IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1598 OF 2018

Sankalp Recreation Pvt. Ltd. .. Appellant.
v/s.
Union of India & Ors. .. Respondents.

Mr. Rohan Cama with Mr. Vishal Maheshwari with Mr. Harish Adwant I/by V.M.Legal, Advocates for Petitioner.
Mr. Akhileshwar Sharma, Advocate for Respondent Nos.1 to 3.
Mr. Sharan Jagtiani with Mr. Kunal Kanani I/by IC Legal, Advocates for Respondent No.4.

CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.
DATE : 27th July, 2018.

P.C:-

This Petition under Article 226 of the Constitution of India challenges:

(a) the cancellation letter dated 4.5.2018 of the auction sale on 22nd September, 2017 of the property at Linking Road, Santacruz (W), Mumbai ('Said Property') by the Respondent No.2 (Principal Commissioner of Income Tax). This challenge is on the ground that the same is arbitrary and in breach of Article 14 of the Constitution of India; and

(b) the fresh auction of the said property as proposed in newspaper advertisement dated 12.5.2018 issued by Respondent No.2.

2 This petition was first moved on 23.5.2018 before this Court. At that time, Petition was adjourned to 11.6.2018 but the Respondent Nos.2 and 3 (Chief Commissioner of Income Tax) were not restrained from proceeding with the fresh auction of the said property but prohibited from confirming the same. At the same time, the Petitioner was permitted to participate in the auction and make his bid without prejudice to the rights of the parties in this petition. The fresh auction was held on 30.5.2018 and Respondent No.4 (Krishna Minerals) was the sole bidder. The Petitioner did not participate in the auction held on 30.5.2018, despite the specific liberty by this Court in its order dated 23.5.2018.

3 The basic challenge of the Petitioner is that the cancellation of bid (Sole bidder) made by it at the auction held on 22.9.2017 is arbitrary. Thus, warranting interference of this Court in its extraordinary writ jurisdiction.

3 Brief facts leading to this Petition as is evident from cumulative reading of the Petition and the Additional affidavit filed on behalf Respondent Nos.2 and 3 are as under:

(a) On 27.3.2017 the Respondent held auction in respect of the said property fixing reserve price of Rs.32.11 Crores. None participated in that auction. However, after the auction, the Petitioner addressed communication on 5.4.2017 to the Central Board of Direct Taxes ('CBDT') making an offer to purchase the said property at Rs.32.11 Crores. However, the CBDT informed the Petitioner that it cannot sell the said property by private treaty in respect of property which remained unsold at the auction except in cases of Public Sector Undertakings or Central or State Government as laid down by the CBDT Circular No.1908 dated 19.7.1994.

(b) Therefore, in view of the above, Respondent Nos.2 and 3 issued an fresh auction notice in September, 2017 inviting bids for the purchase of the said property on terms and conditions annexed thereto with the reserve price being fixed at Rs.30 Crores. On 21st September, 2017, the Petitioner submitted its bid at Rs.30.20 Crores along with earnest money deposit of Rs.7.5 Crores and caution money of Rs.5 Lakhs by way of Demand Draft along with the other documents. On 22.9.2017 the bids were to be opened and on that day it was found that the Petitioner was the only bidder offering price of Rs.30.21 Crores i.e. above the reserve price of Rs.30 Crores.

(c) Notwithstanding the above, the Respondent Nos.2 and 3 did not accept the bid. This was for the reason that the Petitioner had itself offered Rs.32.11 Crores in respect of the said property prior to holding of the auction. In the above context as it's practice, the Respondent Nos.2

and 3 prepared a report dated 26.9.2017 on above auction and the earlier offer by the Petitioner while seeking clarification/direction from CBDT for further action.

(d) In response, the CBDT by its letters dated 20.11.2017 directed Respondent to keep the proceedings of auction in respect of the said property in abeyance till fresh valuation of it is done and the report is examined by the CBDT . On the same date, the CBDT directed Chief Engineer Valuation, New Delhi to have the said property freshly valued once again through the independent valuer stationed outside of Mumbai.

(e) Consequent to the above District Valuation Officer ('DVO'), Chennai prepared valuation report dated 23.2.2018 determining fair market value of the said property at Rs.31.07 Crores. This after taking into account the application of the Development Control Rules for Greater Mumbai to the said property.

(f) In view of the above, the CBDT by letter dated 6.4.2018 directed Respondent Nos.2 and 3 to hold fresh auction after re-determining a reserve price taking into account fresh valuation report dated 23.2.2018 prepared by the DVO, Chennai. Thus before the fresh auctioning process could be commenced the Respondent Nos.1 and 2 had to return the Demand Draft of earnest money of Rs.7.5 Crores and caution money of Rs.5 Lakhs in its possession. The Petitioner by letter dated

12.4.2018 sought return of the above two demand drafts pending confirmation of its bid. Thus on 12.4.2018 itself the Respondent Nos.2 and 3 returned the Demand Drafts of Rs.7.5 Crores and 5 Lakhs to the Petitioner.

(g) Thereafter, the Respondent No.2 on 4.5.2018 issued impugned letter cancelling auction sale dated 22.9.2017 to the Petitioner.

(h) On 12.5.2018 the Respondent Nos.2 and 3 issued a fresh notice for public auction of the said property which was published by the Respondent Nos.2 and 3 in the newspapers inviting offers for the said property with reserve price fixed at Rs.31.10 Crores. The date of the auction of the said property was scheduled to take place on 30.5.2018 as published in the above advertisement.

