

AFR

Court No. - 5

Case :- WRIT - C No. - 11469 of 2020

Petitioner :- Babloo

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rahul Jain

**Counsel for Respondent :- C.S.C.,Archit
Mandhyan,Kartikeya Saran**

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Rahul Jain, learned counsel for the petitioner, learned Standing Counsel for the State respondent and Sri Ujjwal Satsangi holding brief of Sri Kartikeya Saran, learned counsel for the respondent nos. 2 and 3.

2. This writ petition has been filed praying to quash the advertisement dated 20.03.2020, the order dated 16.03.2020 passed by the Mandi Secretary, Agra and the order dated 26.02.2020 passed by the allotment committee with the approval of the District Magistrate, Agra.

3. Briefly stated the facts of the case are that the bids were invited pursuant to a tender notice after publication in daily newspapers for open auction of 43 shops for allotment at Mandi Sthal Barauli Ameer, Agra. In respect of the seven shops reserved for scheduled castes, only five firms, including the petitioner, submitted their bids. The petitioner submitted a bid of Rs. 16,15,000/- in the name of his concern M/s K.G.N. Trading Company. The Allotment Committee, upon considering that the number of applicants was less and competitive bids were not submitted, which had resulted in the bids having been

submitted for lesser amount, took a decision not to accept the highest bids submitted in respect of the shops reserved for the scheduled caste category. A resolution in this regard was passed on 26.02.2020 which was approved by the District Magistrate, Agra on the same date. The consequential impugned order dated 16.3.2020 was issued by the Secretary of the Krishi Utpadan Mandi Samiti, Agra. Aggrieved by the aforesaid order and a fresh advertisement notice dated 18.01.2020, published on 20.03.2020 inviting bids, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner has drawn the attention of this Court towards Clause 9 of the relevant bye-laws i.e. *Mandi Sthal/Up-Mandi Sthal/Krishi Vipran Kendra (A.M.H.)/Gramin Avasthapan Kendra (Rin) me nirmmit dukano/godamo tatha aanya parisampattiyo ke Avanton Viniyamawali-2016*¹ to submit that even in the case of a single bid, the Allotment Committee was empowered to grant approval. It was sought to be contended that once the bid submitted by the petitioner was highest in the reserved category then the Allotment Committee was bound to accept the same as per the terms of the *Avanton Viniyamawali-2016*.

5. We have carefully considered the submissions of learned counsel for the parties and perused the record of the writ petition.

6. The bid submitted by the petitioner, in respect of the shop in question which was reserved for the scheduled caste category, was for Rs. 16,15,000/-. The proceedings of the Allotment Committee dated 26.02.2020, which are

1. Avanton Viniyamawali-2016

on record, indicate that the bids submitted under the other categories, i.e. unreserved and OBC category, were much higher. The Allotment Committee, as referred to under Clause 3 (7) of the *Avanton Viniyamawali-2016*, took into consideration that in respect of the shops reserved for the scheduled caste category only five firms submitted their applications and the number of applicants being less, the bids submitted were not competitive resulting in the bid amount being less. It is in view of the aforesaid situation that the Allotment Committee took a decision not to accept the highest bid in respect of the shops reserved for the category under which the petitioner had submitted his application.

7. The decision of the Allotment Committee is based upon a consideration of the facts in respect of the category under which the petitioner had applied, and it cannot be said that the decision arrived at by the Allotment Committee is without consideration of the relevant material or that there is no basis to support the decision of the order of the Allotment Committee.

8. No other ground has been urged by the counsel for the petitioner to point out any illegality in the decision arrived at by the Allotment Committee leading to non-acceptance of the highest bids submitted in the category under which the petitioner had applied.

9. The right of the highest bidder at public auctions has been subject matter of consideration in a number of cases and it has been consistently held that the authority concerned is not bound to accept the highest tender or bid, which is subject to the conditions in terms of which the public auction has been held.

10. The right of the highest bidder to have the auction concluded in his favour came up for consideration in **Rajasthan Housing Board and another Vs. G.S.Investments and another**², and it was held that the highest bidder did not acquire any vested right to have the auction concluded in his favour as the same was subject to the conditions in terms of which the auction proceedings had been held. The observations made in the judgment are being extracted below :-

“8. 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...”

11. In taking the aforesaid view, an earlier decision in **Laxmikant v. Satyawan**³ was taken note of, wherein it had been stated as follows :-

“4...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

2 (2007) 1 SCC 477

3 (1996) 4 SCC 208

cases of *Trilochan Mishra, etc. v. State of Orissa* AIR 1971 SC 733, *State of Orissa v. Harinarayan Jaiswal* (1972) 3 SCR 784, *Union of India v. Mis. Bhim Sen Walaiti Ram* (1970) 2 SCR 594 and *State of Uttar Pradesh and Ors. v. Vijay Bahadur Singh* AIR 1982 SC 1234. 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.”

12. A similar view was taken in the judgment in **Meerut Development Authority Vs. Association of Management Studies**⁴, and it was laid down as a legal principle that the bidder who has participated in the tender process has no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids. The relevant portion of the judgment is being extracted below :-

“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.

28. It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an

4 (2009) 6 SCC 171

opportunity to all the interested persons to participate in the process.

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 favoritism.”

13. Having regard to the aforementioned, we may reiterate the legal position that the highest bidder does not acquire any vested right to have the auction concluded in his favour and the authority concerned is not under all circumstances bound to accept the highest tender or bid, which is subject to the conditions in terms of which the auction has been held. It is open to the authority, if there exist good and sufficient reasons, not to accept the highest bid or to initiate proceedings inviting bid afresh.

14. For the reasons aforestated, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to interfere in the case at hand.

15. The writ petition is accordingly dismissed.

Order Date :- 14.10.2020

Pratima