

Indore Vikas Praadhikaran (Ida) vs Shri Humud Jain Samaj Trust on 25 November, 2024

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Bench: Bela M. Trivedi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
[Arising out of SLP (Civil) No. 9940 of 2022]

INDORE VIKAS PRAADHIKARAN
(IDA) & ANR.

...APPELLANT(S)

VERSUS

SHRI HUMUD JAIN SAMAJ
TRUST & ANR.

...RESPONDENT(S)

JUDGMENT

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. This present petition is arising out of order dated 08.02.2022 passed in Writ Appeal No. 5/2022, titled as, “Shri Humad Jain Samaj Trust Vs. The State of Madhya Pradesh & Ors.”, passed by the High Court of Madhya Pradesh at Indore. The Division Bench of the High Court has set aside the order dated 17.12.2021, passed by the learned Single Judge in Writ Petition No. 26040/2021.

3. The facts of the case reveal that the appellant Indore Vikas Praadhikaran (IDA), hereinafter referred to as “IDA” issued an advertisement inviting bids for leasing out land admeasuring 3382 sq. meters situated at Scheme No. 74-C, Sector C, Indore, on 17.07.2020 and the terms and conditions were specified in the Notice Inviting Tender (NIT). The reserve price was fixed at Rs. 21,120/- per square meter. The IDA pursuant to the NIT dated 17.07.2020 received three bids and the bid of respondent No. 1- Shri Humud Jain Samaj Trust was the highest as a bid of Rs. 25,671.90/- per square meter was offered in the matter. The bids were opened on 09.09.2020. The Tender Committee while it was finalizing the bids noticed that in respect of the land in question, a property tax demand to the tune of Rs. 1.25 crores was outstanding and the same was not taken into account while fixing the base price and, therefore, the Tender Committee arrived at a conclusion not to

accept any of the bids and to issue a fresh tender with a reserve price of Rs. 26,000/- per square meter. The matter was placed before the Board of IDA and on 27.07.2021, the Board accepted the recommendation of the Tender Committee. The bid of respondent No. 1 was rejected and it was resolved to issue a fresh NIT in the matter. Respondent No. 1 was informed on 23.08.2021 about the rejection of bid of respondent No.1 and on 01.10.2021, the earnest money was also refunded. On 18.10.2021, the IDA passed a resolution for issuance of a fresh NIT with a reserve price of Rs. 26,000/- per square meter and thereafter, a fresh NIT was issued on 17.11.2021. Respondent No. 1 after issuance of the fresh NIT preferred a writ petition on 24.11.2021 before the High Court of Madhya Pradesh, inter alia, challenging resolution dated 27.07.2021 rejecting the bid as well as being aggrieved by the issuance of fresh NIT dated 17.11.2021.

4. It is pertinent to note that respondent No.1 did not participate in the subsequent NIT issued on 17.11.2021. Respondent No. 1 before the High Court stated that by no stretch of imagination, his bid could have been cancelled as he was the highest bidder. It was further stated by respondent No.1 before the learned Single Judge that he is ready to negotiate in the matter and the bid has been cancelled without assigning any reason.

5. The IDA did file a detailed and exhaustive reply before the learned Single Judge and reliance was placed upon the terms and conditions of the NIT. Heavy reliance was placed upon Condition No. 6 which empowered the IDA to accept or reject any or all bids. Learned Single Judge after hearing the parties at length arrived at the conclusion that the petitioner Trust is not entitled to any relief as no contract was executed at any point of time nor any letter of allotment was issued in its favour. Learned Single Judge also held that the highest bidder does not acquire any vested right to have the auction concluded in his favour and the IDA was justified in issuing fresh NIT in the matter.

6. Respondent aggrieved by the orders passed by the learned Single Judge preferred a writ appeal and the Division Bench of the High Court of Madhya Pradesh at Indore Bench allowed the writ appeal directing the IDA to allot the plot to respondent in case he is ready to pay the price of the land in question at Rs. 26,000/- per square meter. Para 6, 7 and 8 of the order passed by the Division Bench of the High Court reads as under:

“6. The dates and events of the case are not in dispute. In the first NIT, the base price of the land was Rs.21,000/- per sq. meter as fixed by the Indore Development Authority. Out of three bidders, the petitioner offered the highest bid. Rs.25671.90/-. The property tax on land to the Municipal Corporation is payable by IDA. The resolution has been passed with the hope that the IDA might fetch higher prices than the price received in the first round of NIT. Unfortunately in the second round not, a single bidder had participated and the tender proceedings have resulted in an unsuccessful attempt. In all bona fide, the petitioner has submitted that the petitioner is still ready to match the base price fixed by the Indore Development Authority in the second tender by paying the amount of Rs.26,000/- per sq. meter.

