

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 6341 of 2020

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

New Born and Pediatric Health Centre
and another Petitioners

-Versus-

Cuttack Development Authority
and another Opp. Parties

For Petitioners : Mr. S.P. Mishra,
Senior Advocate along with
M/s. S. Mishra, A. Agarwal,
G.N. Parida, E. Agarwal and
N. Sharma, Advocates.

For Opp. Parties : M/s. Sanjib Swain and
Ashok Mishra, Advocates

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing & judgment: 26.04.2022

DR. B.R. SARANGI, J. The petitioners, by way of this writ petition, seek to quash the cancellation letter dated 02.01.2020 issued by the Secretary, Cuttack

Development Authority under Annexure-9 and to issue direction to the opposite parties to allot Plots No.1-COM-11/1(K), 1-COM-11/1(L), 1-COM-11/1(M) and 1-COM-11/1 (N) in Sector-1 of Bidanasi Project Area, Cuttack, in favour of the petitioners on receipt of the bid amount and execute all such deeds in accordance with the terms and conditions of the Brochure.

2. The factual matrix of the case, in brief, is that petitioner No.1, is the New Born and Pediatric Health Centre, represented through petitioner No.2-Sri Udaynath Upadhyay. Petitioner no.2 through his son, who is a Doctor, is running the said health care centre, which caters the need of the society, by taking care of the new born babies and other pediatric patients for their better treatment and giving good medical facilities with the help of best Pediatric Doctors, since 2008. The health care centre is running in a rented premise at D/54, Sector-7, CDA, Cuttack since inception and has a very good reputation. The health care centre has 18 numbers of support staff and a large number of new born and infants are being treated every day and night with in-house bed

capacity of 21 patients, which remains full practically. The treatment of the new born and infants, is the call of the day and those pediatric patients require good hygienic condition for their treatment and require constant care and attention.

2.1 Opposite party no.1 issued an e-auction notice on 01.03.2019 vide Annexure-1 inviting applications for lease of commercial plots at Sector-1, Bidanasi Project Area, Cuttack on as-is-where-is-basis. The applications were invited through online from individuals for allotment of commercial plots available at Sector-1, Bidanasi, Cuttack measuring an area of 40,900 sq. ft. approximately through e-auction. The advertisement also clarified that the selection shall be based on the eligibility and highest quoted amount (Rupees/Sq. ft) over the reserve price specified in the brochure. The bidders were requested to make themselves aware of the site conditions before participating in the e-auction process. The brochure for the same was to be downloaded from the website of Cuttack Development Authority (CDA) and the bidders were to participate in the e-auction process by

17.00 Hrs of 26.03.2019. The CDA, Cuttack reserved right to accept or reject any application and to annul the selection process at any time, without incurring any liability and without assigning any reason thereof. For any assistance/ clarification in that regard, the prospective applicants were to contact Secretary, CDA during office hours.

2.2. Such advertisement was published in the local newspapers, "The Samaj", "The Sambad", "The Times of India" and "The Indian Express" on 02.03.2019. After downloading the brochure from the website of the CDA, the petitioners applied for purchase of all four plots mentioned in the said brochure, viz, Plot No.1-COM-11/1(K), 1-COM-11/1(L), 1-COM-11/1(M) and 1-COM-11/1 (N) in Sector-1, clubbed together as one, of Bidanasi Project Area, Cuttack. Accordingly, the petitioners applied for the same through online, as per the prescribed format, which was registered on 25.03.2019 in the name of Sri Udaynath Upadhyay, who is one of the partners of the petitioner No.1 firm, on payment of the requisite fee of

Rs.1,180/- towards registration fees, and deposit of EMD which is 10% of the reserved price at Rs.1,43,15,000/-, which was paid by NEFT in favour of CDA, followed by submission of the documents required by CDA on 04.04.2019, such as; (a) application for participation in e-auction; (b) affidavit; (c) acknowledgement of payment; (d) form of EMD refund.

2.3 The petitioners expressed their willingness for buying the above four plots, which were clustered into one and were e-auctioned by the CDA Authorities. When the e-auction was conducted, the petitioners placed their bid, which was confirmed by the CDA authorities. The e-auction was held on 05.04.2019 at 5.34 P.M. in accordance with the information contained in the Brochure. The offset price in the said auction was fixed at Rs.3,500/- per sq.ft, but the petitioners submitted their bid at Rs.3,550/-per sq.ft. Accordingly, the price offered by the petitioners was confirmed and the petitioners were selected as the highest bidder in the e-auction process.

