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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 16th September, 2019*

\+ W.P.(C) 9634/2019

SHRENIK PROPERTIES PVT LTD ..... Petitioner

Through Mr. Sanjay Goswami, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR ..... Respondents

Through Mr. Pawan Matur, Standing Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. ***(ORAL)***

1. This is a petition filed by the petitioner under Article 226 of the Constitution of India seeking the following prayer :

> "a) Issue a writ of Certiorari for Orders and Directions in the nature of Certiorari to the Respondent to produce the original files for E-Auction of plot at SL. No.118, being Plot No.B-339, Mangolpuri Industrial Area, Phase-I, Delhi and Plots at SI. No.124 being Plot No.B-345, Mangolpuri Industrial Area, Phase-I, Delhi of the list of the plots auctioned in the E-Auction conducted on 26.04.2019 and to set aside and quash the rejection by the letters of the Respondents dated 07.08.2019 of the highest bids of the Petitioner, for the said two plots which were already accepted on 27.04.2019 and for simultaneously issue of Writ of Mandamus or Orders or Directions in the nature of Mandamus directing the Respondents to complete the formalities and procedures for allotment of the said plots in

> favour of the Petitioner which involve the issue of LOI and Demand Cum Allotment Letter to the Petitioner etc."

2. An e-auction scheme was floated by the DDA on 09.03.2019 pertaining to the industrial plots in Delhi known as Phase-III, Industrial Plot. The e-auction was held on 26.04.2019. It is stated that the petitioner complied with all necessary formalities and placed a bid for plots at Sr. No.118, being Plot B-339, Mangolpuri, Industrial Area, Phase-I, Delhi and Sr. No.124 being Plot B-345, Mangolpuri, Industrial Area, Phase-I, Delhi. Out of two bidders, the petitioner was given intimation by the respondents that his bids stand at the highest.

3. It is the case of the petitioner that subsequently however, he was shocked to learn by a communication dated 07.08.2019 that the two bids, which were accepted in the auction of 26.04.2019, had been cancelled on the ground that there has been low bidding as compared to other plots; and on the basis of site inspection, which was done to determine the drawback in the plots, the competent authority had decided to cancel the bid of the said plots.

4. Mr. Sanjay Goswami, learned counsel for the petitioner has placed strong reliance on an inspection report pertaining to two plots of the DDA itself, as per which, the two plots had a dumping ground of North Delhi Municipal Corporation; and besides, there were encroachments on the said plots. It is thus contended that for this reason the bidding was low. Counsel further contends that the petitioner participated in the auction having complied with all conditions of the tender documents; and having been declared the highest bidder, the petitioner cannot be deprived of his rights which stand vested in him, that too after more than 100 days.

5. Mr. Goswami also submits that in pursuance to the petitioner being declared as the successful bidder, the petitioner deposited 5% of the bid money, which was refunded as late as on 07.08.2019.

6. Mr. Pawan Mathur, learned Standing Counsel enters appearance on behalf of the DDA on an advance copy. The matter was adjourned to enable Mr. Mathur to seek appropriate instructions in the matter.

7. Mr. Mathur submits that the decision to cancel the bid is not an arbitrary or fanciful decision but the same is based on cogent reasons. While relying on tender condition No.2.4, Mr. Mathur contends that the DDA was well within its right to cancel the bid in case it is found to be not competitive enough to reflect the market value of the plot auctioned. While relying on clause 2.4.2, Mr. Mathur submits that the confirmation of the highest bid is also in the sole discretion of the Vice-Chairman of DDA and thus, the petitioner cannot find fault in communication dated 07.08.2019 informing him that the bids stand cancelled.

8. Additionally, Mr. Mathur submits that around the same time, adjoining plots were also auctioned and the bids received for adjoining plots were far higher than the reserve price. A chart has been handed over in court to show that Plot No.B-337 for which the reserve price was Rs.2,10,24,000/- was finally sold for Rs.3,00,24,000/-; and plot No.B-335 has been sold at Rs.2,60,24,000/- while its reserve price was Rs.2,10,24,000/-; and with regard to plot B-336 the reserve price was Rs.2,10,24,000/- while it was sold at Rs.2,22,24,000/-, which forms part of another auction. The bid with respect to this plot also stands cancelled. The bid of Plot B-339 also stands cancelled for the same reasons as in the present case. Mr. Mathur submits that wherever the

DDA finds that the price was not competitive enough to reflect the market value, the auction is cancelled.

9. Mr. Mathur has handed over photographs in court to show that the entire area is encroachment free and plots in question cannot be termed as special plots in any sense.