7. Had the Indore Development Authority received an offer in the second NIT more than Rs.26,000/- per sq. meter certainly the petitioner would not have any case before this court. But in

the second round of NIT, the Indore Development Authority has failed to receive any bid hence the right of the petitioner is still survived to claim the allotment being a successful bidder. The petitioner had approached this court by way of the writ petition before issuance of the second NIT and immediately after dismissal of the writ petition the writ appeal has been filed therefore, the cause for the petitioner is still survived. The Indore Development Authority has wasted public money by cancelling the first NIT and going for the second NIT. Learned counsel or the Indore Development Authority submitted that has the petitioner /appellant participated in the subsequent tented process the allotment would have been done on quoting the price of Rs 26000/- it means the Indore Development Authority has no issue in giving the land to the petitioner /appellant but same will not be given through the court as it is beyond judicial review. For this approach of the Indore Development Authority, a cost is liable to be imposed.

8. Accordingly, the writ appeal is allowed, and the order passed by the writ court is set aside. If the petitioner is ready to pay the price of the in question land @Rs.26,000/- per sq. meter the land in question be allotted to the appellant.”

7. Hon'ble Division Bench while allowing the writ appeal has held that the respondent was the highest bidder as in the first round of the tendering process, the base price of the land was fixed at Rs. 21,120/- per square meter and the respondent No. 1 offered a bid of Rs. 25,671.90/- per square meter. In the second round while issuing fresh NIT, the IDA has fixed the base price at Rs. 26,000/- per square meter and no offer was received by the IDA in the second round of more than Rs. 26,000/- per square meter and, therefore, the Division Bench held that in case the respondent is willing to pay the amount at the rate of Rs. 26,000/- per square meter, the land in question should be allotted to the respondent No.1.

8. The IDA being aggrieved by the order passed by the Division Bench of the High Court of Madhya Pradesh at Indore, dated 08.02.2022, has preferred the present appeal and it has been vehemently argued by Mr. Balbir Singh, learned Senior Counsel for the appellant that the order passed by the Division Bench of the High Court deserves to be set aside as the High Court has in fact decided a suit for specific performance of contract while deciding the Writ Appeal. He has vehemently argued before this Court that in the light of Condition No. 6 of the NIT, dated 17.07.2020, the IDA was having a right to accept or reject any or all the bids. It was also brought to the notice of this Court that the bid of respondent No.1 was cancelled only after it came to the notice of the Tender Committee in its meeting dated 25.09.2020, that there is an outstanding property tax in respect of the land in question amounting to Rs. 1,25,82,262/- and considering the location of the plot and after payment of property tax to the Municipal Corporation and further keeping in view the fact that more revenue is likely to be generated in future by disposing of the property through the tendering process, the bid of the respondent No. 1 was rejected.

9. Learned Senior Counsel has placed heavy reliance upon the judgments delivered in the case of State of Jharkhand and others Vs. CWE-SOMA Consortium (2016) 4 Supreme Court Cases 172 and Haryana Urban Development Authority and others Vs. Orchid Infrastructure Developers Private Limited (2017) 4 Supreme Court Cases 243.

10. Learned counsel appearing on behalf of respondent No. 1- Trust has vehemently argued before this Court that respondent No. 1 was the highest bidder in respect of NIT dated 17.07.2020 and merely because the respondent No. 1 has not participated the second NIT issued on 17.11.2021, the question of setting aside the order passed by the Division Bench does not arise. It has been vehemently argued by the learned counsel for respondent No. 1- Trust that once the respondent No. 1 was declared as the highest bidder amongst the three bids received in respect of the land in question, his bid of Rs. 25,671.90/- per square meter should have been accepted and respondent No.1 should have been declared the successful bidder and, thence, no case for interference is made out in the present case. Reliance has been placed on *Eva Agro Feeds Private Limited Vs. Punjab National Bank and Anr.* 2023 INSC 809 decided on 06.09.2023 in Civil Appeal No. 7906 of 2021.

