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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HRISHIKESH ROY; J., PANKAJ MITHAL; J.
AUGUST 01, 2023.

CIVIL APPEAL NOS. 4856 – 4865 OF 2023 (ARISING OUT OF SLP (CIVIL) NOS. 22454-22463 OF 2019)

HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
versus
ASHISH JAIN & ORS. ETC.

Allotment of Plots - E-auction - When the HSIIDC as the authority deciding to allot industrial plots had laid down a particular procedure which will ensure fairness and transparency amongst the participants, they cannot depart from the notified process particularly when there was no technical report available with the authority to confirm technical fault in the e-auction process. When such a departure from the laid down norm is made, it has to be declared to be arbitrary and unfair. Since the decision is not founded on any acceptable reasoning, it would suffer from the vice of irrationality and unreasonableness. (Para 24)

E-auction - When e-auction is opted for allotment of the industrial plots, the authority could not have departed from the notified procedure. The shift to manual auction would make the earlier process of e-auction an exercise in futility. It would also undermine the finality of the auction process where the bidding must conclude by the stipulated time and the winner is determined by the highest last bid. (Para 29)

Public Interest - Public interest need not remain exclusively limited to ensuring maximum revenue accrual for the Government. Instead, public interest includes, without limiting itself to, a fair, transparent & stable process which any and all executive action must adhere to. (Para 30)

Judicial Review - When it is seen that the decision of the authority is arbitrary, irrational, and disproportionate, having regard to complaints received only with regard to few plots and yet all 130 plots being put to manual auction after abandoning the e-auction process, the intervention by the High Court with the decision of the authority cannot be faulted. (Para 31)

WITH CIVIL APPEAL NO. 4867 OF 2023 (ARISING OUT OF SLP (CIVIL) NO. 980 OF 2023) A N D CIVIL APPEAL NO. 4866 OF 2023 (ARISING OUT OF SLP (CIVIL) NO. 968 OF 2023)

(Arising out of impugned judgment and order dated 13-02-2019 in CWP No. 31711/2018, CWP No. 30487/2018, CWP No. 30587/2018, CWP No. 32117/2018, CWP No. 32345/2018, CWP No. 32975/2018, CWP No. 33005/2018, CWP No. 33006/2018 (O&M), CWP No. 505/2019 and CWP No. 2002/2019 (O&M) passed by the High Court of Punjab & Haryana at Chandigarh)

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ORDER

Leave granted.

2. The challenge in these bunch of appeals is to the judgment and order dated 13.02.2019 of the High Court of Punjab and Haryana whereby the writ petitions filed by the respective parties were allowed whereunder the decision by the Haryana State Industrial and Infrastructure Development Corporation Limited (for short, "HSIIDC") to conduct manual auction from the stage of end of e-auction, was struck down by the Division Bench of the High Court.

3. We have heard the submissions of Ms. Aishwarya Bhati, the learned ASG assisted by Mr. Alok Sangwan, Sr. AAG and Mr. Rajat Sangwan, learned counsel appearing for the appellant. The respondents are represented by the learned senior counsel, Mr. Neeraj Kishan Kaul, Mr. Nidhesh Gupta, Mr. Gopal Sankaranarayanan and Mr. Dama Seshadri Naidu.

4. An advertisement was issued by HSIIDC for the allotment of 1762 industrial plots of varying sizes in different industrial estates across the State of Haryana. E-auction was conducted for 352 of the offered plots. In course of the same, some of the participants made complaints alleging technical glitches in the e-auction process. Although 24 complaints were received against individual plots, since plots were grouped in nine categories, the complaints were treated to be for all 130 plots in those nine categories. In other words, one complaint vis-à-vis one plot in a given category was taken as complaints for all the plots in that category. In the 24 complaints received, technical glitches thwarting fair participation in the online bid process were highlighted.

5. For conducting the e-auction for the industrial plots, the terms and conditions were set out in a Brochure and it can be inferred therefrom that allotments were to be made in accordance with the Enterprises Promotion Policy of the State Government and the Estate Management Procedure (EMP)/Allotment Procedure of the Corporation, as amended from time to time. Clause 3.4 (ii)(a) and (c) of the EMP is relevant where it is specified that allotment shall be made through limited e-auction amongst the applicants.

6. The e-auction for allotment of industrial plots was undertaken on 25.09.2018, wherein the respondents and others participated. On conclusion of the process of e-auction, a public notice was issued on 29.11.2018 whereby decision was conveyed that for 130 plots, the Corporation will conduct manual auction by discarding the bids obtained during the e-auction. The reason given for abandoning the e-auction process with respect to the 130 plots and opting for manual auction was "*due to some technical reasons it has been decided to resume/conduct some of the auctions manually as per the following schedule*". In the notice, it was specified that the auction at Sl. Nos. 1 to 8 shall be resumed from the highest bid as received during e-auction process.

7. At that stage, those aggrieved by the decision to conduct manual auction for the 130 plots by limited abandonment of the e-auction process (by accepting bid from the highest e-auction stage), moved the High Court.

