

Sri Krishna Kumar Singhania

Vs

Lala Shyamlal Jain Ship Breaking Company Ltd. and others

Civil Appeal No. 2447 of 1992

(Dr. A. S. Anand, L. M. Sharma JJ)

14.05.1992

JUDGMENT

1. We have heard Mr. Sanghi learned counsel appearing in support of the special leave petition. Mr. Soli J. Sorabjee, learned Advocate on behalf of the respondent No. 1, Mr. Salve, the learned counsel for respondent No. 7 and Mr. Attorney General, appearing for West Bengal State Electricity Board. Special Leave is granted.

2. The case relates to sale of Turbine and boilers with their accessories and fittings installed at Gauripur Thermal Power Station within 24 Parganas (North). The tender notice was issued by the Board inviting offers from intending purchasers accordingly several tenders were filed. Subsequently there was a modification in the terms of the tender and the appellant was informed by a letter from the Board that a sum of over Rs. 3,04,00,000/- had been offered by the respondent No. 7 and if the appellant was interested in purchasing the aforesaid equipments at a higher consideration than Rs. 3,05,00,000/-, he should do so along with 10% of the amount as earnest money. The case of the appellant is that he did not intend to bid so high and he, therefore, gave up his attempt to compete with the respondent No. 7. The matter, however, did not rest there. The present respondent No. 1 filed a writ petition before the Calcutta High Court with certain prayers the details whereof are not necessary to set out. When the case was taken up the parties interested in the matter were invited to make fresh offers and ultimately on 12-3-1992 the respondent No. 1 came out to be the highest bidder offering a price of Rs. 2,11,11,111/- and an order in his favour was passed by the learned trial Judge. According to the ease of the appellant he got information of the case and the order on 16-3-1992 and made a prayer before the learned trial Judge for passing an order of stay giving the appellant an opportunity to make a further bid. The appellant was allowed to file a written application which was done containing a prayer for setting aside the order dated 12-3-1992. Attempts were made for getting the matter heard expeditiously, but the appellant could not succeed. After waiting for about a week the appellant attempted to get the order set aside in appeal. Ultimately this special leave petition was filed in this Court on 16-4-1992.

3. It has been contended by Mr. Sanghi that the appellant was and is ready to offer a sum of Rs. 2,55,00,000/- for the material offered for sale besides paying the sales tax thereon, but he could not make the offer before the High Court because he had no knowledge of the case and he was misled by the letter of the Board dated 26-11-1991 telling him that unless he was prepared to pay a sum higher than Rs. 3,05,00,000/- the articles would not be transferred to him. Now that it transpires that the sale was taking place for a lower amount, he has a right to purchase the articles for the higher offer.

4. In reply Mr. Sorabjee has argued that the appellant is not in fact interested in purchasing the

materials at the price indicated by him and he was merely attempting to make an excuse for not offering his higher bid at the earlier stage on the basis of the Board's letter. Mr. Sorabjee has after taking instructions from the respondent No. 1, stated that he is not ready to raise his offer of Rupees 2,11,11,111 /- and Mr. Salve has also stated that the respondent No. 7 is not in a position to make an offer of a sum higher than Rs. 2,50,00,000/-.

5. Mr. Attorney General has stated on behalf of the Electricity Board that the Board would be happy to receive the best price for the transaction but requires the site urgently which can be available to it for use only after the aforementioned plants and machinery, which are the subject matter of the sale, are removed by the purchaser in accordance with the terms of the tender notice.

6. Mr. Sorabjee has then contended that if the offer of the appellant is accepted, the respondent No. 1 must be compensated for its loss in consequence thereof. It is stated that the respondent No. 1 has already taken steps to remove some of the articles and has invested some money with a view to utilise the purchased equipment's. He has also lost the interest on the amount which he has deposited. Mr. Sanghi, on the other hand, has said that admittedly the respondent No. 1 has sold away some of the purchased properties and since he is making the present offer for the entire articles originally advertised for sale, he is entitled to receive all the articles intact and in the alternative he has to be compensated for the missing articles. Both the learned advocates appear to be right that if relief is granted to the appellant in the present case, equities between the parties must be further worked out and the sale in favour of the appellant will have to be subject to the settlement of the equities in accordance with law.

7. The learned counsel on behalf of the respondent No. 1 has further said that in that event the respondent No. 1 must be allowed to withdraw the amount of Rs. 2,11,11,111 /- already paid by him. Similarly Mr. Sanghi prays for a direction to the High Court to permit partial withdrawal of his deposit if he is held to be entitled to compensation on account of non-availability of any portion of the articles in question which have been removed by respondent No. 1.

8. We have considered the relevant circumstances and the arguments addressed on behalf of the parties appearing before us and we are of the view that the appellant should be allowed to purchase the articles for the higher sum of Rs. 2,55,00,000/- plus sales tax payable on the transaction on the following conditions:

a) The total amount of Rs. 2,55,00,000/- must be paid by the appellant to the Electricity Board latest by the 29th of May, 1992 in two instalments, the first instalment of Rs. 25,00,000 payable latest by the 19th of May, 1992 by a demand draft and the balance amount of Rs. 1,30,00,000/- to be similarly paid by a demand draft to the Electricity Board on or before 29th May, 1992.

b) On the deposit of the total amount of Rs. 2,55,00,000/- the sale in favour of the respondent No. 1 shall stand set aside and the articles in question shall stand sold to the appellant and necessary steps in this regard formalising the transaction would be taken immediately thereafter including the delivery and possession.

c) On the failure to deposit any of the aforesaid two amounts this appeal will automatically stand dismissed and the impugned order of the High Court confirmed.

d) We, however, make it clear that the time allowed for making deposits shall not be

extended on any ground either by the High Court or by this Court. If the appellant apprehends the risk of some unforeseen difficulty arising at the last moment, he may make the deposits in advance before the periods fixed.

e) The appellant will additionally pay the amount of sales tax in accordance with the direction of the High Court in this regard and the liability will be a charge on the property purchased.

f) The High Court shall consider all the relevant circumstances and pass an appropriate order by way of settlement of the equities between the parties with regard to their respective claims. It will be open to the High Court to hold an appropriate inquiry and for doing so it may admit evidence, appoint a receiver or take steps for getting an inventory made and take all other necessary steps which may appear proper. Since, the matter appears to be urgent we hope that the High Court shall take up the matter without any delay on being so approached by either of the parties. Appropriate orders with respect to the refund of the amounts or tax thereof shall also be passed by the High Court.

g) The status quo, which has been maintained in pursuance of an interim order passed by this Court during the pendency of the case, shall be further maintained till the 19th of May, 1992 and if the first instalment of Rs. 25,00,000/- is paid to the Board, it shall continue till the 29th of May, 1992.

h) If any further question arises for a full implementation of this order, the same shall be determined by the High Court at the instance of any of the concerned parties.

9. The impugned judgment is set aside and the appeal is allowed on the terms mentioned above. There will be no order as to costs. Order accordingly.

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