

(2013) 06 OHC CK 0009
In the Orissa High Court
Case No : Writ Petition (C) NO. 10379 of 2013

Satyabrata Sahoo

APPELLANT

Vs

Commissioner of Endowments and Three Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : AIR 2013 Ori 169 : (2013) 116 CLT 878 : (2014) 1 ILR (Ori) 314

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Advocate : H.S. Mishra, A.K. Mishra and R. Dash, for the Appellant; A.K. Rath for O.P. Nos. 1 and 2, Bidyadhar Mishra and P. Bharadwaj for O.P. No. 3 and Mr. J.K. Mishra (2) for O.P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patel, J.—This writ petition has been filed by the petitioner challenging the auction of two "Bhog shops" at Shri Chandrasekhar Jew Pitha under Dhenkanal Debottar held on 29.04.2013 in the office of O.P. No. 1 at Bhubaneswar for the period from 1.5.2013 to 31.03.2014 and allotment thereof in favour of O.P. No. 4; and praying for issuance of a writ of certiorari quashing the entire process of auction in question and also for issuance of a writ of mandamus directing the opposite parties 1 to 3 for conducting fresh auction of the said Bhog Shops. Before going through the main issue involved in this writ petition, it is worthwhile to have a little glance at the background of the petitioner's case as has been adverted to by the petitioner in this writ petition. Earlier, petitioner came up before this Court by way of filing W.P.(C) No. 9713 of 2012 with a prayer to direct the O.P. No. 3 to allot the Bhog Shop of Shri Chandra Sekhar Jew Pith for the year 2012-13 as the O.P. No. 3 did not receive any offer in response to the tender call notice dated 3.4.2012. This Court while disposing of the said writ petition with direction that the petitioner was to approach the O.P. No. 3 with his offer for the balance period and on examination of the offer, if O.P. No. 3 will find the offer to be beneficial in the interest of the Deity and public, petitioner may be

permitted to run the Shop till end of March, 2013 on payment of the amount in advance. Accordingly, petitioner was allotted the said Shop till the end of March, 2013. However, before the end of March, 2013 fresh auction for the year 2013-14 could not take place. At this juncture petitioner again approached this Court by filing W.P.(C) No. 7458 of 2013 with a prayer to allow the petitioner to operate the Bhog Shop in question till the end of June, 2013 or till finalization of the fresh tender process. This Court vide order dated 22.04.2013 disposed of the said writ petition with a direction to permit the petitioner to continue till 29.04.2013 and if the fresh auction fails or is not conducted, the petitioner will be permitted to continue the Bhog shop till fresh auction is held on depositing the amount as would be fixed by the Sub-Collector. Petitioner was continuing the said Bhog Shop as such.

The case of the petitioner in the instant petition in nutshell is that, O.P. No. 3 issued the tender call notice No. 255 dated 22.04.2013 under Annexure-1 calling upon the intending bidder to participate in auction of two Bhog Shops in question, which was to be held on 29.04.2013 in the office of O.P. No. 1 at Bhubaneswar, for the period from 1.5.2013 to 31.03.2014. The upset price for each shop room was fixed at Rs. 5,83,850/-. It was further specifically mentioned in the tender notice that intending bidders are to deposit Rs. 58,385/- in the form of a Bank Draft as security deposit for each shop to make them eligible to participate in the auction. The grievance of the petitioner is that instead of publishing all the terms and conditions in the tender call notice, it is mentioned in the notice that all the terms and conditions of the auction can be seen in the working hours of any working days at the Debottar Office of Dhenkanal. Be that as it may, petitioner being the intending bidder prepared two Demand Drafts of Rs. 6.00 lakh and Rs. 2.00 lakh on 25.04.2013 (under Annexure-2 series) and on 29.04.2013 went to Bhubaneswar along with those two Demand Drafts and Rs. 10.00 lakhs in cash to participate in the auction. It is stated that, after reaching Bhubaneswar, immediately petitioner prepared two Demand Drafts of Rs. 58,385/- each (under Annexure-2 series) towards security amount for both shops and at about 1.00 p.m. he approached the opposite party Nos. 1 and 3 to accept his security money, but O.P. No. 3 refused to accept the same stating that the same is beyond the terms and conditions of the auction notice. Thereafter, the auction was held and ultimately O.P. No. 4 became the successful bidder at Rs. 12,02,000/-.

