**In The High Court at Calcutta**
**Constitutional Writ Jurisdiction**
**Original Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**WPO No. 85 of 2021**

**Bijay Kumar Agarwal**
**Vs.**
**The Union of India and others**

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| For the petitioner | : | Mr. Soumya Majumder,<br>Mr. Mainak Gangully |
| For the respondent nos. 1 and 2 | : | Mr. K. K. Maity,<br>Ms. Aishwarya Rajashree |
| Hearing concluded on | : | 11.03.2021 |
| Judgment on | : | 06.04.2021 |

**The Court:**

**1.** An e-auction notice bearing no. MSTC/ERO/Kolkata Customs (Port)/3/Kolkata/2021/11179 [261655] was floated by respondent no.4 on behalf of the respondent nos. 1 to 3. The articles put up for sale included those comprised of lot no.1629, which is the subject-matter of the present writ petition.

**2.** The auction was conducted on September 1, 2020, in which the petitioner succeeded as the highest bidder. Accordingly, a sale intimation letter was issued by respondent no.4 intimating approval of the bid by the seller. The petitioner was directed to tender an amount of

Rs.2,60,275/- as security deposit, which was deposited by the petitioner on September 4, 2020.

**3.** Subsequently, the petitioner was not intimated regarding the date of delivery of goods. Upon enquiry, the petitioner was instructed to put in the balance amount of Rs.7,80,885/- which was directly handed over to the Customs Authorities on September 14, 2020.

**4.** The copies of the sale intimation letter and the relevant letters indicating such deposits have been annexed to the writ petition.

**5.** Subsequently, respondent no.4 issued a delivery order on September 15, 2020 which, along with relevant receipts of acknowledgement regarding the deposits, are annexed to the writ petition.

**6.** It is alleged by the petitioner that the petitioner made several deposits for taking delivery of the subject goods but those were not delivered to the petitioner.

**7.** The grievance of the petitioner was intimated to the respondents by a letter dated September 22, 2020 and a detailed representation was given through the advocate of the petitioner on September 30, 2020. Ultimately, the petitioner made an application under the Right to Information Act, 2005 on October 12, 2020 seeking information regarding the subject goods and the status of their delivery.

**8.** In response, vide letter dated November 2, 2020, the respondent authorities intimated the petitioner that, on a complaint received on

September 3, 2020, a valuation was done by the respondents and the respondents accordingly had ordered cancellation of lot no.1629 from the e-auction-cum-e-tender-in-question. Such cancellation was claimed to have been done in terms of paragraph 8.9(i) of the Disposal Manual of 2019 issued by the Central Board of Indirect Taxes and Customs.

**9.** Learned counsel for the petitioner argues that, in terms of Clause 8.6 of the Disposal Manual, 2019, the sale intimation letter issued to the petitioner amounts to confirmation of the sale in favour of the petitioner. It is argued that in terms of Clause 6.1 of the auction conditions as well as Clause 8.10.8 of the Manual, all sales would be subject to Reserve Price (RP) fixed, subject to approval by the principal, who also had the option to fix a lower limit of RP for an individual lot. Such lot would not be declared "sold" on final bidding but declared "pending" during e-auction irrespective of Reserve Price comparison. As per the said clause, the sale acceptance would be intimated by the principal within seven working days from the date of the e-auction.

**10.** As per Clause 6.3 of the conditions of auction, it would be the bidders' responsibility to personally see the result of e-auction by downloading "auction lot status" from the website immediately after closing of e-auction which would be displayed up to seven days from the closing of e-auction.

**11.** Learned counsel further submits that, as per Clause 10.3 of the conditions of auction, no segregation could be done regarding items from sole lots. Clause 11 thereof included a default clause in the event the petitioner (purchaser) defaulted in lifting the goods.

**12.** It is further contended that Clause 3 of the conditions of auction stipulate that the sale would be on "as is where is" and "no complaint" basis. In view of such stringent conditions, which the petitioner complied scrupulously, and the sale having been concluded as per Clause 8.6 of the Disposal Manual, there was no scope left for the authorities to withdraw the lot from the tender and/or cancel the auction/tender after the sale had been confirmed.

**13.** By placing reliance on Clause 6.3.4, learned counsel for the petitioner argues that 'fair price' had to be determined by JPC, which does not appear to have been done in the present case.

**14.** It is further submitted that the inspection of the lot-in-question was undertaken on August 26, 2020, as stipulated in the terms of auction. The alleged complaint on the basis which the respondent authorities re-evaluated and cancelled the auction was received by the authorities subsequently, only on September 3, 2020.

**15.** As such, learned counsel for the petitioner submits that the unilateral cancellation after confirmation of sale was invalid in the eye of law and ought to be set aside.

**16.** In addition, learned counsel appearing for the petitioner contends that the Disposal Manual is binding only on the Customs Officials, as indicated in the foreword of the Manual, and not on the purchasers.

**17.** Learned counsel for the respondent-authorities argues that Clause 7 of the conditions of the auction specifically stipulates that the respondents may withdraw any lot from auction or tendering at any time or cancel the same at any stage prior to the delivery of the goods.

