

**Jeevan Singh and Another Vs. State of M.P. and Others**

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**Court :** Madhya Pradesh

**Decided On :** Jul-15-2015

**Judge :** S.K. Gangele

**Appeal No. :** W.P. No. 12877 of 2014

**Appellant :** Jeevan Singh and Another

**Respondent :** State of M.P. and Others

**Judgement :**

1. The petitioners have filed this petition against the order Annexure P- 1. By the aforesaid order, the allotment of plots in favour of the petitioners, in pursuance to earlier auction have been cancelled. The petitioners further prayed a relief that a Mandamus be issued in their favour directing the respondents to execute the sale deeds of the plots which were allotted to them in an auction conducted in the year 2010.

2. There was an old fruits and vegetables market situated at Bhopal in the name of Nabhahar Sabji Mandi. It was within the area of heart of the city. Due to increase of population of the city, the Government decided to establish a new market yard for fruits and vegetables traders comprising area of 56 acres of land at the place named as Karond. On 9.11.2000, a notification under Section 3 of the Madhya Pradesh Krishi Upaj Mandi Adhinyam 1972, hereinafter referred as Adhinyam of 1972, was issued for the purpose of establishment of market an auction was held

in the year of 2007 for allotment of plots in the newly establishment. Aforesaid auction was cancelled. Again on 18.12.2009, vide advertisement dated 18.12.2009 the Mandi Committee invited applications for allotment of plots. The auction was held on 8.1.2010. The petitioners participated in the auction and they were allotted plots admeasuirng area 25x40 sq. ft. On 30.3.2010, the petitioners deposited 50% of the amount with the respondent no.4.

3. Some persons who did not participate in the auction filed writ petition before this court challenging vires of Sub Rule 7 of Rule 3 of Rules named as Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Marketing Committee/Board) Rules 2007. They pleaded that the Mandi Samiti could not hold auction of the plots and the plots have to be allotted to the persons who had been doing their business as venders of Vegetables for a long time. The Division Bench of this Court admitted the writ petition for hearing and ordered maintenance of status quo. This court, vide order dated 1.3.2012 dismissed the writ petition and other petitions. The court also upheld the auction. Against the aforesaid judgment, a SLP was filed before the Supreme Court. The Supreme Court also dismissed the SLP on 6.1.2014.

4. Some persons also filed PIL, which was registered as W.P. No. 15957 of 2014. This court dismissed the aforesaid writ petition also with the following observations:-

11. It is also indisputable that the auction process has already been set in motion by giving public notice. The members of the petitioner Association were free to participate in the said auction process. Those who have participated, the respondent/Mandi would be obliged to consider their applications in accordance with the procedure prescribed in Rule 3 (7) (b) of the Rules. The last date of bid was 13.11.2014. In the auction process, the Mandi has already collected an amount of around Rs.31 crores from the participants. Even for that reason, the matter cannot brook any further delay - as it would be affecting the rights of those who have invested in the auction process with a sanguine hope of getting allotment of land or structure in the respondent/Mandi area.

12. Taking any view of the matter, therefore, this petition deserves to be dismissed. Ordered accordingly.

5. The petitioners did not deposit the entire amount in accordance with the terms and conditions of auction, hence by notice dated 8.2.2010, the petitioners were directed to deposit the entire amount within a period of 30 days from the date of receipt of the notice. Copy of the notices issued to the petitioners have been filed as Annexure R-2. 4.2 and 4.3 alongwith the petition and thereafter vide impugned order allotment of plots in favour of the petitioners have been cancelled.

6. The respondent no. 4 in its return raised a preliminary objection in regard to maintainability of the writ petition. It is contended that the petition is not maintainable because appeal and revision have been provided in accordance with the provisions of Rules of 2009.

