BDP-SPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1324 OF 2023

Pratik Group, through its Partner)
Pratik Sanjay Chandalia)
Age: 29, Occupation Business,)
R/o. House No.37, Ganpati Mandir)
Road, Lasur Station, Tal. Gangapur,)
District Aurangabad) ….. Petitioner

V/s

1] The State of Maharashtra,)
through Department of Industrial)
Development, Mantralaya, Mumbai-32)
)
2] Maharashtra Industrial)
Development Corporation (MIDC),)
through its General Manager,)
Udyog Sarathi, Mahakali Caves Road,)
Andheri (E), Mumbai)
)
3] The Regional Officer, MIDC,)
Railway Station Road, Aurangabad) Respondents.

ALONGWITH
CIVIL APPLICATION NO.2067 OF 2023
IN
WRIT PETITION NO.1324 OF 2023

1] Mr. Sushil Kamalnayan Bharuka)
Age: 59 years, Occu. Business.)
R/o. Office No.13 to 16 City Pride,)
Jalna Road, Aurangabad.)

2] Mr. Archit Sushil Bharuka)
Age: 33 years, Occu. Business)
R/o. Office no.13 to 16 City Pride,)
Jalna Road, Aurangabad)
)
3] Mr. Adarsh Gopal Agarawal)
Age: 28 years, Occu. Business,)
R/o. Office no. 13 to 16 City Pride,)
Jalna Road, Aurangabad) …..Applicants.

V/s

1] Pratik Group,)
Through its Partner)
Mr. Pratik Sanjay Chandaliya)
Age: 29 years, Occu: Business,)
R/o. House No.37, Ganpati Mandir)
Road, Lasur Station, Taluka Gangapur,)
District Aurangabad.)
)
2] The State of Maharashtra)
Through the Ministry of Industrial)
Development, Mantralaya,)
Mumbai-32.)
(Copy to be served on Government)
Pleader, High Court of Bombay))
)
3] Maharashtra Industrial Development)
Corporation Ltd.)
Through its General Manager (Land),)
And General Manager (IT))
"Udyog Sarthi", Mahakali Caves Road,)
Andheri (East), Mumbai : 400093)
)
4] Regional Officer,)
Maharashtra Industrial Development)
Corporation Ltd.,)
Aurangabad Regional Office,)

Railway Station MIDC, Aurangabad) …. Respondents.

ALONGWITH
WRIT PETITION NO.3872 OF 2022

1] Mr. Sushil Kamalnayan Bharuka)
Age: 59 years, Occu. Business.)
R/o. Office No.13 to 16 City Pride,)
Jalna Road, Aurangabad.)

2] Mr. Archit Sushil Bharuka)
Age: 32 years, Occu. Business)
R/o. Office no.13 to 16 City Pride,)
Jalna Road, Aurangabad)
)
3] Mr. Adarsh Gopal Agarawal)
Age: 28 years, Occu. Business,)
R/o. Office no. 13 to 16 City Pride,)
Jalna Road, Aurangabad) …..Petitioners

V/s

1] The State of Maharashtra)
Through the Ministry of Industrial)
Development, Mantralaya,)
Mumbai-32.)
(Copy to be served on Government)
Pleader, High Court of Bombay))
)
2] Maharashtra Industrial Development)
Corporation Ltd.)
Through its General Manager (Land),)
And General Manager (IT))
“Udyog Sarthi”, Mahakali Caves Road,)
Andheri (East), Mumbai : 400093)
)

3] Regional Officer,)
Maharashtra Industrial Development)
Corporation Ltd.,)
Aurangabad Regional Office,)
Railway Station MIDC, Aurangabad) …. Respondents.

Shri D.P. Padolkar, Advocate for the Petitioner in Writ Petition No.1324 of 2023.
Mr. Anand P. Bhandari, Advocate for the Petitioners in Writ Petition No.3872 of 2022 and for the Applicants/Interveners in Civil Application No.2067 of 2023.
Shri P.K. Lakhotiya, A.G.P. for Respondent No.1 in Writ Petition No.1324 of 2023 and Writ Petition No.3872 of 2022 and for Respondent No.2 in Civil Application No.2067 of 2023.
Mr. S.S. Dande, Advocate for Respondent Nos. 2 and 3 in Writ Petition No.1324 of 2023 and Writ Petition No.3872 of 2022 and for Respondent Nos. 3 and 4 in Civil Application No.2067 of 2023.

CORAM: NITIN W. SAMBRE &
S.G. CHAPALGAONKAR, JJ.

JUDGMENT RESERVED ON : 03.05.2023
JUDGMENT PRONOUNCED ON : 09.08.2023

JUDGMENT: **(*Per Nitin W. Sambre, J.*)**

1] In both these Petitions, subject matter is, E-auction of the plot No.P-4/2 admeasuring 4800 square meters situated in Chikhalthana Industrial Area at Aurangabad. Respondent-MIDC is the owner of the aforesaid property and vide E-beed notice, decided to conduct online auction of its properties in various industrial areas in the State of Maharashtra.