**18.** Since, in the instant case, the cancellation was done prior to the delivery of goods, such cancellation was well within the powers of the respondents as contemplated in the conditions of the e-auction itself.

**19.** Moreover, the balance security, it is submitted by the respondents, was paid by the petitioner only after the complaint was lodged on September 3, 2020. The respondents had asked the petitioner to take refund of such amount, which the petitioner did not accede to.

**20.** Learned counsel appearing for the respondents further submits, on the strength of Clause 8.9, first sub-clause, that the stipulations of Clause 7 of the auction conditions is also reiterated therein, hence, empowering the respondents to cancel the auction/tender at any stage prior to delivery.

**21.** Thus, it is contended by the respondents that the writ petition ought to be dismissed.

**22.** Upon hearing learned counsel for both sides, it is apparent that Clause 7 of the auction conditions and Clause 8.9 of the Disposal Manual have to be read in proper perspective, in conjunction with the other conditions and provisions contained in the auction conditions and Disposal Manual respectively.

**23.** A perusal of Clause 8.10.8 of the Disposal Manual as well as Clause 6.1 of the auction conditions mark a distinction as regards lots in respect of which the Reserve Price was fixed at a lower limit. Such lots, as per the said clauses, would not be declared 'sold' on final bidding but declared 'pending' during e-auction.

**24.** Clause 8.6 of the Disposal Manual, on the other hand, deals with sale intimation letters and provides that, on closing of auction, automatic sale intimation letters will be issued to the highest bidders by e-mail. Sub-clause (i) provides that, for 'confirmed' sales, automatic confirmed sale intimation letter will be issued to the H-1 bidder and he will be advised to deposit 25 per cent of the security deposit within three days.

**25.** However, sub-clause (ii) stipulates that for 'pending' sales, the bids would be kept on hold as 'pending' decision.

**26.** The said clauses, read in conjunction with each other, clearly indicate that the sale was considered to be confirmed even by the respondents by virtue of issuance of the sale intimation letter, annexed at page 32 of the writ petition, and subsequent compliance by the petitioner by making security deposit of Rs,2,60,275/-. Even thereafter, the balance amount of Rs,7,80,885/- was paid by the petitioner, which was duly acknowledged by the respondents upon encashment of the relevant cheques.

**27.** Clause 6.3 of the auction conditions clearly contemplates the closing of e-auction and display of such closure within seven days from the date of closing.

**28.** In the present case, not only was the sale confirmation intimation issued to the petitioner after closure of e-auction, thereby indicating that the sale was confirmed, as contemplated in Clause 8.6 of the Disposal Manual, the other connected documents, including the receipts issued for the security deposits paid by the petitioner and the delivery order issued in favour of the petitioner clearly indicate beyond all doubt that the sale was concluded for all practical purposes upon closure of the e-auction and compliance of all conditions on the part of the petitioner.

**29.** Interpreting Clause 7 of the auction conditions and Clause 8.9 of the Disposal manual in their appropriate perspective, read in conjunction with the other clauses of the Manual and the auction conditions, as discussed above, it is clear that the scope of withdrawal of any lot from auction or tendering and cancellation of the tender at any stage prior to the delivery goods can only remain relevant as long as the auction is not concluded. In the present case, the auction was not only concluded, the transaction between the parties in respect of the sale of the goods-in-question was concluded as well. There was, thus, no question of ‘cancelling’ the tender/auction since the tender/auction had been concluded long back and had already fructified in a concluded sale. The sale having been confirmed, there could not be any justification on the part of the authorities to withhold delivery of the goods.

**30.** Since it is sufficiently evidenced from the materials-on-record that the petitioner did his utmost to get the delivery of the goods within time but was refused such delivery at the instance of the respondents, the respondents cannot take advantage of their own wrong and order the cancellation of lot no.1629 from the e-auction-cum-e-tender, which was history on November 2, 2020 in view of the closure of the same and culmination of the transaction by way of a confirmed sale much before the said date.

**31.** Hence, in the light of the above observations, the impugned cancellation of lot no.1629 from the e-auction, as intimated by the respondents to the petitioner vide letter dated November 2, 2020, was patently illegal and *de hors* the provisions of the Disposal Manual as well as the auction conditions. Even without going into the question as to whether the provisions of the Disposal Manual are binding only on the Customs Officials or on the purchasers as well, such conditions themselves, upon being given a proper interpretation, invalidate the impugned cancellation.

**32.** As such, WPO No.85 of 2021 is allowed on contest, thereby setting aside the cancellation of lot no.1629 from the e-auction-in-question, as intimated vide letter dated November 2, 2020 (Annexure P-10 at page 49 of the writ petition). All consequential and preceding action, respectively on the basis of and leading to such cancellation, are also set aside.

**33.** The respondents are directed to immediately hand over the goods-in-question to the petitioner upon the petitioner approaching the respondents for the delivery of such goods.

**34.** There will be no order as to costs.

**35.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**