
In **Narinjan Singh's case** (*supra*) **Ashok Kumar's case** (*supra*) and **Shah Hyder Being's case** (*supra*), it has been held by this Court and the Supreme Court that once the award is passed and compensation accepted, the acquisition is complete for all intents and purposes and the possession vests in the State.

(81) On the basis of the above discussion, we find no reason to accept the prayers made by the petitioners and consequently, dismiss the writ petitions.

R.N.R.

Before Vijender Jain, C.J. Rajive Bhalla & Surya Kant, JJ.

SUBHASH CHAND,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 16905 of 1991.

30th May, 2006,

Constitution of India, 1950—Art.226—Non-acceptance of highest bid of petitioner—Challenge thereto—Whether petitioner has locus standi to approach Court—Held, yes—Every highest bidder has a right to put the action of competent authority to judicial scrutiny—State cannot be treated differently than an individual qua its rights to enter into contract in exercise of its Executive powers—Though State or its instrumentalities are free to enter into a contract with any person yet they cannot act whimsically and their freedom to enter into business is subject to conditions of 'reason', 'fair play' and 'public interest'—Doctrine of promissory estoppel—Also applicable against Government even in cases where no valid contract in terms of Article 299 entered into between the parties—Actions of Government must be reasonable, fair and just and in consonance with the rule of law—State Government cannot refuse to confirm highest bid without assigning any valid reason.

Held, that the State is free to enter into a contract just like any other individual ; and the contract shall not change its legal character merely because the other party to the contract is the State.

Though no citizen possesses a legal right to compel the State to enter into a contract, yet the latter can neither pick and choose any person arbitrarily for entering into such agreement nor can it discriminate between the persons similarly circumstanced. Similarly, where the breach of the contract at the hands of the State violates fundamental rights of a citizen or its refusal to enter into a contract is contrary to the 'statutory provisions' or 'public duty', the judicial review of such State action, is inevitable.

(Para 16)

Further held, that if the State enters into a contract in consonance with Article 299 of the Constitution, the rights of the parties shall be determined by the terms of such contract, irrespective of the fact that one of the parties to it is a State or a Statutory Authority. The State, while entering into contracts with individual parties invokes its executive power under Article 298 of the Constitution and its decision is assailable on the ground that it is arbitrary or is de-hors of Article 14 and/or is contrary to 'public law'. In other words, though the State or its instrumentalities are free to enter into a contract with any person yet they cannot act whimsically and their freedom to enter into business etc. is subject to the conditions of 'reason', 'fair-play' and 'public interest'.

(17 & 18)

Further held, that the equitable doctrine of 'pomissoy estoppel' has been made applicable against the Government, as against any other private individual, even in the cases where no valid contract in terms of Article 299 was entered into between the parties. Hence, if the Government makes a representation or a promise and an individual alters his position by acting upon such promise, the Government may be required to make good that promise and shall not be allowed to fall back upon the formal defect in the contract, though subject to well known limitations like Larger Public Interest.

(Para 19)

Further Held, that the State has no dominus status to dictate unilateral terms and conditions when it enters into a contract and its actions must be reasonable, fair and just and in consonance with the rule of law. The State Government cannot refuse to confirm the

highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons.

(Para 20)

Further held, that as regards *locus standi* of the petitioner to maintain the writ petition, every highest bidder has a right to assail the action of the State Government or its authorities by contending that his bid has been turned down for arbitrary, illegal or perverse reasons, though in such like matters, heavy onus would lie on the petitioner to establish his allegations as the State action shall always be presumed to be in accordance with law.

(Para 21)

Rakesh Kumar Jain, Advocate, for the petitioner.

Randhir Singh, Addl. AG, Haryana, for the respondent.

SURYA KANT, J.

(1) The following questions of law have been referred by a Division Bench of this Court *vide* order dated 7th February, 1992 for adjudication by a larger Bench :—

- “(1) Is the State to be treated differently than an individual *qua* its rights to enter into contract in exercise of its Executive powers ?
- (2) Are the provisions of the Indian Contract Act applicable to the State as in case of an individual in addition to the additional safeguards provided by Article 299 of the Constitution of India, to protect the interest of the State particularly in view of the fact that the auction, subject to confirmation of the higher authorities is nothing more than inviting offers and it is only on confirmation or acceptance of auction that an enforceable agreement comes into being ?
- (3) Does a person who made only an offer without it being accepted acquire any enforceable right under the law ?
- (4) Does the petitioner, in the facts and circumstances of the case particularly the non-acceptance of the bid

which was subject to the confirmation, has any *locus standi* to maintain the writ petition ?