2] Petitioner in Writ Petition No.1324 of 2023 is a registered partnership firm who claims to have responded to the aforesaid online beed and claims to have successfully submitted its Earnest Money Deposit ("EMD") on 03.02.2022. Subsequent to above, Petitioner claims to have uploaded documents showing technical qualification criteria of the Petitioner-partnership firm. On 04.02.2022, Petitioner claims to have logged-in the website of Respondent Nos. 2 and 3 for uploading financial bid. However, it is claimed that same could not be uploaded due to technical issue cropped up on the official website of Respondent-MIDC. According to the Petitioner, message started displaying on the computer screen of the Petitioner viz. " *you are not verified vendors of MIDC kindly contact with MIDC Officials for validation."* It is further claimed that the Petitioner tried to contact Officials of MIDC so as to solve the aforesaid technical glitch. However, in spite of repeated attempts because of the aforesaid technical glitch, Petitioner was not able to submit its online financial bid in the matter. In this background, it is claimed that Respondent Nos. 2 and 3 be directed to accept the rate quotations of the Petitioner in respect of the aforesaid property or in the alternative issue fresh tender process in respect of the plot in question. Petitioner therefore by way of undertaking to this Court has specifically stated as under:-

> "3. I say and submit that, I have quoted Rs 17,500/- per Sq. Mtrs as rate in financial bid. The size of writ plot is 4800 Sq. Mtrs. as such, total rate quoted by me amounts to Rs 8,40,00,000/-. I undertake to deposit remaining 75% amount within 03 months from today. I have prepared Demand Draft No.000622, dated 17.04.2023 issued by Deogiri Nagari Sahakari Bank Ltd., Aurangabad to deposit 25% amount of total rate quotation i.e. Rs 2,10,00,000/-. The copy of Demand Draft No.000622, dated 17.04.2023 issued by Deogiri Nagari Sahakari Bank Ltd is annexed herewith in respect of 25% of the amount quoted by me."

In addition, contentions of the Petitioner are, Petitioner is willing to even increase its offer if chance is given by the Respondent-MIDC.

3] According to Petitioners in Writ Petition No.3872 of 2022, who are partners of proposed partnership firm, they are engaged into development of residential and commercial properties in and around Aurangabad City. According to them, said proposed firm submitted its bid for the aforesaid property by depositing EMD of Rs 12,50,400/- with Respondent-MIDC and auto-generated e-mail from MIDC was received by the Petitioners on 04.02.2022 informing that the bid of the said Petitioners was successfully submitted for the property referred to above. According to the Petitioners, vide e-mail dated 09.02.2022, Petitioner No.1 was informed by MIDC that bids will be opened on 10.02.2022 and 11.02.2022 at MIDC Headquarters. It is further claimed that three e-mails were received by the Petitioners from Respondent-MIDC regarding (a) successful qualification of technical Envelope, (b) successful submission of Commercial Envelope and (c) Petitioners found to be the highest bidder for the plot in question. According to the Petitioners, they were waiting for intimation to deposit the amount as per tender document. However, since there was no response, they have forwarded mail to Respondent-MIDC, expressing their willingness to deposit entire amount of the balance consideration.

4] Mr. Bhandari, Counsel for the Petitioners in Writ Petition No.3872 of 2022 submit that Petitioners being the highest bidder, Respondent-MIDC as such ought to have inferred concluded contract in their favour and lease deed for a period of 95 years ought to have been executed in their favour as per E-bid notice. So as to substantiate his contention, he has relied on tender conditions viz tender opening instructions and Commercial Envelope. He would claim that after final bid was concluded and same was processed by opening bid offer, it is not open for Respondent-MIDC to entertain representations/complaints. In this backdrop, Counsel for Petitioners would urge that directions need to be issued to the Respondent-MIDC to ignore the complaints/objections and execute lease deed in relation to the plot in question in favour of the Petitioners.

He would invite our attention to Division Bench Judgment of this Court delivered on18.11.2022 in Writ Petition No.3993 of 2022 in the matter of *Dharam Ice and Cold Storage vs. Maharashtra Industrial Development Corporation and Ors.* alongwith connected Writ Petitions at the Principal Seat in Civil Appellate Jurisdiction.

According to Mr. Bhandari, under very same E-tender notice, identical issue was raised like the one which is raised in the present Petitions and this Court has issued positive directions to consider the bid of the highest bidder in accordance with law and passed appropriate orders.

He would further urge that he has instructions to make a categorical statement before this Court that Petitioners are willing to give higher offer than the one which is quoted by them in commercial bid.

