hesitation in holding that both these questions must necessarily be answered in the negative for the following reasons, viz.

A. Insofar as the first question, i.e. whether it was incumbent upon CIDCO to accept the Petitioner’s bid since it was the highest, we must note that there is no dispute that the tender conditions expressly reserved the right of CIDCO to reject any or all the bids/offers without assigning any reason. Also, the Petitioner has not impugned such condition but infact submitted its bid accepting such condition. It is also not in dispute that at no time after submitting its bid/offer did CIDCO never even announce that the Petitioner was the L1 much less issue any allotment letter in favour of the Petitioner. Thus, given the fact that Clause 7

of the tender condition specifically provided that a bid once made would remain valid for acceptance by CIDCO for a period of 90 days and that CIDCO had communicated rejection of the Petitioner's bid within the stipulated time, it cannot be said that CIDCO has acted in an arbitrary, unfair or unreasonable manner. It is well settled that the highest bidder does not get any vested right only by virtue of the fact that its bid is the highest. Additionally, it is not even the Petitioner's case that the Petitioner has any vested right by virtue of being the highest bidder or that as per the terms of tender CIDCO was bound to accept the highest bid. Thus, given the express tender conditions it cannot be said that in the facts of the present case, that merely because the Petitioner's bid was the highest, it was incumbent upon CIDCO to have accepted the same.

B. Insofar as the second question, i.e., whether CIDCO had acted in an arbitrary, unfair, and unreasonable manner in rejecting the Petitioner's bid, again we find in the negative. Firstly, we must note that in the present case, the Petitioner has admittedly not impugned the decision-making process but has only impugned the decision of CIDCO in rejecting the Petitioner's bid. We find that on a perusal of the Memo dated 27th October 2021 and the notings thereon, the reasons for rejection of the Petitioner's bid have been expressly set out by Respondent Nos.2 and 3. A perusal of the same along with Memo dated 27th October 2021 make manifestly clear that the bids/offers received for all the 62 plots are much lower than the bids received for the 8 plots which were accepted. It is not even the Petitioner's case that CIDCO had accepted any bids which were similar to the rate offered by the Petitioner and as a result thereof, had discriminated against the Petitioner. It is infact clear from the material placed before us that CIDCO has uniformly rejected all bids/offers which in its discretion were below the market price. Given this, we find that CIDCO has not acted in an arbitrary, irrational or unfair manner. It is now well settled principle that in case of contractual or commercial matters, the Court must give fair play in the joints to the Government and exercise a lot of restraint while exercising their powers of judicial review, as has been held by the Hon'ble Supreme Court in the case of Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others¹ Hence, in our view, CIDCO having taken a commercial decision, basis the material before it to reject the bid of the Petitioner, cannot in any manner be termed as having acted in an arbitrary, unfair or unreasonable manner.

14. Thus, for the aforesaid reasons, we dismiss the Writ Petition.