

ORDER

OD-1

WPO/419/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RAJGARIA TIMBER PRIVATE LIMITED
VERSUS
BOARD OF TRUSTEES FOR SYAMA PROSAD MOOKERJEE PORT & ORS.

BEFORE:

THE HON'BLE CHIEF JUSTICE RAJASEKHAR MANTHA

DATE : 19TH JANUARY, 2022

[Via Video Conference]

APPEARANCE:

Mr. Jishnu Saha, Senior Advocate
Mr. Shaunak Ghosh, Advocate
Ms. Saheli Sen, Advocate
Mr. Rajib Mullick, Advocate
Ms. Shreyashi Maity, Advocate
.....for the petitioner.

Mr. Joy Saha, Senior Advocate
Mr. Snehasis Sen, Advocate
Mr. Aditya Sarkar, Advocate
Mr. Abhishek Banerjee, Advocate
.....for the respondents.

The Court:- The writ petitioner is aggrieved by notice dated 16th December 2021 issued by the respondent Port Trust Authority proposing to call for fresh tenders for transfer by long term lease for 30 years of Plot No.A10 at Taratala Road, Kolkata.

The writ petitioner and other persons had participated in the NIT for the said property published earlier on 4th December, 2019 . The writ petitioner was found to be the highest tenderer on 30th June 2020 with a bid for Rs.12.32 crore.

One Khatupati Energy Limited filed WP No.5858(W) of 2020 challenging the tender process alleging illegality. By an order dated 17th August 2020, a coordinate Bench stayed the tender process. The writ petitioner and the said Khatupati who was the second highest tenderer, were asked to participate in a fresh tender process comprising of only the said two persons as participants.

In the second round of tendering, which was held on 3rd September 2020, the writ petitioner quoted about 18 crores and once again emerged as the highest tenderer, albeit quoting Rs.50,000/- more than the said Khatupati Energy Limited.

Interestingly, at no point of time, either on 30th June 2020 when the result of the first tender was declared or on 3rd September 2020 when the result of the second tender emerged, did the petitioner put in or offer to put in the bid amount. The petitioner was admittedly putting in only the EMD [Earnest Money Deposit] amount of a paltry sum.

It is submitted that an application for vacating the order dated 17th August 2020 was filed by the writ petitioner which was eventually never moved or pressed. The order dated 17th August 2020 was not challenged in appeal either.

As on the date of the impugned order i.e. second NIT for auction, the first auction process had reached a state of limbo. The petitioner, despite being the highest bidder in the first and second stages of the auction, chose not to put in the bid amount. The said Khatupati curiously did not press the writ petition thereafter.

The Port Trust was left without money or user of the property since 2019.

Finding no other alternative, caught in legal wrangles and the petitioner not forthcoming with any sum of money, the Port Trust issued second NIT which is impugned in the instant proceeding.

Mr. Jishnu Saha, learned Senior Counsel appearing for the petitioner, would rely upon three several judgments, namely **U.P. Awas Evam Vikas Parishad and Ors. v. Om Prakash Sharma** reported in (2013) 5 SCC 182, **M/s. Vedica Procon Private Limited v. Balleshwar Greens Private Limited and Ors.** reported in (2015) 10 SCC 94 and **Nagendra Rai v. Om Prakash Singh and Ors.** reported in (2014) 15 SCC 463. By referring to the **U.P. Awas Evam Vikas Parishad (supra)** and **Vedica Procon (supra)** decisions, it is argued that vested rights have accrued in favour of the petitioner for being the highest bidder. It is argued that the absence of formal confirmation by the Port Trust Authorities due to subsequent litigation not within the control of the petitioner, cannot vitiate accrued rights.

This Court notes that the proposition laid down that an accepted bid cannot be reopened by Courts for having received a higher bid and cannot be applied in the facts of the instant case. It is the petitioner who has quoted a price higher by about 6 crores to outwit the said Khatupati.

The reference to the decision of **Nagendra Rai (supra)**, however, needs to be noticed as it appears at first glance that the facts are substantially similar. What, however, stands out in the instant case from the **Nagendra Rai** decision is that the writ petitioner herein had filed an application for vacating

of the interim order, and has not pursued it. It is also not clear from the facts of the said case whether the appellant therein had put in the entire consideration money / bid amount. The appellant highest bidder was also not the original bidder, as in the instant case.

Therefore, this Court is of the considered view that while the Nagendra Rai decision may appear to be attractively similar to the instant case, is yet distinguishable on facts.

This Court notes without hesitation that the writ petitioner was a speculator. But for the curious, sudden and unexplained departure of M/s. Khatupati from the race, the petitioner was ready and willing to put 18 crores i.e. 6 crores more than the original bid for Rs. 12.48 crores. The sudden and very curious exit of M/s. Khatupati Energy Limited enabling the petitioner to avoid paying 18 crores and to and claim the property at 12.48 crores is too much of a convenient coincidence.

Clearly, the Port Trust Authorities cannot be exposed to the vagaries litigation and the commercial whims and pyrotechnics of the writ petitioner after the first and second auctions. The petitioner also cannot take advantage of the vagaries of litigation to assert rights and take advantage of an earlier bidding process that has been hitherto abandoned by conduct. The writ petitioner may also be estopped by principles of waiver and acquiescence.

This Court is, therefore, of the view that Syama Prosad Mookerjee Port Trust was justified in calling for a fresh auction, cancelling all earlier auction processes.

For the reasons stated hereinabove, the writ petition fails and is hereby dismissed.

There will be no order as to costs.

(RAJASEKHAR MANTHA, J.)

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