7. It is further pleaded by the respondents that the petitioners only deposited 50% of the amount. In spite of notice they did not deposit the entire amount in accordance with the terms and conditions of auction notice and also in accordance with statutory rules of 2009. Those persons who had deposited the entire amount within time the answering respondents executed the registered sale deeds in their favour. The time limit for depositing the entire amount has been expired. The petitioners were adamant not to deposit the amount. The respondent no. 2, M.P. Rajya Krishi Board, Bhopal in its separate reply pleaded that the petitioners did not fulfill the conditions mentioned in the auction notice and also did not fulfill the statutory requirements of Rules of 2009, hence their offer was rejected. The Finance Department of State of M.P. raised objections in regard to allotment of land in favour of the petitioners. It is further pleaded that in the auction conducted in the year of 2010, the minimum offset price of the plots was fixed @ Rs. 251/- per sq. ft. in accordance with the 2009-2010 Collector Guidelines. However, in subsequent auction, which was held in the year of 2014 as per Collector Guidelines, the minimum offset price was fixed @ Rs. 1045 sq. ft. The Mandi received minimum offer of Rs. 1048/- per sq. ft. and maximum offer of Rs. 4500/- per sq. ft. The Mandi has gained near about 38 crores in the second auction. A chart has also been filed by the respondents showing the details of the total

amount which was received by the Mandi in 2010 auction and the total amount which was received by the Mandi in 2014 auction which is as under :-

## LANGUAGE

8. The question for consideration in this writ petition is that whether the action of the respondents in cancellation of allotments in favour of the petitioners is in accordance with law or not.

9. Learned counsel appearing on behalf of the petitioners has contended that the action of the respondents is arbitrary and illegal in the writ petition challenging the vires of Rules of 2009. This court ordered maintenance of status quo. In pursuance to the aforesaid order, the petitioners were not able to deposit the remaining amount. The petitioners have tried to deposit the amount. It is further contended that when the petition was dismissed in regard to vires of Rules of 2009. The petitioners again contacted the authorities and the authorities did not accept the amount of the petitioners, hence the action of the respondents in cancellation of the allotments in favour of the petitioners is arbitrary and illegal.

10. Contrary to this learned Senior Counsel appearing on behalf of Krishi Upaj Mandi Samiti has contended that in accordance with the initial tender notice, it was obligatory on the part of the petitioners to deposit the entire amount within stipulated time. Some of the persons deposited the amount and in favour of those persons, the Mandi executed the sale deeds. However, the petitioners deliberately did not deposit the amount, hence there is no concluded contract between the petitioners and the Krishi Upaj Mandi Samiti. The price of the land has been increased many times. The petitioners have no legal or equitable rights in their favour to get the land on the price which was fixed in the year of 2010.

11. Copy of the advertisement issued on 18.12.2009 has been filed alongwith the writ petition. It is mentioned in the aforesaid advertisement that the auction would be held in the office of Mandi Committee in accordance with the provisions of Rules of 2009 and in accordance with the terms and conditions, the persons had to deposit the amount. Rule 10 of the Rules of 2009 prescribes procedures for the purpose of depositing the auction amount. In accordance with the aforesaid

statutory rule, it is obligatory on the part of the purchasers to deposit the entire amount of the plot within a period of 30 days. After receiving the information that his bid was highest, in the present case, the petitioners deposited only 50% amount. Thereafter notice was issued to the petitioners to deposit the amount. Copy of the notice has been filed as Annexure R-4.2. It is mentioned in the notice that the petitioners are required to deposit the entire amount within a period of 30 days from the date of receipt of copy of the notice. The petitioners admittedly did not deposit the amount. The petitioners contended that this court vide order dated 27.04.2010 passed in W.P. No. 3957/2010 ordered to maintain status quo with respect to allotment of land which is existing as on today. Hence, the petitioners did not deposit the amount and after dismissal of the writ petition, SLP was filed and after dismissal of the SLP, the petitioners were willing to deposit the entire amount. However, the Mandi did not accept the amount.

12. No document has been filed by the petitioners in the petition to substantiate the claim that the petitioners made a request to the Mandi Committee that they were willing to deposit the remaining amount. It is pleaded in this petition that the petitioners have tried to deposit the amount but they were not permitted, in my opinion, the statutory requirements of depositing the amount within time as fixed in the Rules of 2009. Only the pleadings are not sufficient to substantiate the claim of the petitioners that they were willing to deposit the amount and the Mandi Samiti did not accept the amount. Apart from this, the Mandi Committee had no power or authority contrary to the statutory requirements of Rules.

13. This court passed the following order on 27.04.2010 in W.P. No. 3957 of 2010 :-

In the meanwhile, it is ordered that status quo with respect to the allotment be maintained which is existing as on today.

