

SUPREME COURT OF INDIA

The Haryana State Agricultural Marketing Board & Ors.

Vs.

Sadhu Ram

C.A.No.2549 of 2008

(Tarun Chatterjee and Harjit Singh Bedi)

08.04.2008

JUDGMENT

Tarun Chatterjee, J.

SLP (C) 17473 of 2006

1. Leave granted.

2. These bunch of appeals have arisen from a common judgment and order dated 27th of April, 2006 of the High Court of Punjab & Haryana at Chandigarh whereby the High Court had allowed a bunch of writ petitions filed by the respondents challenging an order dated 17th of December, 2004 canceling the allotments of Plots in their favour in an open auction. Since common questions of law and fact arise in the disposal of these bunch of appeals and the High Court has disposed of the entire bunch of writ petitions following the judgment passed in *Mangat Ram & Ors. Vs. State of Haryana & Ors.*¹ decided on 27th of April, 2006], we take up the facts leading to the filing of these appeals from the judgment dated 27th of April, 2006 passed in CWP No. 213 of 2005 of the High Court of Punjab and Haryana at Chandigarh, which are as under: -

3. The appellants are statutory authorities under the Punjab Agricultural Produce Markets Act, 1961 (in short "the Act"). A public notice was issued by the office of Market Committee, Panchkula, Haryana, appellant no.2 inviting traders and general public to purchase commercial sites in an open auction to be held on 8th of July, 2004 in the New Grain and Vegetable Market, Panchkula. By this auction, Shop plots (62 Nos.) and Booth plots measuring 20' X 50' were to be auctioned. On 16th of May, 2003, the High Powered Committee constituted by an office order recommended that the reserve price for a plot measuring 20' X 50' be fixed at Rs. 33,91,391/- which was approved at the level of the Chief Administrator of the Board. However, the reserve price so fixed was neither mentioned in the public notice nor was the same announced before the start of the auction. The auction of the plots was held as per schedule. The respondents were declared to be the highest bidders for the plots who deposited 25% of the bid money as per the requirement of law. On 24th of

July, 2004, the auction committee report of the aforesaid auction held on 8th of July, 2004 was put up before the Market Committee, Panchkula, which by a resolution dated 24th of July, 2004 recommended the confirmation of the auction bids and resolved that the approval of the Chief Administrator, Haryana State Agricultural Marketing Board be taken under Section 18 of the Act. On 30th of November, 2004, a letter was sent on behalf of the Chief administrator to the Executive Officer-cum-Secretary, Market Committee, Panchkula by which some discrepancies were conveyed. On 6th of December, 2004, the Executive Officer addressed a letter to the Chief Administrator informing him that the discrepancies pointed out have been attended to and requested for approval. The Chief Administrator, on 15th of December, 2004 conveyed his approval in respect of the bids given for plot No. 1 measuring 20' X 50' and three booths bearing Nos. 149, 150, 152 measuring 12' X 27 ='. The auction of all the other plots was rejected and it was directed to refund the amounts to the respondents and to put the plots in open auction on 20th of December, 2004. On 17th of December, 2004, the respondents received a communication from the Market Committee that since the auction in their favour had not been approved by the Chief Administrator, 25% of the bid money deposited by them was being refunded. The second public auction, as scheduled, was held on 20th of December, 2004, and a price higher than that of the earlier price was fetched from the auction purchasers.

4. On 4th of January, 2005, the respondents filed a batch of writ petitions seeking quashing of the order dated 17th of December, 2004 canceling the allotments of plots in their favour. The batch of writ petitions filed by the respondents before the High Court was taken up for hearing and the main judgment that was passed was in the case of Mangat Ram & Ors. Vs. State of Haryana & Ors., CWP No. 213 of 2005 decided on 27th of April, 2006 and thereafter, following the same judgment, all the remaining writ petitions were disposed of by holding that the respondents were entitled to be allotted alternative plots. It is against these judgments of the High Court that separate appeals have now been filed by the respondents, in respect of which leave has already been granted. As noted herein earlier, the High Court, while deciding the bunch of writ petitions, had taken into consideration the facts from one of the writ petitions bearing CWP No. 213 of 2005 on the ground that the writ petitions involved common questions of law and fact. That being the stand taken by the High Court, we also, therefore, at this stage look at the findings of the High Court in CWP No. 213 of 2005, which are as under: -