2. Mr. Mishra, learned counsel for the petitioner submitted that the petitioner was ready to offer Rs. 16.50 lakhs, but mechanically petitioner was not allowed to participate in the auction process and ultimately the bid has been settled at Rs. 12,02,000/- which is a loss to the public exchequer. In this regard, Mr. Mishra, placed reliance on an earlier decision of this Court in the case of Brajabandhu Pati Vs. Collector-cum-Trustee, Debottar, Dhenkanal (W.P.(C) No. 7041 of 2009 decided on 17.09.2009) wherein this Court at paragraph 10 of the judgment, placing reliance on the judgments of Hon"ble Supreme Court in the cases of Tata Cellular Vs. Union of India, and Haryana Financial Corporation and Another Vs.

Jagdamba Oil Mills and Another, , has observed as under:

...the deity is a perpetual minor and the property belonging to a minor requires protection, it is the obligation of the authorities to protect the interest of the minor. It is the settled principle of law that the sale by public auction or tender or private negotiations should be bona fide and endeavours should be made to get the highest price and the act of the authorities, i.e., trustee, its actions must be fair, honest, cautious and reasonable and every attempt must be made to fetch the maximum price. In view of the above principle, this Court directs opposite party Nos. 1, 2, 3 and the Commissioner of Endowments to fix the upset price in future so that the property and interest of the deity is well protected....

It was further submitted by the learned counsel for the petitioner that the terms and conditions of the auction in details were not given in the tender call notice for which the same was not clear and transparent and it was also not stipulated in the advertisement as to at what time the security deposit can be received. It was submitted that during the previous years, excepting 2012-13, the auction was conducted at Dhenkanal and large number of participants were taking part in the auction, but for the first time, the auction was held at Bhubaneswar for the Bhog Shops at Dhenkanal for the reason best known to the authorities. Therefore, it was submitted, all the actions of the authorities in question are illegal, arbitrary and mala fide and hence the entire tender process is liable to be quashed and fresh tender is required to be conducted.

3. Counter affidavits have been filed on behalf of opposite party Nos. 1 to 3- authorities traversing the averments made by the petitioner in the writ petition. It is stated in the counter that the petitioner was well aware of the terms and conditions of the tender notice in question and he has personally verified the same in the office of O.P. No. 3 more than once from 25.4.2013 to 27.4.2013. Despite of being well aware of the terms and conditions, petitioner did not deposit the Demand Drafts towards security deposit within the prescribed time i.e. 12.30 PM to 1.30 PM as per the conditions of the auction. It is further stated that the petitioner has made false and incorrect statements in the writ petition which would be apparent from the contradictory averments made at paragraphs 13, 19 and 21 of the writ petition.

4. On the other hand O.P. No. 4-the successful bidder, in whose favour the shop rooms have already been settled, has filed counter affidavit stating that as the petitioner has submitted cash towards security deposit on the date of auction, the authority rightly did not accept the same and thereafter the petitioner left the office of O.P. No. 1 at 1.00 p.m.. It is further averred that the O.P. No. 4 being the successful tenderer has already deposited the entire money on the same date i.e. 29.04.2013 and as per the conditions prescribed agreement has been executed on 30.04.2013 and he has already been delivered possession of the shop rooms from 01.05.2013. He has also started his business by investing lakhs of rupees, and it is stated that the petitioner is trying to vandalize the entire auction process with an ulterior motive.

5. Learned counsel on behalf of opposite parties in course of their arguments reiterated the stand taken in the counter affidavits and submitted that the petitioner has not come to the Court with clean hands. All the drafts produced by the petitioner under Annexure-2 series are not prepared by the petitioner rather they are in the names of one Bidyadhar Sahoo and one Basanti Sahoo. Petitioner approached the opposite parties to accept cash towards security deposit, which was contrary to the conditions made in the tender call notice, for which opposite parties-authorities have not accepted the same. As the petitioner could not succeed in his ambition, he is trying to make out a case to sabotage the entire process of auction with an intention to take the wrong advantage of the order of this Court dated 22.04.2013 passed in W.P.(C) No. 7458 of 2013 wherein this Court has observed that "petitioner may be permitted to continue till 29.04.2013 when the auction is scheduled to be held, but if the auction fails or is not conducted, the petitioner will be permitted to continue the Bhog Shop till auction is held on depositing the amount as would be fixed by the Sub-Collector".

