

(2013) 10 DEL CK 0412

In the Delhi High Court

Case No : Writ Petition (C) No. 6854 of 2013 and CM 14857 of 2013

Veecon Media and Broadcasting Pvt. Ltd.

APPELLANT

Vs

Prasar Bharati and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0412

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Neeraj Kishan Kaul and Ms. Enatoli Sema, for the Appellant; Rajeev Sharma, Uddyam Mukherjee for R-1 and 2, Ms. Sweetie Manchanda, CGSC and Mr. Debashis Mukherjee, For R-3, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Vide Press Advertisement issued in August, 2013, the respondent-Prasar Bharati invited applications to fill up vacant slots on the DTH Service of Doordarshan DD-Direct Plus through e-Auction system to be conducted on 13th August, 2013. The number of slots to be filled up in the aforesaid e-Auction, however, were not indicated in the said Press Advertisement. Vide another Press Advertisement, Prasar Bharti invited applications to fill up the vacant slots on the aforesaid DTH Doordarshan DD-Direct Plus through e-Auction, to be conducted on 12th September, 2013. This time also, the number of slots that were to be auctioned on 12th September, 2013 was not declared. Vide another advertisement issued in September, 2013, Prasar Bharati invited applications to fill up five (5) DTH slots by way of slots on the DTH Service of Doordarshan DD-Direct Plus through e-Auction to be held on 17th/18th October, 2013 and to fill up six (6) slots by way of e-Auction to be held on 29th/30th October, 2013. The respondents, however, did not indicate as to how many slots would be auctioned on each of the aforesaid four dates. The grievance of the petitioner is that being a small player, in the absence of the slots to be auctioned on each date, it could

not participate in the aforesaid e-Auction process since it would have been able to decide the quantum of its bids only on knowing the number of slots which were to be auctioned on a particular date. This is also the contention of the petitioner that in the past, the practice of Prasar Bharti was to notify the numbers of slots in the Press Advertisement itself. The practice adopted by Prasar Bharti is alleged to be arbitrary, unreasonable, irrational and unfair. Being aggrieved from the aforesaid auction process, the petitioner is before this Court seeking the following reliefs:

(a) issue a writ of mandamus directing the respondents to re-auction all the DTH slots in transparent and fair manner;

(b) issue a writ of certiorari or a writ of mandamus or any other appropriate writ, order or direction calling for the records of the e-auctioning and after perusing the records, quash the entire e-auction conducted by respondent no. 1

2. The learned counsel for the respondent-Prasar Bharti, who appears on advance notice, submits that it was a commercial decision taken by Prasar Bharti not to notify the numbers of slots to be auctioned on a particular date. According to him, the aforesaid decision was necessitated on account of the fact that in the past, knowing the number of slots that would be auctioned on a particular date, the intending bidders formed a cartel resulting in depressed bids. He further submits that as a result of the new policy adopted by Prasar Bharti, the revenues from such auctions has substantially increased.

3. There is no statutory requirement for Prasar Bharti to disclose in advance the number of slots to be filled up on a particular date. There is no declared policy of Prasar Bharti to notify the number of slots in the auction notice itself. Though in the past, Prasar Bharti disclosed the number of slots to be filled up on a particular date in the auction notice itself, it was under no legal obligation to disclose such numbers in the auction notice issued in August-September and October, 2013. It was for Prasar Bharti to decide, keeping in view, inter alia, its commercial interests in mind, whether to disclose or not in advance the number of slots to be auctioned on a particular date. If Prasar Bharti, from its experience found that an advance intimation with respect to the number of slots to be filled up by way of auction on a particular date was resulting in forming of a cartel and depression of bids, nothing in law prevented it from deciding not to make such disclosure in advance.

4. It is settled legal proposition that the Court, exercising its writ jurisdiction under Article 226 of the Constitution cannot interfere with a policy decision of the State unless such a decision is shown to be wholly arbitrary, irrational or unreasonable. The decision taken by Prasar Bharti, not to disclose, in advance, the number of slots to be filled up by way of e-Auction, on a particular date, in my view does not suffer from any such vice. A perusal of the Chart available at page 49 of the paper book would show that the bids received by Prasar Bharti for the period 16.8.2013 to 15.8.2014 were substantially higher than the bids

received in the past. The commercial decision taken by Prasar Bharti, therefore, stand vindicated from the aforesaid bids. Therefore, no ground for interference in exercise of jurisdiction under Article 226 of the Constitution is, therefore, made out.

5. It would be pertinent to note here that terms of the auction were uniform for all the prospective bidders and no one knew what would be the number of slots available for e-auction on a particular date. I find no merit in the contention that the petitioner being a small player in the market, it was necessary for it to know in advance the number of slots that would be available for e-auction on a particular date. The prospective bidder has to decide the quantum of bid on the basis of potential of a particular slot and not on the basis of the number of slots available for e-auction on a particular date. A number of bidders participated in the auction, without knowing the number of slots to be auctioned on a particular day. Even the petitioner did not come to the Court, before the e-auctions were held. I am in full agreement with the learned counsel for the respondents that in case the number of slots available for e-auction on a particular date as disclosed in advance that would likely to result in cartelization by way of intending bidders allocating the slots amongst themselves and then giving bids in concert with each other. If it happens, this would certainly constitute an unfair practice besides artificially depressing the revenues of Prasar Bharti. During the course of arguments, the learned senior counsel for the petitioner prays for a direction to Prasar Bharti to disclose the particulars of the successful bidders. If the petitioner is desirous of obtaining such information, the appropriate remedy for it is to apply to the concerned CPIO/PIO under the provisions of the Right to Information Act and a writ petition is not an appropriate remedy for seeking such a direction.

For the reasons stated hereinabove, I find no merit in the petition and the same is hereby dismissed. There shall be no orders as to costs.