- (5) Is the State in exercise of its executive powers bound to pass a reasoned speaking order and is bound to follow the principles of natural justice like granting an opportunity of hearing ?
- (6) Does a highest bidder in an auction whose bid the authorities refuse to accept, acquire any right ?
- (7) Does the said refusal adversely affect any right of the highest bidder ?
- (8) Can the contractual rights be enforced in exercise of writ jurisdiction ?”

(2) While referring these questions, the Division Bench has doubted the correctness of an earlier Full Bench judgement of this Court in the case of **Surja Ram versus The State of Haryana and another** (1) as according to it, the view taken by the Full Bench that “non-acceptance of the highest bid amounts to taking away the Right to Property”, runs contrary to the law laid down by the Apex Court in the case of **M/s Bombay Salt and Chemical Industries versus L.J. Johnson and others**, (2)

(3) Before advertng to the questions under reference, the facts may be noticed briefly.

(4) Plot No. 3837-42/1 measuring 210 square yard was put to auction by respondent No. 3—Tehsildar (Sales)-cum-Managing Officer, Hisar, on 7th February, 1991 at a reserve price of Rs. 325 per square yard, amounting to a total of Rs. 68,250. The said auction was held under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Rules of 1955 framed there under. The petitioner gave the highest bid of Rs. 71,000 and deposited the earnest money amounting to Rs. 18,000 on the same day i.e. 7th February, 1991. Since the auction was subject to confirmation by the competent authority under Rule 90(10) of the 1955 Rules, respondent No. 3 recommended the case to the Chief Settlement Commissioner,

(1) 1984 PLJ 282

(2) AIR 1958 S.C. 289

Haryana (respondent No. 2) for acceptance of the petitioner's bid and non-confirmation of sale in his favour. The second respondent, however,—*vide* his order dated 22nd July, 1991 declined to confirm the sale and ordered reauction of the plot on the plea that "the difference between the reserve price and the highest bid is marginal".

(5) Aggrieved, the petitioner assails the aforementioned order on the ground of discrimination, *inter-alia*, alleging that on 7th February, 1991 itself, the third respondent also put another plot No. 6837-39/4 measuring 240 square yards to auction at a reserve price of Rs. 325 per square yard, amounting to a total of Rs. 78,000, in which the highest bid of Rs. 80,000 i.e. Rs. 8.33 per square yard more than the reserve price only, was received but the bid was accepted and sale was confirmed on the premise that the aforesaid price was fetched in the seventh attempt.

(6) The petitioner appears to have relied upon the Full Bench decision of this Court on **Surja Ram's case** (*supra*), the correctness of which has been doubted by the Division Bench, giving rise to this reference to a larger Bench.

(7) We have heard learned counsel for the parties at length on the questions of law under reference.

(8) In **Surja Ram's case** (*supra*), the Settlement Commissioner had declined to confirm the auction of an 'evacuee property' which comprised agricultural land. Meanwhile, the Settlement Officer (Sales) set aside the auction itself held in favour of the highest bidder on the ground that the land was "*shamlat deh*" and not an 'evacuee property'. When the order of the Settlement Officer (Sales) was assailed before this Court, the State of Haryana took up the preliminary objection that since the bid was not accepted and the auction was never confirmed by the Settlement Commissioner, the highest bidder had no *locus standi* to approach the Court and that in view of the provisions contained in Rule 5 of the Rules for the Sale of Surplus Rural Properties, the Settlement Commissioner was not obligated to give reasons for not accepting the highest bid.

(9) The Full Bench, however, ruled that under clause (i) of rule 5 of the Rules, the Settlement Commissioner or other Officer is empowered not to accept the highest or any other bid and not to

“disclose” his reasons also but it does not mean that the Settlement Commissioner or other Officer is not bound to “give” reasons. Following the view taken by the Hon’ble Supreme Court in **Ramana Dayaram Shetty versus The International Airport Authority of India and others.** (3), the Full Bench further held that every order of the State or its functionaries has to meet the twin-test of “reasons” and “relevance” and they cannot pass a vagarious order. It was held that the competent authority is duty bound under the Rules to record relevant reasons for refusing to accept the highest or other bid, even though such reasons may not necessarily be disclosed to the bidders but are required to be placed before the Court in the process of judicial review.

(10) As regard to the preliminary objection re *locus standi* of the petitioner to approach the Court, the Full Bench held that :—

“Futher the contention that no legal right vests in a highest or other bidder so as to entitle him to challenge an action of the appropriate authority in refusing to accept the highest or other bids, is not legally tenable. The aggrieved person whose right to the property as a result of non-acceptance of the highest bid, is being taken away, can certainly challenge the action on the ground that the order of the appropriate authority is arbitrary or has come in existence as a result of extraneous considerations and in case it is so proved, then the order of non-acceptance would certainly be liable to be quashed. The State Government or the appropriate authority can defend its action by disclosing reasons given for non-acceptance of the bid and if the same are found relevant, relief would straightway be declined. But there is no warrant for this proposition that even if the order of the authority in not accepting the bid is arbitrary and does not disclose any reasons, then also the legality of the same cannot be challenged in a Court of law.”

