

Star Enterprises And Ors. vs City And Industrial Development ... on 30 May, 1990

Equivalent citations: [1991]71COMPCAS1(SC), (1990)2COMPLJ138(SC), JT1990(2)SC401, 1990(2)KLT37(SC), (1990)98PLR264, (1990)3SCC280, [1990]2SCR826, 1990(1)UJ728(SC)

Author: Ranganath Misra

Bench: Ranganath Misra, Kuldeep Singh, R.M. Sahai

JUDGMENT

Ranganath Misra, J.

1. Special leave granted.

2. Three applications were filed under Article 226 of the Constitution before the High Court of Bombay by the respective appellants before us challenging the rejection of their highest offers in response to invitation by public tender without assigning any reason for the same as arbitrary, unconstitutional and contrary to Rule of Law.

3. The respondent a Government company within the meaning of Section 617 of the Companies Act has been constituted as the New Town Development Authority under Sub-section (3) of Section 113 of the Maharashtra Regional Town Planning Act, 1966. The respondent is empowered to dispose of land vested in it and the respondent has formulated with the approval of the State Government under Section 159 of the said Act a code for regulating, inter alia, disposal of land. Regulation 4 provides:

The Corporation may dispose of plots of lands by putting to auction or considering the individual applications as the Corporation determines from time to time.

4. According to the appellants the normal practice adopted by the Corporation is to invite tenders for the disposal of specified plots which the Corporation chooses to assign according to the terms and conditions for lease of plots of mercantile use. The appellants maintained that they had given the highest offers by way of tender for certain specified plots by complying with the requirements of deposit and claim that though the offers were the highest, yet the same have not been accepted. Each of the appellants was before the High Court challenging the action of respondent No. 1 but the writ petitions were dismissed in limine by saying that there was no arbitrariness in the respondent No. 1 trying to get proper price for its plots.

5. It is not disputed that the scheme which is operating provides that "respondent No. 1 reserves the right to amend, revoke or modify the scheme at its discretion as well as to reject any or all offers for allotment without assigning any reason." Obviously it is in exercise of this power that the highest tenders have not been accepted.

6. It is the contention of Mr. Dwivedi appearing in support of these appeals that the respondent is 'State' under Article 12 of the Constitution and conferment of naked and unguided power as referred to above is arbitrary and contrary to the provisions of Article 14 of the Constitution; and since there is no prescribed norm or guideline and the power is unregulated and unfettered and the highest offer after complying with the prescribed requirements is available to be rejected without assigning any reasons, citizens are likely to be affected by exercise of such uncanalised power. Shortly put, Mr. Dwivedi submits that the procedure is contrary to the requirement of Rule of Law and, therefore, cannot be sustained. An affidavit in opposition has been filed on behalf of respondent No. 1 wherein the circumstances under which the highest offers have not been accepted has been indicated and the position has been explained.

7. We do not find it difficult to agree with Mr. Dwivedi's submissions that respondent No. 1 is 'State' within the meaning of Article 12 and in its dealings with the citizen of India it would be required to act within the ambit of Rule of Law and would not be permitted to conduct its activities arbitrarily. It is too late in the day for an institution like respondent No. 1 to adopt the posture that the activity in question is commercial and as respondent No. 1 is engaged in trading activity it would be open to it to act as it considers appropriate for the purpose of protecting its business interest. An instrumentality of the State as has been laid down by this Court in a series of authoritative decisions beginning with *R.D. Shetty v. International Airport Authority of India and Ors.* (1979) 1 SCR 1042 and in *Ajay Hasia v. Khalid Mujib Sehravardi* and a number of decisions thereafter has to act within the ambit of Rule of Law and would missions that respondent no. 1 is 'State' within the meaning of Article 12 and in its dealings with the citizen of India it would be required to act within the ambit of Rule of Law and would not be permitted to conduct its activities arbitrarily. It is too late in the day for an institution like respondent no. 1 to adopt the posture that the activity in question is commercial and as respondent no. 1 is engaged in trading activity it would be open to it to act as it considers appropriate for the purpose of protecting its business interest, An instrumentality of the State as has been laid down by this Court in a series of authoritative decisions beginning with *R.D. Shetty vs. International Airport Authority of India & Ors.* (1979) 1 SCR 1042 and in *Ajay Hasia vs. Khalid Mujib Sehravardi* and a number of decisions thereafter has to act within the ambit of Rule of Law and would not be allowed to conduct itself arbitrarily and in its dealings with the public would be liable to judicial review.

8. The State is certainly entitled to look for the best deal in regard to its properties. This has been accepted by several decisions of this Court with reference to State action under the Excise Laws. There is no allegation of mala fides in the conduct of respondent no. 1 in refusing to accept the highest offer. We must, therefore, proceed on the footing that respondent no. 1 acted bona fide and in refusing to accept the highest offers of the appellants in regard to specific plots has been actuated by the consideration of looking for better offers for the specific plot in the economic interests of respondent no. 1.

9. The question which still remains to be answered is as to whether when the highest offer in response to an invitation is rejected would not the public authority be required to provide reasons for such action? Mr. Dwivedi has not asked us to look for a reasoned decision but has submitted that it is in the interest of the public authority itself, the State and every one in the society at large that reasons for State action are placed on record and are even communicated to the persons from whom the offers came so that the dealings remain above board; the interest of the public authority is adequately protected and a citizen knows where he stands with reference to his offer. What this Court said in *State of U.P. vs. Raj Narain & Ors.* (1975) 4 SCC 428 may be usefully recalled here:

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy, is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public.

10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.

11. We do not intend to go into matters any further in as much as we do not propose to apply this test to the present appeals. These appeals fail but we make no order as to costs.