10. Mr. Mathur has placed reliance on the observations made by the Supreme Court of India in ***State of Jharkhand v. CWE-SOMA Consortium*****,** (2016) 14 SCC 172, more particularly paras 19 to 22, wherein the Supreme Court has explained the right of governmental entities to cancel the auction in appropriate cases. Paras 19 to 22 are reproduced herein below :

> "19. Clauses 4.5(A)(*a*) and 4.5(A)(*c*) have been found stringent resulting in request to the Chief Engineer for issuing corrigendum as the above clauses added an additional qualification of showing of quantity of work done in one project. The Division Bench, thereafter, examined Clauses 4.17 and 4.18 of the CVC Guidelines and came to the conclusion as under: (*CWE-SOMA Consortium case* [*State of Jharkhand* v. *CWE-SOMA Consortium*, 2015 SCC OnLine Jhar 1415 : (2015) 2 AIR Jhar R 459] , SCC OnLine Jhar para 33)
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> > "*33*. … there was certainly a competition within three companies including SOMA in which SOMA turned out to be a single vendor and therefore, it cannot be said to be a case for retendering on account of lack of competition due to restrictive specification. Lack of competition has to be construed in that manner only. In this eventuality, it is only Clause 4.17 of the CVC Guidelines which ought to have been invoked and not Clause 4.18 of the CVC Guidelines as rightly held by the learned Single Judge."
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> 20. Admittedly, in the pre-bid meeting held on 24-3-2014, ten tenderers have participated. After conclusion of the pre-bid meeting on 24-3-2014, as a result of stringent conditions

prescribed in Clauses 4.5(A)(*a*) and 4.5(A)(*c*), only three tenderers could participate in the bidding process and submit their bids. As noticed earlier, upon scrutiny two were found non-responsive. In our considered view, the High Court erred in presuming that there was adequate competition. In order to make the tender more competitive, the Tender Committee in its collective wisdom has taken the decision to cancel and reinvite tenders in the light of SBD norms. As noticed earlier, the same was reiterated in a subsequent meeting held on 9-7-2014. While so, the High Court was not justified to sit in judgment over the decision of the Tender Committee and substitute its opinion on the cancellation of tender. Decision of the State issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. **When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there are any mala fides or want of bona fides in such decision.** While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fides, unreasonableness or arbitrariness.

21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in ***Tata Cellular* v. *Union of India*** [*Tata Cellular* v. *Union of India*, (1994) 6 SCC 651] , SCC in para 70 it was held as under: (SCC p. 675)

> "*70*. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State*. The right to refuse the

lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

(emphasis in original)

22. The Government must have freedom of contract. In ***Master Marine Services (P) Ltd.* v. *Metcalfe & Hodgkinson (P) Ltd.*** [*Master Marine Services (P) Ltd.* v. *Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138], SCC in para 12 this Court held as under: (SCC p. 147)

"*12*. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)"

The Court does not have the expertise to correct the administrative decision as held in *Laxmikant* v. *Satyawan* [*Laxmikant* v. *Satyawan*, (1996) 4 SCC 208], the Government must have freedom of contract."

11. Mr. Mathur has also relied on ***Tata Cellular*** (*supra*) to contend that the scope of judicial intervention and judicial review in the matter is limited and the Court must be slow to interfere in the same. He further submits that the DDA has cancelled the bid for good reasons.

12. We have heard learned counsels for the parties. We deem it appropriate to reproduce clause 2.4.1 and 2.4.2 of the tender document :

> **"2.4 Evaluation of Bid**
> 2.4.1 The accepting officer, subject to confirmation of the VC, DDA, normally accepts the highest Bid for a plot, provided that it is above the reserve price and found to be competitive enough to reflect the market value of the plot auctioned for.
> 2.4.2 The confirmation of the highest Bid- shall be in the sole discretion of the/Vice Chairman, DDA who does not bind himself to confirm the highest bid and reserve to himself the right to reject all or any of the bid without assigning any reasons. Any Bid not fulfilling any of the prescribed conditions or incomplete in any respect shall be rejected."

13. The short question which arises for our consideration is whether the cancellation of the bid of the DDA was arbitrary, whether the decision was fanciful and whether the decision was taken on account of mala fide reasons or whether the bid was cancelled in the better interests of the institution and for cogent reasons.

14. A careful reading of clause 2.4.1 and 2.4.2 would show that a right is vested in the Vice-Chairman of DDA either to confirm the highest bid or reject the bid without assigning any reason. Clause 2.4.1 also gives the right to respondent to cancel the bid in case the same is not found to

be competitive enough to reflect the market value of the plot in auction. A chart showing the details of bidders in respect of 161 Industrial Plots has been handed over to show that the adjoining plots have been sold at higher rates and those cases wherein the plots were not sold as per the expected market price, the bids stand cancelled.

15. We are of the view that the DDA has acted in best interest of the institution. The act of the DDA cannot be termed as arbitrary, fanciful and mala fide. Resultantly, we find no ground to entertain this writ petition. The writ petition is dismissed accordingly.

16. In case the refund is made beyond 15 days from the date of receipt of the bid money, the DDA shall be liable to pay interest @ 8% per annum to the petitioner, which shall be paid within two weeks from today.

CM Appl. 39767/2019 (stay)

17. In view of the order passed in the writ petition, the application also stands dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 16, 2019

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