

SUPREME COURT OF INDIA

State of Punjab

Vs.

Bandeep Singh & Ors.

C.A.No.629 of 2006

(Vikramajit Sen and Shiva Kirti Singh,JJ.,)

25.08.2015

JUDGMENT

Vikramajit Sen, J.,

1 These Appeals assail the Judgment dated 20.9.2005 of the Division Bench of the Punjab and Haryana High Court in CWP No. 9621 of 2004. The factual matrix is that pursuant to an Auction Notice dated 1.5.2004 issued by the Managing Director, Punjab State Leather Development Corporation Ltd., several properties, of which we are only concerned with two, were to be put to a public auction. The salient terms as contained in the auction Notice required the interested persons to deposit an amount of [pic]2,00,000/- as Earnest Money; the successful bidder would have to deposit twenty five per cent of the auction amount at the conclusion of the bidding, and the remaining amount within thirty days of the approval of the bid by the Government. It is not disputed that the two Respondents/Writ Petitioners had deposited the Earnest Money together with twenty five per cent of the auction bids which, admittedly, were only marginally above the reserve price fixed by the Competent Authority. In respect of the Hide Flaying and Carcass Utilization Centre, Jhabal Road, Village Fathepur, Amritsar the reserve price was [pic]45.50 lakhs and the highest (subject) bid was [pic]46 lakhs; and for Tanning Centre Jhabal Road, Village Fathepur, Amritsar the reserve price was [pic]37.25 lakhs and the highest (subject) bid was [pic]38.10 lakhs.

2. However, the notings disclose that a certain person, referred to as Mr. Walia had orally complained that the successful bidders had promised to associate him in their venture as their partner, but had thereafter resiled from this commitment. Shri Walia was obviously a disgruntled party, and any official with a modicum of experience would not require superlative sagacity to discount or ignore his complaint. This is especially so since, admittedly, Shri Walia had been called upon to file his complaint in writing, but which he declined to do.

3. Without conveying to the Respondents the reasons for not accepting their bids, being the highest offer received in the course of the auction process, a decision was taken by the Appellant to re-auction the said two properties. This was despite the fact that the Chairman-

cum-Managing Director of the Punjab State Leather Development Corporation Ltd. had recorded, on 15.6.2004, that the bids of the Respondents were not only the highest, but were also higher than the reserve price. The notings of the Chairman-cum-Managing Director in fact do not recommend that the offers should be rejected; instead it solicits acceptance/approval of the Government through its Director, Industries and Commerce. However, when the case was submitted to the Director, Industries and Commerce, he opined that a re-auction should be conducted as the two subject bids were only marginally higher than the reserve price. Indubitably, the Impugned Order mentions instances where bids were not accepted because they were only marginally higher than the reserve price; but failing to give due weightage and consideration to those instances where similar bids had in fact been accepted.

4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi*¹, of which the following paragraph deserves extraction:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* [1952] 1 SCR 135: Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older”.

We must reproduce the noting dated 18.6.2004 of the Director, Industries and Commerce since there is an endeavour by the Appellant to add grounds and reasons thereto. It reads as follows:

“Above office note may kindly be perused. In my opinion the highest bids offered are marginally higher than the reserved price and it would be appropriate not to confirm those bids and go for re-auction.” This noting will palpably clarify that the element of cartelization or grouping was not one of the reasons for taking the decision to re-auction the two properties, which contention has been strenuously canvassed before us. “

5. As we have already mentioned, the auction notice itself stated that it is the Government and not any other person, including the Managing Director of the Punjab State Leather Development Corporation Ltd., which was to approve the bid. Any challenge to the position that it is the Government on whom is reposed the final decision, is devoid of substance. It is pertinent to note the judgement of this Court in *Anil Kumar Srivastava Vs. State of U.P.*², wherein it was held that the reserve price merely limits the power of the Auctioneer by preventing a bid below this price from being accepted. This Court approved the view taken in *B. Susila Vs. Saraswathi Ammal*³ which held that “notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside.” The same principle was upheld more recently in *Ram Kishun Vs. State of U.P.*⁴. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. This has already been discussed threadbare in several decisions of this Court, including in *Sterling Computers Ltd. v. M & N Publications Ltd.*⁵, *Tata Cellular v. Union of India*⁶, *Air India Ltd. v. Cochin International Airport Ltd.*⁷, *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*⁸, *Jagdish Mandal v. State of Orissa*⁹

6 In the impugned Judgment, the High Court has rightly concluded that no sustainable justification and rationalization was recorded in writing at the relevant time for ordering the re-auction of only the two subject properties. However, we should not be understood to have opined that the Government is bound in every case to accept the highest bid above the reserve price. Needless to say, the presence of cartelization or “pooling” could be a reason for the cancellation of an auction process. In addition, a challenge on the ground that the property has fetched too low a bid when compared to the prevailing market price, would also be valid and permissible provided this approach has been uniformly adhered to. In the case at hand, however, while the latter was ostensibly the reason behind the decision for conducting a fresh auction, no evidence has been placed on the record to support this contention. The highest bids, marginally above the reserve price, have been accepted in the self-same auction. The factual scenario before us is clearly within the mischief which was frowned upon in *Mohinder Singh Gill*. We therefore uphold the impugned Judgment for all the reasons contained therein. The assailed action of the Appellant is not substantiated in the noting, which ought at least to have been conveyed to the Respondents.

7 The bid of the Respondents is already over a decade old, which is the period the present Appeal has been awaiting its turn in this Court. We must, therefore, balance the equities and interest of the adversaries before us. It has been submitted by the learned Senior Counsel for the Respondents that although the Appellant had addressed a letter to the Respondents purporting to return the sums received from them, the cheque for this amount was not enclosed with the letter. The fact remains that these sums continue to be in the coffers of the Appellant. It is also submitted by the learned Senior Counsel that the balance sale consideration had been tendered by the Respondents to the Appellant, who declined to accept it on the premise that their Appeal was pending in this Court. Learned Senior Counsel suggested that in the endeavour to do justice to all the parties before this Court, we may

direct the Respondents to pay the price of the land at the prevailing Circle Rates, which suggestion has readily been accepted by the learned Counsel for the Appellant with alacrity. Since the Respondents have succeeded in the High Court as well as before us, they should not be deprived of the fruits of the litigation and suffer the disadvantage of losing the land for which they have successfully paid the earnest money and deposited more than twenty five per cent of the sale consideration and have tendered the entire remainder. Learned counsel appearing for the Appellant conceded that, in the facts of the present case, if the Respondents are directed to pay the circle rates, as existing today, the ends of justice would be met. Accordingly, in the circumstances of the present case, we hold that if the Respondents tender the price of the land equivalent to the prevailing Circle Rate minus the sums already paid by them to the Appellant within ninety days from today, the Appellant shall take all necessary steps to convey the land to the Respondents within sixty days thereafter.

8 The Appeals are disposed of in these terms, with no order as to costs. Stay granted by this Court on 16.1.2006 is vacated.

Judgment Referred.

¹(1978) 2 SCR 0272

²(2004) 8 SSC 0671

³AIR 1970 Mad 0257

⁴(2012) 11 SCC 0511

⁵(1993) 1 SCC 0445

⁶(1994) 6 SCC 0651

⁷(2000) 2 SCC 0617

⁸(2006) 11 SCC 0548

⁹(2007) 14 SCC 0517