“i) In view of non-disclosure of the reserve price to the auction purchasers, the auction proceedings in their favour could neither be cancelled nor the approval be denied on the ground that the bid price offered by them was lower than the reserve price;

ii) The non-disclosure of the reserve price amounted to an unfair practice;

iii) The auction in favour of the highest bidders was subject to final approval by the Chief Administrator but the approval could be declined only for reasons which were relevant and could justify the non-acceptance of highest bids of the auction purchasers but the same could not be arbitrary or absolute;

iv) The order dated 17th of December, 2004 would be quashed but it would be open to the Chief Administrator to exercise his powers in compliance with the terms and conditions of auction so as to consider the question of approval of the auction in accordance with law.

v) Mere encashing of cheques, refunding the amount, by the auction purchasers could not be taken to be a fact against them.”

5. The learned counsel for the appellants argued that the auction in favour of the respondents was subject to final approval of the Chief Administrator of the Board and since the Chief Administrator had rejected the said auction in their favour, the action of the appellants was wholly justified. He further argued that the bids offered by the respondents were lower than the reserve price, which resulted in the rejection of the bids by the Chief Administrator who under Section 18 of the Act had the prerogative to accept or to reject the bids without assigning any reason. The learned counsel for the appellants also submitted before us that in the subsequent auction conducted on 20th of December, 2004, a higher price was fetched in respect of the same plots. He accordingly argued that the High Court was not justified in invalidating the action of the appellants on the ground of non-disclosure of the reserve price and even if the non-disclosure of the reserve price at the time of auction was to be treated as an irregularity or illegality, the High Court could at the most quash the entire auction but could not confirm the auction in favour of the respondents and in fact, the respondents had already received back the cheques from the Market Committee and encashed them and therefore, had no subsisting right qua their claim.

6. These submissions of the learned counsel for the appellants were hotly contested by the learned senior counsel for the respondents. Mr. Patwalia, the learned senior counsel for the respondents argued that since the reserve price was not disclosed either in the Public notice or at the time of the auction to the persons participating in the same, the offers made by the respondents in the auction held on 8th of July, 2004 could not be rejected by the Chief Administrator of the Board as such rejection must be treated as unfair, unreasonable and illegal. The learned senior counsel for the respondents Mr. Patwalia further submitted that the respondents were not informed the reason for rejection of their bids even in the letter dated 17th of December, 2004 and that the bids offered by them were rejected by the appellants after 6 months without affording them any opportunity of being heard.

7. We have examined the aforesaid submissions of the learned counsel for the parties. We have also examined the judgment of the High Court allowing the writ petitions and holding that since the reserve price was not disclosed before the auction, which was mandatory, and the respondents proceeded to participate in the auction without knowing such reserve price, it could not be said that since the offer of the respondents was less than the reserve price, the same was liable to be rejected. Having heard the learned counsel for the parties and after carefully examining the impugned judgment of the High Court and also the order dated 17th of December, 2004 and other materials on record including the terms and conditions of the

auction held on 8th of July, 2004, we are of the view that this appeal must succeed for the reasons stated hereinafter.

8. Before we proceed to consider the submissions made on behalf of the parties, at the risk of repetition, we may keep it on record that it is not in dispute that the reserve price for holding the auction of the plots in question was neither shown in the Public Notice of the appellants nor was it known to the respondents. It is also an admitted position that the money that was deposited by the respondents was refunded by the appellants by account payee cheques, which were duly encashed by the respondents. As mentioned herein earlier, the High Court had practically allowed the writ petition on a finding that since the reserve price was not shown in the Public Notice, the authorities had no jurisdiction to cancel the auction in favour of the respondents on the ground that their offers were less than the reserve price and therefore, the auction held on 8th of July, 2004 could not be cancelled by the order of the Chief Administrator of the Board.

