

Before K. Kannan, J.

GURDIAL SINGH AND OTHERS,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 8823 of 1990

28th April, 2011

Constitution of India—Art. 14 & 226 Challenge to decision taken by Government directing annulment of sale effected by Improvement Trust for sale of property for commercial purpose—Petitioner successful bidder—Deposited first installment—Contended that sale was concluded in his favour and action of respondents for notifying the property for fresh auction was not in accordance with law.

Held, Though the sale of property belonging to Government is governed by principle of fair play and justice and what subserves to public interest, shall at all times scrutiny with Article 14, in a matter of sale by auction, contract to be awarded to the highest bidder but State is required to protect public interest by ensuring existence of adequate competition to prevent loss and optimizing the price. Principles of law laid down. Cancellation could not have been without giving opportunity to the affected party.

(Para 2)

Sunil Chadha, Advocate, *for the Petitioner*

K. S. Sivia, Dag, Punjab

K. KANNAN, J. (ORAL)

(1) The writ petition contains a challenge to the decision taken by the Government directing the annulment of sale effected by the Improvement Trust, Ropar for sale of property for commercial purpose for construction of a restaurant in an auction that was held on 24th January, 1986. The petitioner was declared the highest bidder at Rs. 1,75,260 on the same day. As per the terms of the auction the petitioner had paid 25% of the amount. The petitioner paid first installment within the time stipulated, namely, before 23rd July, 1986, by sending a Demand Draft of Rs. 31021.92. This was returned by the Improvement Trust on 7th August, 1986, on the ground that the Government had imposed some restrictions and the sale

of the above site was being withdrawn. Significantly, the initial deposit of 25% of the amount had not been given back. The petitioner gave a representation in the year 1986 and the petitioner filed writ petition when the Improvement Trust was putting the property in the auction on 15th June, 1990. The complaint in the writ petition was that the Improvement Trust had concluded sale in his favour and the action of the respondents in notifying the property for auction afresh was not in accordance with law. The respondents joined issue on the contention of a concluded sale by stating that the Government had passed an order on 21st October, 1988, cancelling the auction amongst several grounds stating that the action was vitiated by formation of a cartel which prevented competitive bid and hence secured a price which was grossly below the market price. The petitioner contended that he had not been made aware of this order till the reply was filed by the Government and therefore, moved a petition before this Court for amendment to the prayer in the writ petition and included with the permission of the Court a prayer for quashing the proceedings of the Government.

(2) I have no doubt in my mind that auctions or sales of property belonging to Government are governed by the principles of fair play and justice and what sub-serves to public interest, shall at all times stand scrutiny with Article 14 of the Constitution. In the matter of sale through auction of public property, it is invariably an expectation for a private bidder to be awarded the contract, if the bid is the highest, but the State is required to protect public interest by insuring that adequate competition exists to prevent loss and optimize the price. Three principles of law emerge from the situation which are as under :—

(i) **Public Interest overrides any Private Legitimate Expectations :**

In *Ram pravesh Singh versus State of Bihar* (1), it has been held that :

A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or *bona fide* reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'.

In Union of India and Ors. versus Hindustan Development Corporation and Ors. (2) the Supreme Court held as follows :

The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest.

In Food Corporation of India versus Kamdhenu Cattle Food Industries (3), it has been held by the Supreme Court :

“Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A *bona fide* decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

(ii) **The availability of the best price is in Public Interest, and hence the absence of competitive bids and optimum price is evidence of damage to Public Interest.**

In Ram and Shyam Company versus State of Haryana and Ors.(4), the Supreme Court observed that :

“The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the

(2) AIR 1994 SC 988

(3) AIR 1993 SC 1601

(4) AIR 1985 SC 1147

other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get fillip and shot in the arm."

In Kasturi Lai Reddy versus State of Jammu and Kashmir and Anr.,(5), The Supreme Court observed as under :—

“Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary

corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so."

In the case of **Food Corporation of India versus Kamdhenu Cattle Food Industries** (*supra*), it was again stated that :

"The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderes besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case

acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.”

- (iii) **Public Interest is to be the guiding principle. Thus, there may be a case where the highest bid is rejected, and a fresh auction/call for tenders effected, if it be the requirement of Public Interest.**

In **Monarch Infrastructure (P) Ltd., versus Commissioner, Ulhasnagar Municipal Corporation and Ors. (6)**, the Court stated: “There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus :

- (i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest ;
- (ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate ;
- (iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.”

In the case of **Plantation Corporation Ltd., versus M/s P. L. Agro Technologies Ltd., (7)** a Division Bench of this Court held as follows :—

“The public authority should act fairly in granting assignment of its work, and unjust preference for entrusting the work is unsupportable in law. But public authority is not nailed to

(6) (2000) 5 SCC 287

(7) 1995 (2) PLJ 696

the option of choosing one of the tenderers merely because tenders were once invited. The authority has the right to entrust it to any one if that is found to be necessary to serve the best interest of it. Public interest should be the guiding principle”.

(3) The cancellation of auction could not have been done, as rightly contended by the petitioner, without adequately giving an opportunity to the affected party to explain the grounds which were taken as a basis for cancellation of the auction. Even absence of notice before cancellation of auction may not at all times be necessary. I had an occasion to consider such a situation in **Col. Prithi Pal Singh Gill versus Municipal Corporation, Chandigarh through its Commissioner, (8)**. That was in the context of sale being held under times when the market was damp due to certain situations and the sale was subject to conformation by a higher official and the bidder knew that the sale could be confirmed or rejected for appropriate reasons. In the same judgement I have observed, “*If the auction had been set aside attributing any practice of fraud or collusion against any of the petitioners, they would be justified in stating that decision (to cancel) without putting them on notice of such decision was illegal*” (para 15). If the grounds mentioned in the impugned order are true, there definitely existed a valid justification for its cancellation. The impugned order is purported to have been passed on a report given by the Executive Magistrate. A reliance on a report behind the back of the petitioner without putting the petitioner on notice of what the Government was relying on, was certainly bad in law and the auction could not have been cancelled without notice to the petitioner. I am informed that the property is still remaining vacant and it is appropriate that the decision is taken only after giving notice to the petitioner and calling upon him to show cause against such cancellation.

(4) The notice that the respondents are called upon to give shall include the copy of the report of the Executive Magistrate referred to above and it shall be served within 4 weeks from the date of receipt of the copy of the order. The cancellation made through the impugned notice is accordingly quashed. The petitioner will be at liberty to give his reply within 2 weeks from the date of receipt of the show cause notice. Having regard to the fact the case has been pending since 1990 and the property has remained unoccupied, on such reply being given, the Government shall be at liberty

to take appropriate decision in accordance with law and in the light of principles laid down above, within 4 weeks from the date of reply. The property shall be retained in status quo till the final decision is taken and communicated to the petitioner.

(5) At this point of time, it is submitted by learned counsel for the State that the amount of 25% of the property has been repaid to the petitioner. Learned counsel for the petitioner states that the money has not been received by the petitioner yet. I make no order with reference to the disputed question and the authorities shall verify records about the status of the first deposit and make appropriate orders with regard to the same alongwith the decision that may be taken by the Government pursuant to the order given by this Court.

(6) The writ petition is ordered in the above terms.

A. JAIN.