(11) In **M/s Bombay Salt and Chemical Industries’s case** (supra), reliance upon which has led the Division Bench to doubt the correctness of the Full Bench decision in **Surja Ram’s case** (supra), their Lordships of the Supreme Court dealt with the provisions contained in the Displaced Persons (Compensation and Rehabilitation,)

(3) AIR 1979 S.C. 1628

Act, 1954 and the Rules framed thereunder. It was held that merely because Section 20 of the Act permits a sale by auction, it does not always mean that as and when there is an auction, the same has to be termed as 'complete'. Whether there be transfer of property or not, shall depend on the conditions of auction and there may be a sale by auction where sale is not complete till, for example, a document is executed. It was further held that :—

“It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon issue of it a transfer of the property takes place. Condition No. 7 in this case, therefore, expressly stipulated that upon payment of the purchase price in full the ownership would be transferred and a sale certificate issued”. (Emphasis ours).

(12) On a plain reading of the Full Bench decision in **Surja Ram's case** (*Supra*), we find that the said judgment, to the extent it obligates the competent authority to give reasons for non-acceptance of the highest or the other bid, notwithstanding the fact that the relevant rules do not expressly require so, requires no reconsideration. The aforesaid view is totally consistent with what the Apex Court has held from time to time.

(13) We are, however, of the view that the observations made by the Full Bench in para 9 of its judgment in respect of taking away of “Right to Property as a result of non-acceptance of the highest bid”

and which appears to be the sole cause of this reference, need to be clarified.

(14) In our view, the above quoted observations in **Surja Ram's case** (*supra*) have been made in the context of *locus standi* of the petitioner. The highest bid, *per se*, unless it is accepted by the competent authority, and consequential sale-certificate is issued, does not grant the highest bidder "right to property" of the type which is protected under Article 300-A of the Constitution of India. It, however, also does not mean that even if the highest bid is not accepted by the competent authority, either without citing any reason and/or for totally arbitrary or irrelevant reasons, the highest bidder does not even acquire a right to assail the action of the competent authority. The highest bidder who had a legitimate expectation to acquire ownership of the property, unless his bid was found to be suffering from any legal infirmity, has an indefeasible right to knock at the doors of an appropriate forum including a Constitutional Court and to question the legality of the decision of the competent authority on grounds like it being contrary to the Statute or the Rules or the Constitution. In other words, the refusal to accept the highest bid can not foreclose the right of the highest bidder to put the action of the competent authority to judicial scrutiny. We are, thus, of the considered view that observations of the Full Bench in **Surja Ram's case** (*supra*), in respect of "Right to Property" are limited to confer the highest bidder the right to challenge an action of the appropriate authority in refusing to accept the highest or other bids.

(15) The view taken by the Full Bench in **Surja Ram's case** (*supra*), therefore, is not derogatory to or inconsistent with the view taken by the Apex Court in **M/s Bombay Salt and Chemical Industries's case** (*supra*).

(16) Adverting to the questions referred for our consideration, we find that the same are no longer res-integra. There can hardly be any room for quarrel with the fact that the State is free to enter into a contract just like any other individual ; and the contract shall not change its legal character merely because the other party to the contract is the State. Though no citizen possesses a legal right to compel the State to enter into a contract, yet the latter can neither

pick and choose any person arbitrarily for entering into such agreement nor can it discriminate between the persons similarly circumstanced. Similarly, where the breach of the contract at the hands of the State violates fundamental rights of a citizen or its refusal to enter into a contract is contrary to the 'statutory provisions' or 'public duty', the judicial review of such State action, is inevitable.

(17) Likewise, if the State enters into a contract in consonance with Article 299 of the Constitution, the rights of the parties shall be determined by the terms of such contract, irrespective of the fact that one of the parties to it is a State or a Statutory Authority, (Ref. :— (i) *Achutan versus State of Kerala* (4), (ii) *Lekh Raj Sant Ram Dass Lalwani versus N.M. Shah*, (5); (iii) *Hanif Mohamad versus State of Assam*, (6) ; (iv) *Uma Kant Saran versus State of Bihar*, (7) ; (v) *Ramana Dayaram Shetty versus The International Airport Authority of India & Others* (supra) ; (vi) *M/s Kasturi Lal Laxmi Reddy etc. versus The State of Jammu and Kashmir and another* (8) ; (vii) *Divisional Forest Officer versus Biswanath T. Company* (9) ; (viii) *Gujarat State Financial Corporation versus Lotus Hotels* (10) ; (ix) *Brij Bhushan and Others versus State of Jammu and Kashmir and Others* (11) ; and (x) *Bareilly Development Authority versus Ajai Pal Singh* (12).