5] In the said Writ Petition No.1324 of 2023, the partners of proposed partnership firm i.e. above Petitioners have sought an intervention alleging that the Petitioner in the said Petition not only has withdrawn the Earnest Money Deposit but has raised objection as to the alleged technical glitch which is raised at belated stage. As such it is claimed that the said Petition is not maintainable. It is also claimed that proposed partnership firm of which Applicants are partners, is a highest bidder and as such they have every right to claim issuance of directions to Respondent-MIDC to execute lease deed in their favour as they are willing to deposit balance amount of consideration.

6] While countering aforesaid submissions, Mr. Dande, Counsel for Respondent Nos. 2 and 3 has submitted that Petitioner in Writ Petition No.1324 of 2023 has lodged a complaint about malfunctioning of the E-tender process. He would further urge that one Dilip Shinde has filed Writ Petition No.3121 of 2022 before this Court alleging that though he successfully submitted online application, because of technical glitch, auto-generated e-mail was received by him asking him to resubmit the commercial bid. Based on above, he has informed us that in the said Petition, Petitioner has claimed that there are some malafides and tampering of E-bid process. It is further claimed that there are other complaints already received by the office of the Respondents. As such, it is claimed that based on the complaints, Respondents upon enquiry have found certain technical issue and after identifying the same proposed to cancel the e-tender of the plot in question. It is the contention of Counsel for Respondent-MIDC that in view of offer made by bidders including Petitioners during the course of hearing, it has to be inferred that MIDC has been offered comparatively much less price in E-auction and since Petitioners themselves are willing to bid for plot in question at higher rate, decision of re-auctioning of the property in question is quite justified. As such, Respondent Nos. 2 and 3 have sought dismissal, as they are intending to go for re-auction of the plot in question.

7] The Apex Court in the matter of *The Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. vs. Shishir Realty Private Limited & Ors etc*. delivered in Civil Appeal Nos. 3956-3957 of 2017 has observed that in law relating to Government contracts, constitutional factors are also in play. Governmental bodies being public authorities are expected to uphold fairness, equality and rule of law even while dealing with contractual matters. Public authorities, like Respondents in this case, have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied.

In *Sterling Computers Ltd. vs. M & N Publications Ltd.*, reported in **(1993) 1 SCC 445**, particularly in para 12, the Apex Court has held that under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. However, public authority, in contractual matters, is not vested with unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities they are required to follow the norms recognized by courts while dealing with public property.

In the matter of *Divya Manufacturing Company (P) Ltd. vs. Union of Bank of India and Ors.*, reported in **(2000) 6 SCC 69**, it is laid down that in the matter of sale of public property/auction the dominant consideration is to secure the best price for the property and the Courts are duty bound to ensure that in such auction price fetched is adequate. Support can also be drawn qua aforesaid proposition from the judgment of the Apex Court in the matter of *Chairman and Managing Director, SIPCOT, Madras and Ors. vs. Contromix Pvt. Ltd.*, reported in **(1995) 4 SCC 595.**

The Apex Court in the matter of *State of Punjab and Others vs. Mehar Din* reported in **(2022) 5 SCC 648** has observed that acceptance of highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. It is further held that plausible decisions need not be overturned and, at the same time, latitude ought to be granted to State in exercise of its executive powers. It is further observed that allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills.

Further more in *Tata Cellular vs. Union of India* reported in **(1994) SCC 651**, the Apex Court has observed that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities. In *Jagdish Mandal vs. State of Orissa*, reported in

(2007) 14 SCC 517, the Apex Court has observed that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. The Courts are duty bound to check whether choice or decision is made lawfully.

The Apex Court in its recent judgment in *Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others,* **2023 SCC OnLine SC 671** has observed that award of contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bonafide reasons. The Apex Court while making such observations has drawn support from its earlier judgment in *Air India Ltd. vs. Cochin International Airport Ltd.*, reported in **(2000) 2 SCC 617.**

8] In the backdrop of aforesaid legal propositions, we need to test the decision taken by the Respondents in the case in hand of re-auctioning the property in question. It appears that the property is located at one of the best commercial locations in the Industrial City of Aurangabad. Respondent-MIDC was expecting much higher price than the one which is offered by the Petitioner. Even if Respondent-MIDC has shown the Petitioners to be highest bidder, however there is no material to infer that such highest bid of the Petitioner was accepted and there is concluded contract in favour of the Petitioners.

9] The offer made by the Petitioner in the light of the judgments referred to above is always subject to assessment having regard to overall situation for the purpose of taking decision by the Respondent-authority. Fact that Respondent-authority has noticed certain technical glitch and having noticed that offer given by the Petitioners is at much lower pedestal, is not duty bound to accept the same. Court cannot shut its eyes to the fact that prime property is sought to be purchased by the Petitioner at much lower rate. Court is duty bound to ensure that in auction public property fetches adequate price. Acceptance of the highest bid is always subject to conditions in which public auction was held. Latitude is given to public authority like the Respondents in the present case to take appropriate decision on evaluation of offers.

