

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

WRIT PETITION 5320 OF 2022

Petitioner : Raju Damodar Jibhkate,
 Aged 45 Yrs., Occu : Business,
 R/o Ambedkar Ward, Kosara Konda,
 Tahsil Pauni, District Bhandara.

– Versus –

Respondents : 1. State of Maharashtra,
 Through Ministry of Co-operation,
 Mantralaya, Mumbai 400 032.

2. The Liquidator,
 Shetkari Dugdh Utpadak Sahakari Sanstha
 Maryadit, Registration No.407,
 Konda, Taluka Paoni, District Bhandara.

 Mr. A.M. Quazi, Advocate for the Petitioner.
 Mr. N.S. Rao, A.G.P. for the Respondents.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**

DATE : **1st AUGUST, 2023.**

J U D G M E N T : *(Per Rohit B. Deo, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties.

02] The petitioner is assailing the communication dated 08/08/2022 issued by the second respondent and which was uploaded online, purporting to cancel the tender published for sale of the open plot owned by Shetkari

Dugdh Utpadak Sahakari Sanstha Maryadit (hereinafter referred to as “Society” for short).

03] The Society is liquidated under the provisions of the Maharashtra Cooperative Societies Act, 1960 and Mr. Rajvilas Borkar, who is holding the substantive post of Head Clerk, is functioning as a liquidator.

04] Mr. Borkar issued e-tender notice on the Government of Maharashtra website inviting bid for auction purchase of property admeasuring 0.02 H.R., City Survey 16, which forms part of portion, Sub Division 1141 of Mouza Kosra, Tahsil Pauni, District Bhandara (subject property). The upset price was fixed at Rs.11.00 lakhs.

05] It is not in dispute that the petitioner participated in the auction along with three other bidders, and emerged as the highest bidder with bid of Rs.35,26,000/- (Rupees Thirty Five Lakh Twenty Six Thousand Only), which was more than thrice the upset price.

06] It was only after the opening of the bid, and the emerging of the petitioner as the highest bidder that Mr. Borkar issued the notice dated 08/08/2022 which is impugned herein, purporting to cancel the e-tender.

07] It is on these broad facts that the petitioner is assailing the cancellation of the e-tender. The petitioner submits that the reasons, which are given for purported cancellation, are flimsy and untenable and if there was to be any substance in the reason cited, the second respondent ought not to have waited for completion of the entire process and opening of the bids. The learned Counsel for the petitioner Mr. Quazi would further submit that the bidders were not intimated at any point in time that certain documents are not uploaded on the website nor is it the case of the second respondent that there was any complaint received by any person to the effect that he or she could not participate in the auction due to the alleged absence of certain documents on the website.

08] We have perused the affidavit in response dated 27/06/2023 which filed by Mr. Borkar. The affidavit is interesting. While the communication impugned does not even whisper that the subject property could have fetched better price, in the affidavit, Mr. Borkar states that, he realized that the property could have fetched more than Rs.55.00 lakhs and, therefore, cancelled the e-tender. It is stated in the affidavit that the 7/12 Extract, boundaries and map of the building and house were not mentioned in the tender notice and, therefore, the public at large were not aware of the auction.

09] We were not satisfied with the affidavit in response. We repeatedly asked learned A.G.P. Mr. Rao to inform us as to, what is the basis for the “realisation that the property could have fetched Rs.55.00 lakhs”. Mr. Rao told us on the basis of instructions received from Mr. Borkar, who was present in the Court, that was the “opinion” of Mr. Borkar.

10] The right to cancel the tender is undoubtedly available with the tendering authority. However, the cancellation of tender will have to be justified on grounds which can pass the muster of Article 14 of the Constitution of India. The upset price was fixed at Rs.11.00 lakhs and the petitioner emerged as the highest bidder, which bid was more than thrice the upset price. Admittedly, Mr. Borkar did not receive any complaint whatsoever from any person that he or she would have participated in the auction, but for the fact that he or she was not aware of the auction in view of certain lacunae in the documents uploaded on the website.

11] Mr. Borkar was obviously not alive to the duty to act fairly and in accordance with law. The cancellation of tender is not only arbitrary, the cancellation is whimsical as is apparent from Mr. Borkar’s stand that it was his opinion that the subject property could have fetched Rs.55.00 lakhs. While we would not have ordinarily interfered in an action of cancellation of

e-tender, in the present facts, we find that the action is clearly arbitrary, whimsical and is vulnerable to the charge that extraneous considerations had actuated the action.

12] In this view of the matter, we quash the communication of cancellation, which is impugned and direct the second respondent to proceed further in the matter and conclude the proceedings within the next seven days.

13] The petition is entitled to costs, which we quantify at Rs.20,000/- (Rupees Twenty Thousand Only). The costs shall be paid by the second respondent personally within the next 14 days. Compliance affidavit shall be filed in the Registry. The petition is allowed in the aforestated terms.

14] Rule is made absolute with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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