Primary Submissions

8. The primary contention made by the writ petitioners before the High Court is that when decision is taken to allot the plots on the basis of e-auction, the authorities cannot conduct manual auction since e-auction was expected to ensure a transparent and fair procedure for allotment of plots. However, the HSIIDC in support of the decision to abandon the process of e-auction and the decision to go for manual auction referred to the technical glitches in the e-auction process which incapacitated some of the bidders from offering their bids as per the envisaged procedure in the e-auction.

9. Analysing the complaints that were received against the e-auction procedure, it was noted in the impugned judgment that some of the complainants who were participating in the e-auction process were disabled in the last minute from further raising their bid and outmatching the rival bid. There was thus a systemic failure which, according to the HSIIDC, warranted scrapping of the entire e-auction *qua* the 130 plots spread across 9 categories.

10. In order to appreciate the foundation of the decision taken by the HSIIDC to opt for manual auction *qua* 130 plots, a pointed query was raised to the HSIIDC counsel as to whether any technical evaluation was done regarding the complaint of systemic failure. However, the candid response of the counsel for the HSIIDC on instruction was that no such technical evaluation was done to assess the genuineness of the complaint of the system failure. In fact, the learned ASG Ms. Aishwarya Bhati has referred to the communication dated 30.11.2018 (Annexure P/29), at a stage after the decision which identifies some anomalies in the e-procurement portal for which it was suggested that decision should be taken about whether to continue with the e-procurement/auctions with the Haryana e-procurement portal developed by M/s. Nextenders India Pvt. Ltd. or not. On the 30.11.2018 document, suffice it would be to say that this was a communication well after the decision was taken to scrap the e-auction process. Therefore, the earlier decision cannot be legally supported on the basis of the communication dated 30.11.2018.

11. On behalf of the appellant, Ms. Aishwarya Bhati, the learned ASG would argue that many of the respondents who were successful in the e-auction and who also participated in the manual auction without any protest, could not challenge the decision of the HSIIDC to opt for manual auction from the last stage of the e-auction. According to the appellant's counsel, the merit of the 24 complaints were noticed which confirmed the difficulties faced by the bidders in giving bids online in the e-auction. A Committee was constituted and after comprehensive deliberations, in a proceeding, where HOD (Technical) was also participating, the decision was taken to opt for manual auction for all the plots in a given category although complaint related to a particular plot only. This was done in order to ensure a fair and transparent process and to avoid Court proceedings.

12. Since glitches in e-auction of plots spread across 9 categories out of the total 30 categories were highlighted in the complaint, instead of annulling the entire e-auction for all 30 categories, it was decided to opt for manual auction only for 9 categories which covered a total of 130 plots. According to the learned ASG, the decision to resume manual auction was in larger public interest which will benefit the exchequer as was noticed by the much higher revenue generated through the process of manual auction.

13. On the other hand, it is submitted on behalf of the respondents that there is no provision for conducting manual auction in the EMP. It was contended that manual auction as a process was never envisaged by the authorities in either the advertisement, the Brochure or the terms and conditions for allotment of plots. Adverting to the EMP-2015, the counsel would submit that a conscious decision was taken that when the number of

applicants are more than the number of plots then the allotment shall be made through limited e-auction and there cannot be any departure from the notified process.

14. Specifically addressing the nature of the complaint received by some of the participating bidders, the learned counsel would refer to the Brochure which indicates that e-auction was to be conducted on 26.09.2018 till 1 p.m. The counsel would then refer to Clause B (iv) of the Brochure to point out that in case of any bid made in the last 10 minutes before the closing time, there will be automatic extension of the e-auction process by 30 minutes. But maximum 6 such extensions (from the original closing time) are permitted. This would indicate that after 6 extensions, if it were to happen, the final closing time of the e-auction will be 4 p.m. and not beyond. Clause B (iv) being relevant is extracted hereinbelow:

“iv. E-auction shall start as per the schedule given hereinabove. In case of any bid made in the last 10 minutes of closing time, the closing time of e-auction will be extended by 30 minutes automatically. Six such extensions (from the original closing time) are permitted. Bidders are advised to make payment of e-service fee well in time before start of auction to avoid any inconvenience.”

15. As decision was taken to conduct manual auction from the stage where the last bid in the e-auction was received in the last 10 minutes, it is submitted that this decision to provide unlimited opportunity to outbid in a manual auction process, is wholly contrary to the timeline for the bidding process specified by the HSIIDC. It is also argued that the decision to go for manual auction through hammer would enable the participants to continue to bid indefinitely without any timeline and this would be contrary to what was specified in the Brochure covering the e-auction.

16. Assailing the legality of the decision taken in the meeting dated 16/17.10.2018, it is argued by the respondents that the authorities could not have decided to resume auction from the stage where the e-auction ended by providing unlimited extensions in the manual auction process.