10] In the case in hand Respondent-Interveners i.e. Petitioners in Writ Petition No.3872 2022 have made an offer of Rs 17,500/- per square meters and by demonstrating their bonafides have deposited 25% of the offer made. Stand of Respondent-MIDC that property should have fetched much more value than the value at which Petitioners have offered to purchase the same is justifed. During the course of argument Petitioner has itself conceded by offering higher amount than the amount offered by the interveners that the property should fetch much more value than the value offered by the Petitioner. This Court is not supposed to delve upon the offers made by the parties like Petitioner or Interveners and said issue is purely to be dealt with by the Respondent-MIDC by conducting E-auction. As such, decision of the Respondent-MIDC to re-auction the property cannot be faulted with or cannot be termed as arbitrary, bias or malafide. The decision of the Respondent-MIDC to re-auction the property appears to be in the best public interest, as Respondents have assured this Court that they shall be fixing upset price not below 17,500/- per square meter, as has been offered by the Interveners.

11] Mr. Bhandari Counsel for the Petitioners in Writ Petition No.3872 of 2023 has relied on Division Bench Judgment of this Court in the matter of *Dharam Ice and Cold Storage,* cited supra wherein this Court has set aside the decision of the Respondent-MIDC cancellng the tender and restored the tender process in so far as Petitioners therein are concerned with direction to Respondents to consider bids in accordance with tender conditions.

12] Fact remains that in the case in hand, participants have already lodged their respective protest with Respondent-MIDC about technical glitch in E-tendering process. Respondents themselves have admitted that, they having examined protest and objections and found that there is some substance in the objections raised by the parties. As such, what can be noticed is, Respondents are not consenting for quashing their decision of the proposed cancellation of the E-tendering process. Thus, said judgment in *Dharam Ice and Cold Storage,* cited supra will be of hardly any assistance to the Petitioners in the present case, particularly when already objections are raised by other bidders and some of the bidders have also moved this Court questioning very

E-auction process being illegal as same suffers from technical lacuna. Same does not appear to be the case in *Dharam Ice and Cold Storage,* cited supra. Division Bench at Bombay in the above judgment has noted that none of the participants have raised objection to the finalization of e-tender whereas in the case in hand not only objections were lodged with Respondent-MIDC but also participants have approached questioning tender process before this Court. As such the judgment referred to above will be of hardly any support to the Petitioners in the case in hand.

13] Apart from above, what is required to be noted is, both the Petitioners in their respective Petitions have in categorical terms made a statement that they are willing to make higher offer than the one which is already made to Respondent No.2 while participating in E-bidding process. In such an eventuality public exchequer should not be required to be suffered because of low offer made by the Petitioners. From above contention of both the parties, the stand of the Respondent-MIDC of property in question having fetched much lesser price is justified. There appears to be substance in the case of the Respondents. Once Petitioners in both these Petitions themselves are willing to offer more price to the Respondents for the property in question than the one which is offered by them during E-tendering process, same can be one of the reasons for justifying decision of the Respondents of proposing re-auctioning of the property in question.

14] For the reasons stated above, we are of the view that Writ Petition No.3872 of 2022 lacks merit and is liable to be dismissed and is dismissed accordingly. We further direct Respondent Nos. 2 and 3 to start fresh bidding process in relation to the property being plot No.P-4/2 admeasuring 4800 square meters situated in Chikhalthana Industrial Area at Aurangabad.

15] As far as Writ Petition No. 1324 of 2023 is concerned, we are of the view that in view of dismissal of the aforesaid Writ Petition, present Writ Petition can be disposed of in terms of prayer clause (A)(ii) which reads as under:-

> "(A)(ii) Issue fresh tender process in respect of the writ plot i.e. No.P-4/2, admeasuring

> 4800 sq.mtrs situated in Chikhalthana Industrial Area, Aurangabad by giving time bound scheduled.”

16] For the reasons stated above, pending Application stands disposed of.

17] After the judgment is pronounced, Mr. Bhandari, learned Counsel appearing for the Petitioner in Writ Petition No.3872 of 2022 submits that interim relief granted earlier, thereby restraining Respondent-MIDC to conduct the re-auction, be continued for a period of four weeks.

18] In response to above, Mr. Dande, learned Counsel appearing for Respondent-MIDC submits that, even otherwise, process of re-auctioning is to be finalized and same is like to take atleast six weeks.

19] In view of above, no further orders are required.

[S.G. CHAPALGAONKAR, J.] **[NITIN W. SAMBRE, J.]**