11. Heard learned Senior Counsel for the appellant as well as learned counsel for the respondents at length and perused the entire documents placed on record in the matter.

12. In the present case, the undisputed facts reveal that first NIT was issued on 17.07.2020 and respondent No. 1 was certainly the highest bidder by offering a bid of Rs. 25,671.90/- per square meter. The Tender Evaluation Committee after examining the bid arrived at a conclusion to cancel the tender as it came to its notice that an outstanding property tax demand amounting to Rs. 1,25,82,262/- was not taken into account while fixing the base price. It was resolved to issue a fresh NIT and, therefore, a fresh NIT was issued on 17.11.2021 and for the reasons best known to the respondent No. 1, it did not participate in the second NIT and instead preferred a writ petition on 24.11.2021 before the High Court of Madhya Pradesh. Learned Single Judge was justified in dismissing the writ petition on the ground that merely by offering highest bid, the respondent No.1 did not acquire any vested right for the execution of the contract in its favour. The Division Bench of the High Court, however, allowed the writ appeal and has gone to the extent in directing the IDA to accept the offer of respondent No. 1 which was made before the Court for an amount of Rs. 26,000/- per square meter in respect of the land in question, and further directing IDA to allot the land in question to respondent No.1. This Court in the case of *State of Jharkhand and others Vs. CWE-SOMA Consortium (supra)* while dealing with the similar issue of annulment of tender process, in paras 21, 22 and 23 has held as under:

“21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] , SCC in para 70 it was held as under: (SCC p. 675) “70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best

quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

22. The Government must have freedom of contract. In *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.* [*Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138], SCC in para 12 this Court held as under: (SCC p. 147) “12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-

administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by *mala fides*. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)” The Court does not have the expertise to correct the administrative decision as held in *Laxmikant v. Satyawar* [*Laxmikant v. Satyawar*, (1996) 4 SCC 208], the Government must have freedom of contract.

23. The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established *mala fide* exercise of power by the appellant. While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender.”

13. This Court in the aforesaid case has held that while exercising power of judicial review, the Court does not sit as an appellate Court over the decision of the government but merely reviews the manner in which the decision was made [*Tata Cellular v. Union of India*, (1994) 6 SCC 651]. In the considered opinion of this Court, the Division Bench should not have interfered in the matter and could not have gone to the extent of fixing the base price/modifying the offer made by respondent and, therefore, in light of the aforesaid judgment as the High Court has virtually passed an order sitting in appeal over the decision of the government in absence of any *mala fide* exercise of power by the IDA, the judgment passed by the Division Bench of the High Court deserves to be set aside and is, accordingly set aside. This Court in the case of *Haryana Urban Development Authority Vs. Orchid Infrastructure Developers Pvt. Ltd.* (*supra*) again dealing with the cancellation of a bid of the highest bidder, in paragraphs 12,13,14,15, 16 and 30 has held as under:

“12. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, the plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. The court while exercising judicial review could not have accepted the bid. The bid had never been accepted by the authorities concerned. It was not a case of cancellation of bid after being accepted. Thus, even assuming as per the plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the 1978 Regulations, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case, allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus, there was no concluded contract.

Regulation 6 of the 1978 Regulations is extracted hereunder:

“6. Sale of lease of land or building by auction.—(1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-regulation (2) of Regulation 5.

The successful bidder shall be issued allotment letter in Form CC or C-II by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner

indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the authority and the successful bidder shall have no claim to the land or building auctioned.

(3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5.

(4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot.”

14. We are fortified in our view by a decision of this Court in *U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma* [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737], wherein the questions arose for its consideration that : whether there is any vested right upon the plaintiff bidder until the bid is accepted by the competent authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question; and whether the plaintiff could have maintained the suit in the absence of a concluded contract? Considering the aforesaid questions, this Court has discussed the matter thus : (SCC pp. 195- 97, paras 30-31) “30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in *State of U.P. v. Vijay Bahadur Singh* [State of U.P. v. Vijay Bahadur Singh, (1982) 2 SCC 365]. The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in *Rajasthan Housing Board case* [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] which reads as under : (SCC p. 483, para 9) ‘9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.’ In *State of Orissa v. Harinarayan Jaiswal* [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36] case, relevant paragraph of which reads as under : (SCC pp. 44- 45, para 13) ‘13. ... There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see *Union of India v. Bhim Sen Walaiti Ram* [Union of India v. Bhim Sen Walaiti Ram, (1969) 3 SCC 146]).