2.4 All of a sudden, the petitioners were communicated with a letter dated 02.01.2020 under

Annexure-9, stating therein that the e-auction for lease of Commercial Plots No.1-COM-11/1(K), 1-COM-11/1(L), 1-COM-11/1(M), 1-COM-11/1 (N), in Sector-1 of Bidanasi Project Area, Cuttack, published in the newspapers dated 02.03.2019 is cancelled due to “administrative decision & unavoidable circumstances” and that the EMD of Rs.1,43,15,000/- deposited against above plots has been refunded on 02.12.2019 through RTGS/NEFT. Challenging such cancellation, the petitioners have approached this Court in the present writ petition.

3. Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr.S. Mishra, learned counsel for the petitioners, vehemently contended that the letter, which was communicated to the petitioners under Annexure-9, does not show any reason of cancellation, save and except indicating “administrative decision & unavoidable circumstances”. It is further contended that the opposite parties should have indicated the reason as to why they have cancelled it. In absence of any reason, the order impugned cannot sustain in the eye of law.

4. Mr. S. Swain, learned counsel appearing for the opposite parties, vehemently contended that the reason so indicated vide Annexure-9, i.e. “administrative decision & unavoidable circumstances”, justifies the cancellation itself. This is the reason, for which the cancellation was made and the EMD amount was refunded to the petitioners through RTGS/NEFT. The reference was made to the counter affidavit filed by the opposite parties and the document annexed thereto as Annexure-A. Under Annexure-A to the counter, at point no.3, it has been held as follows:-

“The auction of Plot No-CM/4 in Sector-7, Plot No-5CM-839/15, Sector-9, Plot No.1-COM-11/(K), Plot No-1-COM-11/(L), Plot No-1-COM-11/(M) & Plot No-1-COM-11/(N) in Sector-1 may be cancelled as there is no competition in auction and the quoted price is too low taking the location of plot into consideration.”

According to him, on the basis of such decision, the letter in Annexure-9 was communicated to the petitioners. Thereby, no illegality or irregularity was committed by the authority concerned, so as to challenge the same before this Court.

5. This Court heard Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. S. Mishra,

learned counsel for the petitioners; and Mr. S. Swain, learned counsel appearing for the opposite parties by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally, at the stage of admission.

6. The factual matrix, as has been delineated above, is not in dispute. As such, the letter of cancellation at Annexure-9, which is the subject matter of challenge in this writ petition, clearly indicates the ground of cancellation as “administrative decision & unavoidable circumstances”. But, what was the “administrative decision” and what were the “unavoidable circumstances” were not communicated to the petitioners. Therefore, this Court, while entertaining the writ petition on 07.01.2021, passed the following order:-

“This matter is taken up by Video Conferencing mode.

Heard Mr. S.P. Mishra, learned Senior Advocate appearing for the Petitioners and Mr. S. Swain, learned counsel appearing for the Opposite Parties-Cuttack Development Authority.

The grievance of the Petitioners is that without affording any valid reasons and eight months after the Petitioners had deposited the Earnest Money to the tune of Rs.1,43,15,000/-, the entire e-auction process was

cancelled by the Opposite Parties-Cuttack Development Authority. The Opposite Parties-Cuttack Development Authority quietly refunded the said EMD amount by crediting it to the Petitioners' Bank account before the order of cancellation of e-auction process. When an enquiry was made in this regard by the Petitioners, the Opposite Parties-Cuttack Development Authority informed them that the e-auction process was cancelled due to administrative decision and unavoidable circumstances.

Issue notice.

Mr. S. Swain, learned counsel accepts notice on behalf of the Opposite Parties-Cuttack Development Authority and states that he will file para-wise reply within four weeks. Learned counsel for the Petitioners shall serve extra copies of the petition on him within three days hence. Rejoinder, if any, shall be filed by the next date.

List this matter on 18th March, 2021.

As there are certain restrictions due to pandemic COVID-19 situation, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25th March, 2020."