17. The logic of affording personal hearing on 16.11.2018 well after the decision was taken in the meeting dated 16.10.2018, is also questioned by the respondents by arguing that the decision having been taken prior to the hearing would make the hearing a meaningless exercise. When the parties who participated in the e-auction were affected by abandoning the process of e-auction, they should have been afforded a fair hearing prior to the decision that was taken on 16.10.2018.

18. The decision by the appellant to conduct manual auction also for those plots against which no complaints were received is questioned by the respondents by pointing out that the authority should have allowed finality to the e-auction process for the plots which were free of any complaint from any quarter. It was further argued that adding these plots into the basket of the manual auction process would negate the basic principles of fairness and reasonableness, as well as violate Article 14.

19. Since individual bidders had participated in the e-auction against specific plots, to treat the complaint against a single plot and then take an adverse decision in respect of all the plots in a particular category is contended to be an irrational decision which suffer from the vice of proportionality in the context of the complaint that was made.

20. The timing of the complaints, well after a month of conclusion of the e-auction process is also questioned by the respondents by arguing that when milliseconds are involved in the e-auction process, anyone suffering technical disability in the process should have immediately filed a complaint. In the instant case, the complaints were filed

after a month of the e-auction process and such belated complaints should have been discarded at the threshold.

21. The HSIIDC in support of the decision to go for manual auction has relied on Clause 4(d) which said that the Corporation reserved the right to add/amend/withdraw/modify any of the terms and conditions at any stage without notice. The High Court however opined that such a sweeping clause cannot be used to subvert the process of e-auction without justifiable reason and the court is capable of exercising its power of judicial review in respect of the arbitrary decision. The Court also noted that the respondents have failed to justify their contention of systemic failure.

22. For the impugned process, it must be kept in mind that the bidding during the e-auction was conducted plot-wise. The Brochure itself would show that plots in same industrial estate had different features such as the size of the plot, corner plots, plots facing certain directions, road width in front of the plot, etc. That is how the bidders had decided on the plots to bid for and the price that they would offer. Therefore, the exercise of clubbing together all the plots in one category for manual auction has to be seen as an arbitrary decision, particularly when complaints that were made were addressed plot-wise only.

23. On the plea of the learned ASG that higher revenue was generated through the process of manual auction, we must be conscious of the fact that when a timeline is specified for the process of e-auction, each bidder has the liberty to outbid the other until the last millisecond in the e-auction process. If auction, either electronic or manual is conducted at a later point of time, by virtue of the usual escalation of price of real estate, higher revenue is bound to be generated. But this, by itself, cannot be a ground to support the decision of the HSIIDC to go for manual auction, by abandoning the transparent process of e-auction.

24. When the HSIIDC as the authority deciding to allot industrial plots had laid down a particular procedure which will ensure fairness and transparency amongst the participants, they cannot depart from the notified process particularly when there was no technical report available with the authority to confirm technical fault in the e-auction process. When such a departure from the laid down norm is made, it has to be declared to be arbitrary and unfair. Since the decision is not founded on any acceptable reasoning, it would suffer from the vice of irrationality and unreasonableness.

25. It would be pertinent to note certain principles that emerge from a long list of illustrious cases. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651 (77), the Court held:

“77. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.”

26. In *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 (22), the Court made some pertinent observations, as stated herein:

“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”.

. If the decision relating to award of contract is bona fide 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.

. 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 mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and 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 are in the negative, there should be no interference under Article 226.”

27. Similarly, In *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489 (19), the Court held:

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out.”

28. It is also pertinent to point out that the Court has held in the *Union of India v. International Trading Co.*, (2003) 5 SCC 437 (14-15):

“14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.”

29. When the impugned decision of the authorities is tested on the anvil of the aforesaid legal principles, it has to be said that the decision is arbitrary and also irrational. When e-auction is opted for allotment of the industrial plots, the authority could not have

departed from the notified procedure. The shift to manual auction would make the earlier process of e-auction an exercise in futility. It would also undermine the finality of the auction process where the bidding must conclude by the stipulated time and the winner is determined by the highest last bid. It would be irrational in a process like this to permit the participants to out-bid the final bid and that too without any limitation. For valuable real estates, it is possible and likely that higher revenue will be generated in the next auction process but that cannot by itself, support the decision of the HSIIDC to abandon the e-auction process and choose another mode.

30. Public interest need not remain exclusively limited to ensuring maximum revenue accrual for the government. Instead, public interest includes, without limiting itself to, a fair, transparent & stable process which any and all executive action must adhere to.

31. We are conscious of the limited power of judicial review. However, when it is seen that the decision of the authority is arbitrary, irrational, and disproportionate, having regard to complaints received only with regard to few plots and yet all 130 plots being put to manual auction after abandoning the e-auction process, the intervention by the High Court with the decision of the authority cannot, in our view, be faulted.

32. In view of the foregoing, these appeals are found devoid of merit and are dismissed. Parties to bear their own cost.

33. All impleadment applications are allowed and pending application(s) including intervention application(s), if any, shall stand closed.

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