[Ed.: The matter between two asterisks has been emphasised in *Avam Evam Vikas Parishad case*, (2013) 5 SCC

182.] By merely giving bids, the bidders had not acquired any vested rights [Ed.: The matter between two asterisks has been emphasised in *Avam Evam Vikas Parishad case*, (2013) 5 SCC 182.]’.

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first

defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.”

15. This Court in Om Prakash Sharma case [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737] has held that in the absence of a concluded contract which takes place by issuance of allotment letter, suit could not be said to be maintainable as there is no vested right in the plaintiff without approval of the bid by the competent authority. Thus, in the wake of the aforesaid decision, in the absence of a concluded contract, the suit could not have been decreed for mandatory injunction. It amounted to enforcing of contract in the absence thereof.

16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract i.e. in the absence of allotment letter and acceptance of highest bid, the suit filed by the plaintiff was wholly misconceived. Even if non- acceptance of the bid was by an incompetent authority, the court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority—Chief Administrator—for its acceptance, if at all it was required.

30. In Meerut Development Authority v. Assn. of Management Studies [Meerut Development Authority v. Assn. of Management Studies, (2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] , this Court has laid down that a bidder has no right in the matter of bid except of fair treatment in the matter and cannot insist for further negotiation. The authority has a right to reject the highest bid. This Court has laid down thus : (SCC p. 182, paras 27 & 29) “27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism.”

14. Keeping in view of the aforesaid judgments, this Court is of the considered opinion that in the absence of allotment letter and acceptance of highest bid, no relief could have been granted in favour of respondent No.1 as there was no concluded contract in the matter and the decision taken by the Tender Evaluation Committee to generate more revenues could not have been interfered with in the manner and method as has been done by the Division Bench of the High Court of Madhya Pradesh at Indore Bench. The bidder has no right in the matter of bid except of fair treatment and cannot insist for further negotiation as has been done in the present case. The terms and conditions of NIT, particularly condition No. 6, empowers the IDA to accept or reject any or all bids. In the present case, the bid was rejected for valid and cogent reasons and, therefore, the order passed by the Division Bench of the High Court of Madhya Pradesh is set aside.

15. Learned Counsels for respondent No. 1 placed heavy reliance on *Eva Agro* (supra) stating that the Appellant does not have absolute or unfettered discretion to cancel the auction. While we agree with the principle that the auctioning authority must adhere to the rule of law, the facts of the present case are entirely distinguishable from *Eva Agro* (supra). In that case, after the Appellant therein was declared the highest bidder, the auction was cancelled without providing any reason. This decision was found to be manifestly arbitrary by this Court and therefore, the appeal was allowed. However, in the present case, the decision to cancel the auction was not unfounded, it was undertaken to remedy the erroneous minimum rate provided in the NIT dated 07.07.2020, as noted in the report of the Div. Commissioner of the IDA. Therefore, the Appellants were well within their rights to cancel the auction. More importantly, in the present case, pursuant to the cancellation of the first NIT, a second NIT was issued wherein the respondent No. 1 did not participate. Despite this fact, the Division Bench of the High Court effectively usurped the powers of the auctioning authority and fixed the price at Rs. 26,000/- per square meter. Hence, being entirely distinguishable on facts, the reliance placed is of no assistance to respondent No. 1.

16. Resultantly, the IDA is directed to issue a fresh NIT for disposal of the land in question enabling the IDA to generate more revenues in respect of the land in question. The appellant shall certainly be free to participate in the fresh NIT as and when issued by the IDA. It is made clear that the IDA shall not dispose of the land in question except by way of public auction/by issuing NIT in future.

17. With the aforesaid, the appeal stands allowed.

.....J. [BELA M. TRIVEDI]J. [SATISH CHANDRA SHARMA] NEW DELHI November 25, 2024