9. We are unable to agree with this view expressed by the High Court in the impugned judgment. It is true that the reserve price was neither known to the respondents nor was it advertised for the purpose of allotting the plots to the respondents but that could not, in our view, permit the High Court to direct allotment of alternative plots to the respondents. Even assuming that there was error on the part of the authorities in not mentioning the reserve price in the Public Notice, then also, it was not proper for the High Court to direct allotment of alternative plots to the respondents on the basis of the auction held on 8th of July, 2004.

10. It is also not in dispute that the final authority to approve the auction bids was the Chief Administrator of the Board. Before proceeding further, we may refer to Section 18 of the Act which runs as under: -"Under Section 18 of the Act all the sales of plots whether by open auction or draw of lots, are subject to approval by the CA of the Board. However, he may or may not accord such approval without assigning any reason. In case of offer is rejected, the amount deposited as 1/4th of the total price would be refunded without interest by the M.C."(Emphasis supplied)

11. A perusal of the provisions under Section 18 of the Act, as quoted hereinabove, would show that the auction would be final only after the same is approved by the Chief Administrator of the Board. In case the Chief Administrator of the Board rejects the auction, he may not be required to assign any reason for such rejection. If such rejection is made, Section 18 only provides that the amount deposited by the bidder must be refunded without interest by the Market Committee of the Board. Keeping this provision in mind, it is clear that since the Chief Administrator of the Board was the final authority to approve the auction bids, which in his own discretion, were not approved, it could not be said that since the reserve price was not mentioned in the Public Notice and was not known to the respondents, the High Court could have directed allotment of alternative plots in the exercise of its power under Article 226 of the Constitution. The scope of judicial review/interference under Article 226 in contractual matters including Government contracts and auction of plots by State Government has been extensively dealt with by this Court in a catena of decisions. In *Tata Cellular Vs. UOI* the principle that ought to be applied in judicial review of decisions

especially those relating to acceptance of tender and award of contract was considered in detail and it was held that the principle of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. But it must also be kept in mind that there are inherent limitations in exercise of the power of judicial review. In that decision, it was held that the right to refuse the lowest or any tender is also available to the Government but the principles laid down in Article 14 of the Constitution must be kept in mind while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best quotation and also to cancel the best quotation if it was of the view that the best quotation also was not to the satisfaction of the Government to get a better market price of the plots in question. Therefore, it was held in that decision that the State Government and its instrumentalities cannot be said to have exercised an arbitrary power when they found that the best offer made by the respondents could not be accepted because the market value of the plots in question would fetch better than the amount offered by the respondents. It was further held in that decision that since the power of judicial review is not an appeal from the decision, the court cannot substitute its own decision. In the present case, it is not in dispute that the plots auctioned by the appellants belonged to the instrumentalities of the State Government, which must be expected to protect the financial interests of the State. In the decision reported in *Rajasthan Housing Board and Another Vs. J.S. Investments and Another*³, this Court, after thoroughly considering the earlier decisions of this Court including the decision in *Tata Cellular Vs. Union of India* [supra], considered the contours of power which the High Court would exercise in a writ petition filed under Article 226 of the Constitution when the challenge was to cancellation of auction held by a public body where the prime consideration was fairness and generation of public revenue and held that 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 with great care and caution and should exercise it only in furtherance of public interest. It was also held in that decision that when the Chairman of the Housing Board had the final authority regarding acceptance of the bid, 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 had passed an order to that effect.

12. Keeping the principles laid down in the aforesaid decisions of this Court in mind, let us, therefore, consider whether non-disclosure of the reserve price in the Public Notice is a ground on which the High Court could direct the authorities to allot alternative plots in favour of the respondents in exercise of its powers under Article 226 of the Constitution. At the risk of repetition, we may note that one of the conditions in the Public Notice was that the final authority to approve or disapprove the best offer in the auction was that of the Chief Administrator of the Board. It is true that the Chief Administrator of the Board rejected the offers without assigning any reason but Section 18 of the Act clearly provides that such rejection could be made without assigning any reason. Let us now consider whether the action on the part of the Chief Administrator of the Board canceling the auction was unfair, arbitrary and invalid. In our view, considering the facts and circumstances of the case, the action of the Chief Administrator of the Board was fair and the cancellation was not arbitrary. The second auction was held in respect of the plots in question on 20th of December, 2004 and from the said auction, although the reserve price was not mentioned,