7. In response to the above, contention of Mr. S. Swain, learned counsel for the opposite parties is that they have explained such reasons at paragraphs-6 and 8 of the counter affidavit. For ready reference, the averments made in paragraphs-6 and 8 of the counter affidavit are extracted herein below:-

"6. That the e-auction was carried on as per the terms & conditions of the Brochure (Annexure - 2). But in view of the compelling circumstances and in the interest of general public as well as the authority, an administrative decision was taken and the auction process of lease of commercial plots at Sectore-1, Bidanasi Project Area,

Cuttack on as-is-where-is-basis has been cancelled. Consequently, the EMD of Rs.1,43,15,000/- was refunded on 2.12.19 through RTGS to the petitioner who was the only one bidder for allotment of the aforesaid plot and has offered Rs. 3,550/- for Sq. ft. as against the offset price of Rs. 3,500/- as fixed by CDA. The said decision was communicated to the petitioner vide Letter dt.2.1.2020 (Annexure-9) issued by CDA. Being aggrieved by the said decision petitioner has filed the present writ application.

It is humbly submitted that surprisingly petitioner was the only one bidder in the aforesaid e-auction and there was absolutely no competition for allotment of the aforesaid commercial plots measuring a huge area of 40,900 Sqft. But the fact remains that the said plots are situated in the best area of the Abhinab Bidanasi Project and the same is near the Judicial Academy in Sector-1 of Bidanasi Project Area, Cuttack. Those plots are the most valuable land for all kinds of commercial activities. Therefore, huge amount was expected by the CDA in the e-auction the aforesaid plots.

8. That the averments made in Para-2 to 8 of the writ application are not correct and are hereby denied. However, petitioner is put to strict proof of the same. It is humbly submitted that in response to the e-auction Notice dt 1.2.19 (Annexure-1), petitioner was the only one bidder in respect of the aforesaid four commercial plots (which were clustered into one plot measuring an area of 40,900 Sq.Ft.). Petitioner has offered a nominal amount of Rs.3,550/- only as against the offset price of Rs.3,500/- fixed by the CDA. Thus, the claim of the petitioner that he is the highest bidder is not correct rather he was the only one bidder and there was no competition at all in the auction and the quoted price is too low taking the location of the plot into consideration. The same will be clear from the copy of the auction summary under Annexure-6.”

In view of the above, learned counsel for the opposite parties contends that sufficient reason has been assigned

in Annexure-9 dated 02.01.2020, and, therefore, the same does not require interference by this Court.

8. On perusal of the letter under Annexure-9, this Court finds no sufficient reason, save and except mentioning “administrative decision & unavoidable circumstances”. By way of filing the counter affidavit, now the opposite parties are trying to explain the same by substantiating the reasons in paragraphs-6 and 8 of the counter affidavit and also annexing the document under Annexure-A to the counter affidavit.

9. Admittedly, the petitioners had deposited the EMD amounting to Rs.1,43,15,000/- in Bank of Baroda, CDA Branch, on 25.03.2019, which was duly acknowledged by the opposite parties. The said amount was withheld for quite a long time, i.e. till 10.12.2019, on which date the same was transmitted to the petitioners through RTGS, even though the decision was taken on 20.06.2019 under Annexure-A. The reason for withholding such amount, for quite a long period has not been indicated anywhere.

10. In view of such position, the letter dated 02.01.2020 communicated to the petitioners vide Annexure-9, having not been supported by any reason, the same cannot sustain in the eye of law. In the counter affidavit filed on behalf of the opposite parties, though some reasons have been assigned, but the same are not borne out from impugned communication under Annexure-9.

11. It is well settled principle of law laid down by the apex Court in **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**, AIR 1978 SC 851 that :

“When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.”

12. In **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR 1952 SC 16, the apex Court held as follows :

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of

explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.”

Similar view has also been taken in ***Bhikhubhai Vithlabhai Patel v. State of Gujarat***, (2008)4 SCC 144.

13. Applying the above quoted principles of law, as laid down by the apex Court, to the present context, and looking at the impugned order in Annexure-9, a conclusion can be irresistibly drawn that by a cryptic manner the order of cancellation has been passed, which cannot sustain in the eye of law.

14. Apart from the above, the reasons, which have been explained by filing counter affidavit, are not acceptable, being not permissible under law. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those.

15. In **Union of India v. Mohan Lal Capoor**, AIR 1974 SC 87 it has been held:

“Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.”

The decision, referred to above, has been followed in **Sanjay Kumar Rout v. State of Orissa**, AIR 2018 ORISSA 162, rendered by a Division Bench of this Court, where one of us (Dr. Justice B.R. Sarangi) is a member.

16. In view of the foregoing discussions, the letter dated 02.01.2020 issued by opposite party no.2 in Annexure-9 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. Resultantly, the opposite parties are directed to accept the bid amount submitted by the petitioners, as expeditiously as possible, and take follow up action in accordance with law.

17. The writ petition is allowed. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 26th April, 2022, Arun/GDS

