

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2757 OF 2022

Omax Minerals Pvt. Ltd. Thr. Its Authorized Representative Bhimrao s/o Vinayak Tandekar
Shankar Nagar, Raipur, Chattisgarh

-vs-

The State of Maharashtra, Thr. Its Secretary of Revenue and Forest Dept. Mantralaya, Mumbai
and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Madhur Deo, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondent Nos.1
and 2.

Shri R. M. Bhangade, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND URMILA S. JOSHI-PHALKE, JJ.

DATE : June 09, 2022

P.C.

The challenge raised in this writ petition is to the e-auction conducted by the respondent Nos.1 to 3 pursuant to the tender notice dated 04/02/2022. As per the said tender notice e-auction of various sand-ghats was proposed. As per schedule of e-auction, e-tenders were to be accepted On-line till 10 pm on 19/02/2022. The e-auction process was to be conducted on 21/02/2022 between 11 am to 3 pm. It was stated that thereafter the e-tenders/e-bids would be opened. It is common ground that in view of orders passed in other proceedings the proceedings, the auction activities that were scheduled on 21/02/2022 were held subsequently on 18/05/2022. According

to the petitioner it was necessary for the respondent Nos.1 to 3 to have indicated to all the bidders the upset price which ought to have been the price quoted by the highest bidder at the pre-bid stage. However, without disclosing such upset price and by conducting the e-auction on the basis of the upset price of Rs.72,72,000/-, the respondent Nos.1 to 3 committed an illegality. The object behind holding an e-auction was to ensure that a good price is received in such auction after competitive bidding. The respondent No.4 in its bid had quoted an amount of Rs.1,09,08,000/- and by treating that amount as the highest bid, the sand-ghat was allotted to the respondent No.4. It was necessary for the respondent Nos.1 to 3 to have commenced bidding from the amount quoted by highest bidder but the same was not done. Inviting attention to the judgment of the Division Bench in Writ Petition No.6372/2012 (*Arunodaya Magaswargiya Mazdoor Kamgar Shahakari Sanstha Ltd. vs. The State of Maharashtra and ors.*) decided on 15th/16th June 2013 it was submitted that by deviating from such procedure, there was no opportunity to enhance the bid amount from the bid quoted by respondent No.4. This infact resulted in a lower amount being received by the State under the auction. The learned counsel also referred to the decisions in *Ram and Shyam*

Company vs. State of Haryana and ors. (1985) 3 SCC 267 and *Asha Mehta and anr. vs. Allahabad Bank and ors. 2011(1) Mh.L.J. 1011* in that regard. It was thus submitted that the tender notice dated 04/02/2022 for the sand-ghat at Mohkhedi Taluka Mouda, District Nagpur ought to be set aside.

2. The learned Assistant Government Pleader for the respondent Nos.1 to 3 as well as the learned counsel for the respondent No.4 opposed aforesaid submissions. It was submitted that the auction was conducted in accordance with the Government Resolution dated 28/01/2022. Under that Government Resolution it was not stipulated that the bidding process would commence from the rate quoted by the highest bidder while submitting his bid. The up-set price was indicated in the tender notice itself and since the respondent No.4 had quoted a rate much higher than the upset price and more than what was quoted by the petitioner, the bid of respondent No.4 was accepted. There were no allegations of malafides or breach of the Government Resolution dated 28/01/2022 and therefore there was no reason to interfere in writ jurisdiction. Moreover, the respondent No.4 had already commenced the work under the contract.

3. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. It is seen that the petitioner has not alleged breach of any condition either of the Government Resolution dated 28/01/2022 or the tender notice dated 04/02/2022 in the writ petition. The auction in question was conducted in accordance with the said Government Resolution and the tender notice. The manner in which the auction ought to have been held according to the petitioner by disclosing the price rate quoted by the highest bidder does not find place either in the said Government Resolution or the tender notice. Moreover, there are no allegations of malafides or favoritism against the respondent Nos.1 to 3 on the basis of which the bid was allotted to the respondent No.4. In absence of there being any deviation from the procedure prescribed for holding the e-auction, there would be no scope to interfere in writ jurisdiction.

4. Though it was urged by the learned counsel for the petitioner that with a view to ensure a higher amount being received by the State Government while auctioning the sand-ghats it was necessary to have permitted competitive bidding from the highest rate quoted by a bidder, we find that the same

is not stipulated as the procedure according to which the auction was to be conducted. If the petitioner was not satisfied with the manner in which the auction was to be conducted and the terms expected by the petitioner were not found in the tender notice, the petitioner ought to have challenged the tender notice prior to participating in the auction process. The same has however not been done.

5. Thus in absence of any illegality being pointed out by the petitioner while accepting the bid of respondent No.4 coupled with the fact un-disputedly the respondent No.4 was the highest bidder, there is no case made out to interfere in writ jurisdiction.

The Writ Petition therefore stands dismissed with no order as to costs.

(Urmila S. Joshi-Phalke, J.)

(A. S. Chandurkar, J.)