much higher offers were received by the appellants. Apart from that, we should not keep this fact out of mind that the amounts deposited by the respondents with the appellants were refunded to the respondents by account payee cheques, which were duly encashed by them. Such being the position, we neither find any malafide, unfairness or arbitrariness on the part of the Chief Administrator of the Board in rejecting the offers of the respondents nor do we find it a colorable exercise of power. That apart, in view of the decision of this court in Rajasthan Housing Board and another Vs. G.S. Investments and another [supra], since the final authority to approve the bids was with the Chief Administrator, 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 Chief Administrator had passed an order to that effect and the auction proceedings could always be cancelled. It is on record that the offers made by the respondents in the auction dated 8th of July, 2004 could not fetch the amount expected from the said plots and that is the reason a fresh Public Notice was issued by the appellants for a subsequent auction. The said auction was held and as noted herein earlier, from the said auction, the price fetched was much higher than the offers made by the respondents. That being the position and considering the fact that a subsequent auction was held and concluded, it was not open to the High Court to direct the allotment of alternative plots at the rate offered by the respondents treating the auction held on 8th of July, 2004 to be valid.

13. Mr. Patwalia, the learned senior counsel appearing for the respondents submitted that his clients were ready to pay the enhanced amounts which were offered by the bidders in the second auction and therefore, in view of this, the decision of the High Court should be upheld with such modification. We are unable to accept this submission of Mr. Patwalia because at the present moment, third party interests have also been created in the matter and the bidders in the second auction were not made parties to the writ petitions.

14. Let us now take up the other aspect of the matter. As noted herein earlier, the reserve price was not shown in the Public Notice and therefore, the respondents had no knowledge of the reserve price. Even assuming that the reserve price had to be given in the Public Notice, then also, we are of the view that the best course for the High Court would be to cancel the entire auction in view of the decision of this court in Tata Cellular Vs. Union of India [supra] rather than substituting its own opinion by directing allotment of alternative plots. It is, therefore, difficult to accept the views expressed by the High Court that since reserve price was not known to the respondents and they were found to be the highest bidders in the said auction, they have acquired a right to get the allotment of alternative plots and the appellants had no authority to reject the highest offers given by the respondents or to cancel the auction itself. Since the entire auction was cancelled, we do not find any justification how the High Court could pass an order directing allotment of the alternative plots on the same terms and conditions when, after cancellation, the second auction was held in which the price fetched was much higher than the offers made by the respondents. That apart, we do not find anything unfair in not disclosing the reserve price. It is common knowledge that when reserve price is disclosed, the bidders often form cartels and bid at or around the disclosed price, though the market price is much higher. We, therefore, do not agree with the High

Court that the appellants had acted in an unfair manner in not disclosing the reserve price at the time of inviting tenders or even at the time of holding the auction.

15. In view of the admitted fact that the money deposited by the respondents with the appellants was refunded to the respondents by account payee cheques which were duly encashed by them and in view of the admitted fact that subsequently, a second auction was held on 20th of December, 2004 in respect of the same plots which were put up for auction on 8th of July, 2004 and in the second auction, some other parties have now acquired interest in the said plots, it was not open to the High Court to direct the appellants, in the exercise of its writ jurisdiction, to allot alternative plots to the respondents only on the ground that the auction dated 8th of July, 2004 could not be cancelled by the Chief Administrator of the Board without assigning any reason and also on the ground that the reserve price was not disclosed in the Public Notice issued by the appellants.

16. In this view of the matter, we are, therefore, unable to sustain the decision of the High Court and accordingly, the judgment of the High Court is liable to be set aside.

7. For the foregoing reasons, the impugned judgment of the High Court is set aside and the appeals are allowed and the writ petitions stand rejected. There will be no order as to costs.

Judgment Referred.

¹*CWP No. 213 of 2005*

²*(1994) 6 SCC 0651*

³*(2007)1 SCC 0477*