

Rajasthan Housing Board And Another vs G.S. Investments And Another on 31 October, 2006

Equivalent citations: 2006 AIR SCW 5968, 2007 (1) SCC 477, (2006) 11 SCALE 166, (2007) 1 ANDHLD 45, (2006) 8 SUPREME 762, (2007) 1 ICC 629, (2007) 1 WLC(SC)CVL 571, (2007) 50 ALLINDCAS 473 (SC), MANU/SC/4683/2006, 2007 (66) ALR SOC 43 (SC)

Author: G.P. Mathur

Bench: G.P. Mathur, A.K. Mathur

CASE NO.:

Appeal (civil) 4608 of 2006

PETITIONER:

Rajasthan Housing Board and another

RESPONDENT:

G.S. Investments and another

DATE OF JUDGMENT: 31/10/2006

BENCH:

G.P. Mathur & A.K. Mathur

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 4608 OF 2006 (Arising out of SLP (C) No. 17916 of 2006) (CC 4919/05) G.P. Mathur, J.

Leave granted.

2. This appeal, by special leave, has been filed challenging the judgments and orders dated 4.8.2004 of a learned single Judge of Rajasthan High Court by which the writ petition filed by respondent No. 1 M/s. G.S. Investments was disposed of with certain directions and also the order dated 23.9.2004 passed by the Division Bench by which the special appeal preferred by the appellants against the said order was dismissed at the admission stage. The appellants have also challenged the order dated 4.4.2005 which was passed in the contempt petition initiated by the respondent No. 1.

3. The appellant No. 1 Rajasthan Housing Board published an auction notice on 3.2.2002 for auction of 50 commercial plots in the Mansarovar Scheme, which was followed by another auction notice dated 19.2.2002. The auction was conducted on 20.2.2002 in which M/s. G.S. Investments (respondent No. 1) made the highest bid @ Rs.5750/- per square meter. A news item was published in some newspaper that large scale bungling had been done in the auction due to which the price

fetches for the plots in question was much below the market rate. The State Government issued a direction on 22.2.2002 summoning the records and staying all further proceedings relating to auction of the plots. Thereafter, an order was passed by the State Government on 20.3.2002 directing that the officers of the Rajasthan Housing Board, who were responsible for conducting the auction, be placed under suspension and in future no auction shall be conducted through the agency of Satish Auction House which had conducted the auction on 20.2.2002 or through any other auction agency. After a detailed consideration of the matter, including the report of the Financial Commissioner which showed that in the past plots in the said area had fetched a price of Rs.10,000/- per square meter, the State Government passed an order on 3.4.2002 disapproving the auction held on 20.2.2002 and a further direction was issued for holding a fresh auction. On 23.4.2002 the appellant No. 1 sent a communication to respondent No. 1 that the auction held on 20.2.2002 had been cancelled and it may produce the original receipt regarding deposit of the amount so that the same may be refunded to it. Feeling aggrieved by the aforesaid communication, the respondent No. 1 M/s. G.S. Investments filed a writ petition in the High Court which was admitted by a learned single Judge on 29.5.2002 and an interim order was passed that in the meanwhile no order prejudicial to the writ petitioner shall be passed. The writ petition was contested by the appellant on various grounds by filing a counter affidavit. The learned single Judge by a short order dated 4.8.2004 disposed of the writ petition and the relevant portion of the order is being reproduced below:

"I have carefully examined the orders impugned. It appears that no opportunity of hearing was given to the petitioner by the respondents whereas the petitioner is willing to deposit the balance amount according to the terms and conditions. Consequently, the impugned orders dated 23.4.2002 and 2.5.2002 are hereby quashed and set aside. The petitioner is directed to file fresh representation before the respondents. The respondents are directed to consider the representation of the petitioner and shall issue the demand note of balance amount after filing of representation by the petitioner within a period of one month.

With the aforesaid observation, the writ petition stands disposed of."