6. With reference to the entire fact situation of the case and contentions made by the learned counsel for the parties, this Court has carefully gone through the records. It is a well settled principle that the authority cannot go beyond the terms and conditions stipulated in the tender call notice/advertisement. In the instant case, when it is clearly mentioned in the tender call notice that intending bidders are to deposit the security amount of Rs. 58,385/- for each shop in the form of Bank Draft, the approach of the petitioner to the opposite parties-authorities to accept the Cash Security itself, as admitted by the petitioner in the writ petition, is wrong and the authority has rightly not accepted the same which would be in violation of the terms and conditions of notice.

Further, on the one hand petitioner is claiming to have approached the authorities on 29.04.2013 to accept his two Demand Drafts under Annexure-2 series towards security which they refused to receive, but on the other hand opposite parties-authorities in their counter affidavits stated that petitioner has never deposited any Demand Draft towards security deposit. Be that as it may, it appears from the two Bank Drafts under Annexure-2 series that they have been prepared and remitted by one Basanti Sahoo and not by the petitioner. Therefore, even if the aforesaid contention of the petitioner is accepted, it cannot be said that the authorities have committed any wrong in not accepting the said Demand Drafts from the petitioner and not allowing him to participate in the auction. Petitioner being well aware of the terms and conditions mentioned in the advertisement, cannot take the benefit of his own wrong as explained by a legal maxim "*commodum ex injuria sua nemo habere debet*" meaning thereby convenience cannot accrue to a party from his own wrong or no person ought to have advantage of his own wrong.

7. It is also the settled position of law that the petitioner approaching the Court must come with clean hands and put forward all the facts before the Court without concealing and suppressing anything and seek an appropriate relief. In

the case at hand the question does arise, if the petitioner is a bona fide intending bidder, why he has produced the Demand Drafts under Annexure-2 series before this Court which have been prepared and remitted by one Bidyadhar Sahoo and one Basanti Sahoo, whereas the petitioner is claiming in the writ petition that he himself has prepared the Drafts. The statements made by the petitioner in the writ petition are contradictory. By showing the Bank Drafts prepared by others, petitioners cannot be permitted to establish his bona fide and splash colour of arbitrariness on the opposite parties-authorities without any basis.

8. Also the allegations of the petitioner that non-mentioning of all the terms and conditions of the auction in the advertisement itself and holding the auction at Bhubaneswar are arbitrary and unreasonable, cannot be accepted. As it appears from record, petitioner is not a new bidder for the first time. Rather he is a quite experienced bidder having participated in the auctions of Bhog Shops earlier and also an experienced litigant. He has filed several writ petitions before this Court in several occasions to obtain shops. In the order dated 22.04.2013 passed by this Court in W.P.(C) No. 7458 of 2013 filed by the petitioner, this Court has taken note of the publication of the tender notice in question and date of auction i.e. 29.4.2013 at Bhubaneswar and accordingly allowed the petitioner to run the shop till 29.04.2013, which shows that the same was very much within the knowledge of the petitioner. Further, the petitioner without any objection, being well aware of all the terms and conditions of the auction, has gone to Bhubaneswar to participate in the auction on the scheduled date. But, somehow or rather, when he became unsuccessful in his mission at this stage he cannot have any grievance with regard to legality and validity of tender call notice or place of auction. Law does not permit a person to both approbate and reprobate.

9. In the tender call notice in question, the authorities have fixed the upset price for both the Bhog Shops and finally it has been settled in favour of O.P. No. 4 as he has offered much above the upset price and became successful. This Court cannot interfere in any auction process or award thereof, merely basing on the enhanced offer made by another after confirmation of bid in favour of successful bidder, unless it is found to be arbitrary or unreasonable. On analysis of the entire fact situation of the present case, law on the point and the decision of this Court in the case of Brajabandhu Pati (supra), upon which reliance has been placed by the learned counsel for the petitioner, it is found that there is no illegality, arbitrariness or impropriety in the process of auction in question. In view of the above, there is no merit in this writ petition and the same is accordingly dismissed.

No order as to costs.