
(2009) 09 OHC CK 0029
In the Orissa High Court
Case No : Writ Petition (C) No. 7041 of 2009

Sri Brajabandhu Pati

APPELLANT

Vs

Collector-cum-Trustee and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Citation : (2009) CLT 46 Supp

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : J.K. Mishra, for Petitioner 2, for the Appellant; S. Nayak, A.S.C. for O.P. No. 1, B. Mishra and S. Satpathy, for O.P. No. 2, A.K. Rath, for O.P. No. 3 and H.S. Mishra, for O.P. No. 4, for the Respondent

Judgement

Pradip Mohanty, J.—In this writ petition, the Petitioner prays to quash the entire process of selection adopted by opposite party No. 3 in the matter of allotment of Bhog Shop Nos.1 and 2 in Kapilash temple for the year 2009-10 in favour of opposite party No. 4 and to accept his highest offer for the same.

2. The brief fact of the case is that opposite party No. 2 invited tenders for auction of Bhog Shop Nos.1 & 2 in the Kapilash Temple premises for the financial year 2009-10, but nobody responded to it. However, five persons made simple applications. On 27.04.2009, the Executive Officer, Debottar, Dhenkanal issued notice to the persons who had made applications to participate in the negotiation which was to take place on 01.05.2009. Knowing the process of negotiation, some other persons including the Petitioner also put in their applications. On 01.05.2009, the Executive Officer asked all the applicants to offer their bid in sealed cover. The Petitioner offered his bid amount of Rs.7, 05, 000/- and Opposite Party No. 4 offered Rs.8, 10, 000/-. The Executive Officer after negotiation settled the matter in favour of opposite party No. 4 for Rs.8, 10, 000/-. But the highest offer was made by one Hiranya Barik to the tune of Rs.11, 80, 000/- and second highest offer was made by one Santosh Behera to the tune of Rs.11, 07, 000/ -. Thus, the third man was the present opposite party No. 4

who offered Rs.8, 10, 000/-. On 01.05.2009, the Executive Officer directed the first offerer to deposit 50% of the offered amount in Debottar Office. The Executive Officer also wrote letters to the second offerer Santosh Behera and third offerer Bidyadhar Sahoo to come ready with 50% of the offered amount on 02.05.2009 in case the highest bidder failed to make deposit of the required amount. But none of the above three persons either deposited the amount or produced any proof regarding deposit of amount in any Bank in the account of the Executive Officer of Debottar. Thereafter, on 04.02.2009, opposite party No. 2 (Executive Officer) secretly directed opposite party No. 4 to deposit the required amount, i.e., 50% of the offered amount and opposite party No. 4 deposited Rs.4, 05, 000/- on the same day, but did not deposit any postdated cheque for the rest 50% of the offered amount. Therefore, Executive Officer directed him to deposit the same. On the next day, i.e., on 05.05.2009, opposite party No. 4 deposited postdated cheques of Rs.4, 05, 000/- and deed of agreement was executed on that day. On 05.05.2009, the shop rooms were also handed over to opposite party No. 4.

3. Learned counsel for the Petitioner submits that the Petitioner had made his application for negotiation on 01.05.2009 and his offer was more than the amount offered by opposite party No. 4. He submits that due to illness, the Petitioner could not attend the negotiation and reached after some time in the office with offered amount of Rs.8, 25, 000/- with an application. But, opposite party No. 3 did not consider the same.

4. Learned counsel for opposite party No. 2 submits that the Petitioner was neither present at the time of negotiation nor he had quoted any price for allotment of the shop room through any authorized power of attorney holder. He was not a participant in the negotiation. One Hiranya Barik was the highest bidder who offered Rs.11, 80, 000/ -. Opposite party No. 2 wrote a letter to him on 01.05.2009 to deposit in cash 50% of the offered amount, i.e., Rs.5, 90, 000/- by 11 A.M. on 02.05.2009 in the Debottar Office, Dhenkanal and the rest of 50% by postdated cheques. On the same day, i.e., on 01.05.09, opposite party No. 2 wrote a letter to the second highest bidder and the third highest bidder to come ready with the 50% of their offered amount so that in the event Hiranya Barik failed to deposit 50% of his offered amount by 11 A.M. on 02.05.2009, in order of priority their cases would be considered. But the first highest bidder, namely, Hiranya Barik and the second highest bidder, namely, Santosh Behera did not turn up to deposit their respective offered amounts. The third highest bidder, i.e., opposite party No. 4 was present with 50% of the bid amount. Opposite party No. 2 asked him to pay the 50% of the offered amount on 04.05.2009. Accordingly opposite party No. 4 deposited the amount.

5. Learned counsel for opposite party Nonsupported the submissions made by the learned Counsel for opposite party No. 2 and submitted that the Petitioner had neither applied earlier nor he came to the negotiation table either on 01.05.2009 or on 02.05.2009 and Annexure-2 is a manufactured one for the

purpose of filing the present writ petition. After coming to know about the negotiation price, he manufactured the application for the purpose of filing of writ petition by quoting Rs.8, 25, 000/-. After depositing 50% of the bid amount, deed of agreement was executed and both the shops were handed over on that day for the period from 1st April, 2009 to 31st March, 2010. This negotiation was done after expiry of one month from the commencement of the financial year 2009-2010 as nobody responded to the repeated tenders floated by opposite party No. 2.