The appellant preferred a special appeal against the order of the learned single Judge before the Division Bench of the High Court which dismissed the same at the admission stage on 23.4.2004 observing as under: -

"Considering the fact that the direction was given on the facts that there was open auction wherein the writ petitioner was highest bidder and he had deposited initial amount. There is no allegation of the appellant that auction in question was in collusion with the officers, who conducted auction proceedings and the writ petitioner. In absence of such allegation and material to support that there was collusion between the authorities who conducted the auction proceeding, we do not find any justification to interfere with the impugned order of the learned single Judge.

Consequently, this special appeal is dismissed at admission stage."

4. Learned counsel for the appellant Rajasthan Housing Board has submitted that the respondent M/s. G.S. Investments had merely made the highest bid in the auction held on 20.2.2002 and a highest bidder in an auction does not acquire any legal right to have the auction concluded in his favour. Serious allegations were made of unholy alliance between the officers of the Housing Board, the auctioning agency and the respondent No. 1 and taking notice of the same the State Government had stayed further proceedings in the matter and after consideration of the report of the Financial Commissioner which showed that in the past plots in the said area had fetched the price of Rs.10,000/- per square meter, which was almost double of the price which had been offered by the contesting respondent and also other material, the State Government had issued a direction for initiating disciplinary proceedings against the concerned officers and had also passed an order disapproving the auction held on 20.2.2002. The State Government had taken the said action in exercise of power conferred by Section 60 of the Rajasthan Housing Board Act, 1970. In view of the order passed by the State Government a communication was sent to the contesting respondent on 23.4.2002 that the auction held on 20.2.2002 had been cancelled and it was asked to produce the original receipt so that the amount deposited by it may be refunded. Learned counsel has further submitted that auction of plots by the Housing Board was purely a commercial transaction and the State Government having come to the conclusion that the auction had not been conducted in a fair manner and the price fetched in auction was very low, a decision had been taken to cancel the auction which was held earlier and to hold a fresh auction. The decision having been taken in the interest of public revenue, there was hardly any occasion to interfere with the said decision under Article 226 of the Constitution as the scope of interference in such a case is very limited, the court being concerned not with the decision itself but with the process of making the decision. Learned counsel for the contesting respondent has, on the other hand, submitted that the auction had been fairly conducted and the respondent having made the highest bid and having deposited 25% of the amount within 24 hours, it had acquired a right to have the auction concluded in its favour and the cancellation of the auction was wholly illegal. Learned counsel has further submitted that the Chairman of the Housing Board having made a proposal on 25.2.2002 for confirmation of the auction, the subsequent order passed by the Rajasthan Housing Board on 23.4.2002 cancelling the auction is wholly illegal.

5. We have given our careful consideration to the submissions made by the learned counsel for the parties. As mentioned earlier, after getting report of the bungling done in the auction, the State Government had passed an order on 22.2.2002 staying all further proceedings in connection with the auction. On 20.3.2002 disciplinary proceedings had been initiated against the concerned officers and they were placed under suspension and a further direction was issued that in future no auction shall be held through any agency including Satish Auction House, which had conducted the auction in question. A specific order was passed on 3.4.2002 disapproving the auction held on 20.2.2002 and it was mentioned in the order that the same was being done in exercise of powers conferred by Section 60 of the Rajasthan Housing Board Act. Section 60 of the said Act reads as under: -

"Government's power to give directions to the Board The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions."

The language of the provision is very clear and it empowers the State Government to give directions to the Housing Board as in its opinion are necessary or expedient for carrying out the purposes of the Act. The section further enjoins that it shall be the duty of the Board to comply with such directions. The section is couched in very wide language and the Housing Board has to comply with the directions issued by the State Government. Therefore, the State Government was fully empowered to issue the directions whereby it disapproved the auction held on 20.2.2002 and no exception can be taken to such a course of action. The directions have been issued in the interest of the Housing Board to generate revenue and to augment its finances, it cannot be faulted with on any ground.