5 As pointed out above the Petitioner moved the Court on 23.5.2018. However, no ad-interim relief was granted and the Petitioner was given liberty to make a bid at the auction to be held on 30.5.2018. This was what prejudice to the rights of contention of the Parties.

6 When this Petition came up before us on 22nd June, 2018, we were informed that the bid of M/s. Krishna Minerals was the only bid in the auction held on 30.5.2018. We were also informed it is awaiting acceptance, as the order of this Court had prohibited the bid being accepted. We, therefore, directed the Petitioner to make the highest

bidder of the auction held on 30.5.2018 i.e., Krishna Minerals as party Respondent No.4 to this Petition.

10 The grievance of the Petitioner in the present facts is that the impugned letter is arbitrary as there is no reason warranting the issue of letter dated 4.5.2018 cancelling the auction held on 22.9.2017 at which the Petitioner was the highest bidder. It is also submitted that the reasons as set out in the additional affidavit-in-reply dated 3.7.2018 filed on behalf of the Respondent Nos.2 and 3 are are not sufficient to justify cancellation of licence. In support of his contention, Mr. Cama the learned counsel appearing in support of the Petition invited our attention to **M/s. Star Enterprise & Ors. v. CIDCO (1990) 3 SCC 280**, **Kranti Associates Pvt. Ltd. & Anr. v. Masood Ahmed Khan and Ors. (2010) 9 SCC 496** , **Maya Devi v. Raj Kumari Batra (2010) 9 SCC 486** and **Aman Hospitality Pvt. Ltd. v. Delhi Development Authority ILR (2006) II Delhi 1360**.

11 We have set out the events leading to this Petition on consideration of both the Petition and the additional affidavit in reply for and on behalf of Respondent Nos.2 and 3. We note that the invitation to make bids issued by the Respondent No.2 issued in September, 2017 in its invitation to offer itself provides in Clause 16 thereof that the Respondent No.2 reserves its right to reject any tender form, any bid including highest

bid, without assigning any reason. It was submitted on behalf of the Petitioner that notwithstanding the above clause in the invitation to make bids for the said property, action of the State cannot be arbitrary and it would be subject to judicial review even in case of auction by the State. We do not dispute the aforesaid proposition. The scope of judicial review in matters relating to award of contracts by the State, the test is whether the tenderer has been treated unfairly and/or discriminated against.

It is settled law that while exercising our powers of judicial review, we are not sitting in appeal over decision taken by the authorities. If the decision taken by the authority is reasonable and a possible view considering the facts available before the authorities, then it is not case where we would exercise our extraordinary jurisdiction. The Apex Court in **Michigan Rubber (P) Ltd. v. State of Karnataka 2012 (8) SCC 216** has while reviewing the law on judicial review in matters of tender by the State reiterated the following test laid down by it in **Jagdish Mandal v. State of Orissa 2007(14) SCC 517** as under:

> *"22 Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of*

equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self , and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary or irrational that the Court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached' ;

(ii) Whether public interest is affected.

If the answers to the above questions are in the negative, then there should be no interference under Article 226".

12 In the present facts, we find that additional affidavit filed on behalf of the Petitioner brings on record the fact that the said property was capable of getting higher price than the offer of the Petitioner in the auction held on 22.9.2017. The earlier offer given by the Petitioner to the CBDT was higher then in the bid nade at the auction on 22.9.2017. It was in the above circumstances that the Respondent Nos.2 and 3 referred the

issue to CBDT which taking into account aforesaid facts, directed fresh valuation of the said property being done by the DVO outside the city of Mumbai. This valuation report of DVO at Chennai communicated that fair market value of the property was Rs.31.07 Crores after giving appropriate discount for proposed invocation of DCR of Greater Mumbai, 1991 in respect of the said property. It was in the aforesaid context that the decision was taken to cancel the auction held on 22.9.2017 by the impugned letter dated 4.5.2018. Therefore, in the present facts, it cannot be said that action of the Respondent No.2 in issuing the impugned letter dated 4.5.2018 is arbitrary or in violation of Article 14 of the Constitution of India. The answer to the question to be posed as laid down by the Supreme Court in **Michigan Rubber (I) Ltd (Supra)** has to be, in these facts in the negative. Thus case-laws cited on behalf of the Petitioner would not be applicable in the present facts as from perusal of the additional affidavit filed on behalf of Respondent Nos.2 and 3 we have come to view that there are sufficient reasons on record for the Respondent Nos.2 and 3 to cancel the earlier auction held on 22.9.2017 and publish notice dated 12.5.2018 in newspapers for a fresh auction of the said property. Thus, we are not dealing individually with the case-laws relied upon by the Petitioner.

13 Mr. Cama the learned counsel for the Petitioner thereafter

mentioned that bid which has been received in fresh auction which was conducted on 30.5.2018 was higher only by Rs.90 Lakhs than that made by the Petitioner. On instructions he submits that the Petitioner is ready to match that bid. However, this option he ought to have exercised by participating in auction held on 30.5.2018 bearing in mind that on 23.5.2018 the Court had specifically permitted the Petitioner to bid at the auction which was held on 30.5.2018. In these circumstances, we see no reason to interfere with the impugned letter dated 4.8.2018 cancelling auction held on 22nd September, 2017 or in holding of the fresh auction consequent to notice dated 12.5.2018.

14 Accordingly, Petition dismissed. No order as to costs.

15 At this stage, Mr. Cama the learned counsel appearing in support of the Petition sought continuation of ad-interim relief which was granted by this Court on 23.5.2018 for a further period of four weeks. In the present facts, we see no reason to continue the stay which was granted on 23.5.2018.

(SANDEEP K. SHINDE,J.) **(M.S.SANKLECHA,J.)**