6. Mr. Rath, learned Counsel appearing for the Commissioner of Endowments (O.P.3) submitted that the deity is a jurisdic perpetual minor and the property belonging to the minor requires protection. It is the duty of the Manager/Trustee and ultimately, the State Authorities to protect the interest of such minor. He further submitted that the sale by public auction or tender or private negotiation should be bona fide action. It is the duty of the Manager/Trustee to publish the advertisement in a widely circulated newspaper of the State. This Court should give a direction to the authorities to do so in future.

7. Without expressing any opinion regarding merits of the case but keeping in mind that the deity is a perpetual minor and its interest should be protected, this Court on 02.07.2009 directed the Petitioner and opposite party No. 4 to submit their respective bid amounts in sealed covers. On 08.07.2009, the parties prayed for some more time for submitting their sealed cover tender's. On that day, this Court directed the Petitioner and opposite party No. 4 to give their respective offers in sealed cover which should not be less than Rs.10, 00, 000/-. Since opposite party No. 4 had already deposited the auction amount and is operating the Bhog shops, this Court directed the Petitioner to deposit 25% of the amount to be offered by him as security in the shape of an account payee bank draft in the name of Registrar Judicial in a sealed cover. On 10.07.2007, learned Counsel for the Petitioner prayed for time since the draft was not ready. On 15.07.2009 again this Court adjourned the matter to 16.07.2009 to file the sealed cover offers. On 16.07.2009, Mr. H.S. Mishra, learned Counsel for opposite party No. 4 submitted that opposite party No. 4 is not interested to bid for more than Rs. 10, 000/- and learned Counsel for the Petitioner handed over a sealed cover to this Court. After opening the sealed cover it is seen that the Petitioner is ready to pay Rs.10, 10, 000/- for one year from 15.07.2009 to 15.07.2010. He also handed over three drafts in the name of Registrar (Judic-ial) which comes to Rs.2, 50, 000/-. On 17.07.2009, an affidavit was filed by the Petitioner in the Court stating therein that since opposite party No. 4 has consumed two months, the amount for the said period may be deducted from his deposit. He also submitted that the Petitioner will deposit the rest of the amount and the shops may be handed over to him. On 20.07.2009, Anr. affidavit was filed by the Petitioner to allow him to operate the Bhog shops till the end of March, 2010.

8. Learned counsel for opposite party No. 2 produced the records in Court dealing with the auction in question. On thorough examination of materials

available on records and careful consideration of submissions made by the parties, it is crystal clear that neither the Petitioner was present at the time of negotiation on 01.05.2009 nor he had quoted any price for allotment of the shop rooms. On that day, he had not participated in the negotiation, but had allegedly filed the application vide Annexure-2. There is no acknowledgement of receipt of such application. It can be well presumed that Annexure-2 is nothing but a manufactured document for the purpose of filing of this writ application. There is no proof that the Petitioner submitted any such type of letter to opposite party No. 2 on 01.05.2009 or at any point of time. He submitted his sealed cover offer on 16.07.2009 in Court along with a memo. It was opened in the Court and found that in the memo the Petitioner has stated that he is ready to pay Rs.10, 02, 000/- for one year, i.e., from 15.07.2009 to 15.07.2010, i.e., beyond the financial year. Again he filed an affidavit to deduct the amount for the time consumed by opposite party No. 4 and settle the matter. He also deposited 25% of the bid money by violating the Court orders in two installments, i.e., on 16.07.2009 and again 20.07.2009. Looking to the conduct of the Petitioner, this Court comes to a conclusion that the Petitioner has not come with a clean hand. In order to harass the opposite parties with a mala fide intention he has filed this writ petition and is lingering the matter and killing the Court's time. This kind of practice is deprecated. In such circumstances, this Court directs imposition of cost of Rs.20, 000/- on him, which will be realized from the deposit made before this Court by the Petitioner. This Court directs the Registrar (Judicial) to encash the draft kept with him, realize Rs.20, 000/- and refund the rest of the amount to the Petitioner. This Court further directs the Registrar (Judicial) to deposit this Rs.20, 000/- in the account of the deity through the learned Counsel for opposite party Nos.2 and 3.

9. On analysis of the facts of the present case and law on the point, it is found that there is no illegality or impropriety with regard to procedure in initiating the tender and accepting the offer of opposite party No. 4 by opposite parties 1 & 2. Hence, the writ application is devoid of any merit.

10. At the same time, this Court observes that since 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 endeavors 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 maximum price. In *Tata Cellular Vs. Union of India*, and *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, aforesaid principle has been decided. 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. For this purpose, this Court directs that in future the tender shall be published in a widely circulated daily news paper and the auction shall be conducted by the Commissioner of Endowments in

a transparent manner.

11. The writ application is disposed of with the above directions and observations.