6. The auction notice dated 3.2.2002 contained a condition to the effect that the Chairman of the Housing Board shall have the final authority regarding acceptance of the bid. The second auction notice issued on 19.2.2002 mentioned that the conditions of the auction will be same as mentioned in the earlier auction notice. In view of this condition in auction notice it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction concluded in his favour until the Chairman of the Housing Board had passed an order to that effect. Of course the Chairman of the Housing Board could not exercise his power in an arbitrary manner but so long as an order regarding final acceptance of the bid had not been passed by the Chairman, the highest bidder acquired no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. What are the rights of an auction bidder has been considered in several decisions of this Court. However, we will refer to only one such decision, viz., *Laxmikant vs. Satyawani* 1996 (4) SCC 208 which is almost identical on facts as it related to auction of a plot by Nagpur Improvement Trust. The auction notice in this case contained a condition that the acceptance of the highest bid shall depend upon the Board of Trustees and further the person making the highest bid shall have no right to take back his bid and the decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. After taking note of the aforesaid conditions it was held:-

"From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of *Trilochan Mishra, etc. v. State of Orissa* (1971) 3 SCC 153, *State of Orissa v. Harinarayan Jaiswal* (1972) 2 SCC 36, *Union of India v. Mis. Bhim Sen Walaiti Ram* (1969) 3 SCC 146 and *State of Uttar Pradesh and Ors. v.*

Vijay Bahadur Singh (1982) 2 SCC 365. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."

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.

7. The other question which requires consideration is what are the contours of power which the High Court would exercise in a writ petition filed under Article 226 of the Constitution where the challenge is to cancellation of an auction held by a public body where the prime consideration is fairness and generation of public revenue. This question has been examined by a catena of decisions of this Court. In a recent decision rendered in Master Marine Services (P) Ltd. Vs. Metcalfe and Hodgkinson (P) Ltd. (2005) 6 SCC 138, where after consideration of several earlier decisions, the Bench to which one of us was a party, summarized the legal principle as under in paragraphs 11 to 15 of the said reports: -

"11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in Tata Cellular v. Union of India AIR 1996 SC

11. It was observed 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. (See para 85 of the reports, SCC para 70)

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, fairplay 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 reports, SCC para 94.)

13. In *Sterling Computers Ltd. v. M/s M.N. Publications Ltd.* AIR 1996 SC 51 it was held as under:

(SCC p. 458, paras 18-19) "18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process.".... By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State.

Court have inherent limitations on the scope of any such enquiry. But at the same time ... the Courts can certainly examine whether "decision making process" was reasonable rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract."

14. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.* 1999 (1) SCC 492 it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* 2000 (2) SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide

reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere."

8. The sale of plots by the Rajasthan Housing Board by means of an auction is essentially a commercial transaction. Even if some defect was found in the ultimate decision resulting in cancellation of the auction, the court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority. In the present case there was enough material before the State Government to show that in the past plots in the area had fetched a price of Rs.10,000/- per square meter and the highest bid made by the respondent in the present case was nearly half, i.e., Rs.5750/- per square meter, which clearly indicated that the auction had not been conducted in a fair manner. If in such a case the State Government took a decision to disapprove the auction held and issued a direction for holding of a fresh auction, obviously the said decision was taken in larger public interest. In these circumstances there was absolutely no occasion for the High Court to entertain the writ petition and issue any direction in favour of the contesting respondent. The orders passed by the learned single Judge on 4.8.2004 and the order passed by the Division Bench of the High Court on 23.9.2004 are clearly erroneous in law and are liable to be set aside.

9. It appears that the respondent initiated contempt proceedings against the appellants in which a learned single Judge passed an order on 4.4.2005 observing that the order passed by the court on 4.8.2004 had not been complied with in letter and spirit and a further direction was issued to comply with the said order within two weeks. The material placed before us shows that the appellant No. 1 had issued a notice to the respondent on 15.3.2005 and after giving a personal hearing on the next day, had rejected its representation by the order dated 18.3.2005. In these circumstances there was no occasion for initiating any contempt proceedings against the appellants.

10. In the result the appeal is allowed with costs. The order dated 4.8.2004 passed by the learned single Judge and the order dated 23.9.2004 passed by the Division Bench of the High Court are set aside and the writ petition filed by the respondent is dismissed. The order dated 4.4.2005 passed by the learned single Judge in contempt proceedings is also set aside and the contempt petition filed by the respondent is dismissed. The money deposited by the respondent No. 1 shall be refunded to it forthwith.

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