14. It does not mean that the persons who were found eligible for allotment of plots would not be required to deposit the remaining amount. In accordance with the terms and conditions of the contract, it was the statutory duty of the petitioners to deposit the amount within time. There is no provision in the Rules of 2009 to relax the period. Contrary to this, Rule 10 (1) (4) says that if the highest bidder did not

deposit the amount within time, then his earnest money shall be forfeited and second highest bidder would be offered the plot.

15. It is well settled principle of law that in contract matters, the terms and conditions of the contract have to be followed strictly.

16. The Supreme court in the matter of B.S.N.Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and others- (2006) 11 SCC 548 has held that if there are essential conditions of tender document, the same must be adhered too. The Supreme Court has laid down the following principles which would be considered by the court at the time of considering the legality and validity of decision in regard to award of contract :-

"66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

(i) If there are essential conditions, the same must be adhered to;

(ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing.

(iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..

(v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it

is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

17. The Supreme Court further in the matter of Mahabir Auto Stores Vs. Indian Oil Corporation- (1990) 3 SCC 752 in regard to application of reasonableness and Article 14 has held as under :-

"20. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/s Radha Krishna Agarwal and Ors. v. State of Bihar and Ors., [1977] 3 SCC 457. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s Radha Krishna Agarwal v. State of Bihar, (supra) at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful

and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa v. State of Tamil Nadu and Anr.*, [1974] 4 SCC 3; *Maneka Gandhi v. Union of India and Anr.*, [1976] 1 SCC 248; *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*, [1981] 1 SCC 722; *R.D. Shetry v. International Airport Authority of India and Ors.*, [1979] 3 SCC 1 and also *Dwarkadas Marlaria and sons v. Board of Trustees of the Port of Bombay*, [1989] 3 SCC 293. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case...."

18. This judgment has been quoted with approval of the Supreme Court in the matter of *Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. And others-* (2014) 14 SCC 731. The Supreme Court further held that arbitrariness and discrimination in every matter is subject to judicial review before the writ court. After considering the earlier judgments of the Supreme Court on this point, the Supreme court held as under :-

"19. Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in Radha Krishna Agarwal and Ors. v. State of Bihar and Ors. (1977) 3 SCC 457; E.P. Royappa v. State of Tamil Nadu and Anr. (1974) 4 SCC 3; Maneka Gandhi v. Union of India and Anr. (1978) 1 SCC 248; Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors., (1981) 1 SCC 722; R.D. Shetty v. International Airport Authority of India and Ors., (1979) 3 SCC 489 and Dwarkadas Marfatia and sons v. Board of Trustees of the Port of Bombay (1989) 3 SCC 751 have ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a Writ Court exercising powers under Article 226 or Article 32 of the Constitution."

19. Furthermore, even if a person or authority is a part of the State within the meaning of Article 12 of the Constitution, a writ petition under Article 226 would not lie to enforce private law rights. That is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as the law of contract or tort. Therefore, even if writ petition would be maintainable against an authority, which is State under Article 12 of the Constitution before issuing any writ, particularly writ of mandamus the Court has to satisfy itself that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law. The contractual and commercial obligations are enforceable only by ordinary action and not judicial review.

20. From the judgments quoted above in the order of the Supreme Court the principles of law in regard to interference by the court in exercise of powers under Articles 226 of the Constitution of India is very clear that the court can interfere only if the authority has acted arbitrarily in the matter of awarding contract. In the present case as per terms of the notification by which the tenders were invited in the statutory rules of 2009, which was mandatory on the petitioners to deposit the entire amount of bid. The petitioners deliberately did not deposit the amount. Hence, in my opinion, a writ of Mandamus can not be issued in favour of the petitioners against the respondents in regard to execution of contract of allotment of land. The writ petition cannot be converted into a civil suit as specific

performance of contract.

21. Apart from this, the petitioners did not make the persons as party in the petition in whose favour in subsequent auction the plots have been allotted by the Krishi Upaj Mandi Samiti. If any order passed in favour of the petitioners, admittedly, the interest of those persons would be affected adversely. Those persons have quoted higher rates of the plots, hence the petition is also not maintainable on the ground of non -joinder of necessary party. Consequently, I do not find any merit in this petition. It is hereby dismissed.

22. No order as to costs.

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