(18) It is well known that the State, while entering into contracts with individual parties invokes its executive power under Article 298 of the Constitution and its decision is assailable on the ground that it is arbitrary or is *de-hors* of Article 14 and/or is contrary to 'public law'. In other words, though the State or its instrumentalities are free to enter into a contract with any person yet they cannot act whimsically and their freedom to enter into business etc. is subject to the conditions of 'reason' 'fair-play' and 'public interest', as observed

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- (4) AIR 1959 S.C. 490
 - (5) AIR 1966 S.C. 334
 - (6) 1969 (2) S.C.C. 782
 - (7) 1973(1) S.C.C. 485
 - (8) AIR 1980 S.C. 1992
 - (9) 1981(3) S.C.C. 238
 - (10) 1983(3) S.C.C. 379
 - (11) (1986)2 S.C.C. 354
 - (12) 1989(2) S.C.C. 116

by the Apex Court in a plethora of cases (Ref :—(i) **Kasturi Lal Luxmi Reddy versus State of J & K** (13) ; (ii) **Mahabir Auto Stores versus Indian Oil Corporation** (14) ; (iii) **Mahender Kumar Gupta versus Union of India**, (15) and (iv) **Krishanan Kakkanth versus Government of Kerala**, (16).

(19) For these precise reasons the equitable doctrine of 'promissory estoppel' has been made applicable against the Government, as against any other private individual, even in the cases where no valid contract in terms of Article 299 was entered into between the parties. Hence, if the Government makes a representation or a promise and an individual alters his position by acting upon such promise, the Government may be required to make good that promise and shall not be allowed to fall back upon the formal defect in the contract, though subject to well known limitations like Larger Public Interest. In this regard reference can be made to the views taken by the Hon'ble Supreme Court in :—

- (i) **Union of India versus Indo Afghan Ltd.** (17) ;
- (ii) **Sanctuary Spinning and Manufacturing Ltd. versus Ulhasnagar Municipal Council.** (18) and
- (iii) **KCP Ltd. versus State Trading Corporation of India**, (19)

(20) The State, thus, has no *dominus status* to dictate unilateral terms and conditions when it enters into a contract and its actions must be reasonable, fair and just and in consonance with the rule of law. (Ref. :— (i) **Mahabir Auto Stores & Others. versus Indian Oil Corporation and Others** (*supra*) and (ii) **M/s Star Enterprises and Others versus City and Industrial Development Corporation of Maharashtra Ltd. & Others.** (20). As a necessary corollary thereto, it is held that the State Government cannot refuse

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- (13) 1980(4) S.C.C. 1
 - (14) 1990(3) S.C.C. 752
 - (15) 1995(1) S.C.C. 85
 - (16) 1997(9) S.C.C. 495
 - (17) AIR 1968 S.C. 718
 - (18) AIR 1971 S.C. 1021
 - (19) 1995 Suppl. (3) S.C.C. 466
 - (20) (1990)3 S.C.C. 280

to confirm the highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons.

(20) As regards locus-standi of the petitioner to maintain the writ petition, we have already held that every highest bidder has a right to assail the action of the State Government or its authorities by contending that his bid has been turned down for arbitrary, illegal or perverse reason, though in such like matters, heavy onus would lie on the petitioner to establish his allegations as the State action shall always be presumed to be in accordance with law.

(22) We answer the reference accordingly.

(23) Let the main writ petition be listed for hearing before an appropriate Bench as per Roster.

R.N.R.

Before Adarsh Kumar Goel and H.S. Bhalla, JJ

SURESH PAL AND OTHERS,—*Appellants*

versus

STATE OF PUNJAB,—*Respondent*

Criminal Appeal No. 550/DB of 2002

12th February, 2007

Indian Penal Code, 1860—Ss.302/201/34 and 376—Blind murder of a woman—Conviction of accused under sections 302/201/34 and 376—Prosecution case based on two chance witnesses—Non-disclosure of occurrence by eye witnesses to anyone for more than two months—No explanation offered for such non-disclosure—Conduct of these witnesses to the part of incident is highly unnatural and improbable—Non-disclosure creating a serious infirmity in the prosecution version, which destroyed the creditability of the testimony of the witnesses and no reliance can be placed on such type of weak evidence—Appeal allowed, appellants acquitted of the charges levelled against them.

Held, that the statements of chance witnesses should be subjected to very close and careful scrutiny. Though the chance