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Shankarlal Vs. Indore Development Authority and anr.

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Court : Madhya Pradesh

Decided On : Jan-17-1995

Reported in : AIR1995MP182; 1996(0)MPLJ962

Judge : A.R. Tiwari, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : W.P. No. 1185 of 1993

Appellant : Shankarlal

Respondent : indore Development Authority and anr.

Advocate for Def. : Polekar and ;Chitale, Adv.

Advocate for Pet/Ap. : B.A. Nigam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.R. Tiwari, J.

1. This is petition under Article 226/227 of the [Constitution of India](#).

2. Facts are jejune. Respondent No. 1(IDA) invited tenders vide notice dated 16-12-92 (Annexure A) for a piece of land (approximately 1968 Sq. Metres) reserved for Petrol Pump, in Development Scheme No. 71 Sector A Industrial Area, Sirpur on prescribed tender-form, obtainable from office, to be submitted with earnest money of Rs. 25000/-. The petitioner submitted tender on 7-1-93 with requisite FDR of Rs. 25000/-(Annexure C). Out of total 5 tenderers, petitioner quoted the highest amount of Rs. 421,85 paise per square metre. Respondent No. 1, however, rejected the tender and asked the petitioner on 4-5-93 to receive the earnest money from the office (Annex, D). The plot in question was allotted to respondent No. 2 (Bharat Petroleum Corporation), Aggrieved, the petitioner has filed this petition for quashment of allotment made in faour of respondent No. 2 and for direction of allotment to him.

3. Respondent No. 1 has opposed the petition on affidavit and respondent No. 2 has filed the reply, supported by the affidavit in oppugnation.

4. Respondent No. 1 resolved in pursuance of letter dated 30-1-93 of respondent No. 2 (Annexure R/3) to allot the plot to respondent No. 2 on Rs. 600.- per square meter (Annex. R/4, R/4A) through resolution No. 13 dated 26-3-93 and demanded by the letter Annexure R/5, execution of agreement on stamp of Rs. 10/- to document terms and conditions as contained in the aforesaid letter dated 18-5-93.

5. Premium was fixed at Rs. 1180800/-. Lease rent of first year was indicated as Rs. 23616/-. Respondent No. 2 was thus asked to deposit the sum of Rs. 1204416/- in 30 days.

6. On 31-5-93 during vacation purely as temporary measure an interim order was passed for maintenance of statutes quo till disposal of the application IA No. 2979/93.

7. The counselor the petitioner urged asunder:

(a) Respondent No. 1 acted arbitrarily and illegally in declining to allot the plot in question to the petitioner, despite highest quotation and oral acceptance by Estate Officer arid in allotting it to respondent No. 2 without being the tenderer and thus

contravened Article 14 of the [Constitution of India](#).

(b) Letter dated 4-5-93 (Annexure D) rejecting the tender and resolution No. 13 dated 26-3-93, allotting the plot to respondent No. 2 merit to be mortalised.

8. The counsel for the respondents dubbed the aforesaid contentions as non-meritorious and submitted that:--

(a) Respon'dent No. 2, engaged in catering t'o'the need of general public was preferred in public interest against private interest on higher value of Rs. 600/- per square meter without any arbitrariness, illegality or irrationality.

(b) The petitioner is only a property broker unconnected with business of sale of petroleum products and unable to do it without procurement of dealership from Company like Respondent No. 2. Respondent No. 2, Govt. of India undertaking, needed to resite the outlet and showed preparedness to immediate commissioning of the outlet in Scheme No. 71 to meet the need of motoring public. Respondent No. 1 in good faith gave up notice dated 16-12-92 and responded to the priority, asserted by respondent No. 2 (Annexure R/2). Decision, as noted in Annexure R/4, R-4-A, does not suffer from vice of arbitrariness and does not offend Article 14.

(c) Allotment to respondent No. 2 was designed to serve the object and purpose.

9. The respondents placed reliance on order dated 11-3-87 rendered by this Court in M.P. No. 127/86 (Annexure R/6) but petitioner contended that this order supported his stand.

10. In AIR 1982 SC 1234, State of U.P. v. Vijay Bahadur Singh, it is held that (at p. 1236 of AIR):--

'Therefore, the Government had the rightfor good and sufficient reason, we may say,not to accept the highest bid but even to prefera tenderer other than the highest bidder, theHigh Court was clearly in error in holdingthat the Government could not refuse toaccept the highest bid except on the ground ofinadequacy of the bid.'

11. Law is luculent. AIR 1979 SC 1628, Ramana Dayaram Shetty v. International Airport Authority of India, is considered in AIR 1994 SC 2233, Premium Granites v. State of Tamil Nadu. It is not the law that there can be no departure in a particular case or cases but such a departure should appear to be rational, reasonable and non-discriminatory resting on linchpin of valid principle.

12. In a recent decision of Tata Cellular v. Union of India, (1974) 6 SCC 651, the Apex Court classified the grounds of attack as under:

'Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

13. In Council of Civil Service Unions y. Minister for the Civil Service (1984) 3 WLR 1174 (HL) Lord Diplock stated in classic terms that--

'.....Judicial Review has, I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under these heads the grounds upon which administrative action is subject to control by judicial review. The First ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time and further grounds.'

14. Factors, emerging with no obscurity, are chronicled below:

(1) No individual was preferred or favoured. public interest on demand on higher amount.

(3) The entire action of allotment through tenders was incinerated for public good.

(4) Discretion is free from taint and is in accord with the principle enunciated by Lord Mansfield in classic terms in John Wilkes case (1770) 4 Burr 2528.

(5) In somewhat identical fact situation or back-drop, such allotment was sustained by Division Bench of this Court in MP 127/86 (Annexure R/6). Attempt to distinguish or seek support from it is manifestly an exercise in futility. Ratio and rationale remain attracted with verve (sic) and vigour. There is no case to probe 'Quid hoc Subj Vult'. It is clear and cogent indeed.

15. The trade of petrol is a nationalised activity and is cared and carried on by public sector. No fault can be found if respondent No. 1 altered the course without ill Will and favour and elected to allot the plot to respondent No. 2 and avoid, for good reasons, private party like petitioner. There is no visibility, much less proof, of arbitrariness or illegality or irrationality or procedural impropriety. Absent such infirmity, action is fit and fittingly sustainable. Private interest should not be permitted to defeat or prevail over public good. Mere higher quotation or oral acceptance is not assurer of any legal right, AIR 1988 SC 2149 (State of Punjab v. Om Prakash). Legitimate expectation (1994) 6 SCC 151 cannot be pressed as legal right arid yielded no vested right to quell right of others. De Toc Cue-Ville observed that liberty cannot stand alone and must be paired with companion virtue like common good and civic responsibility. You cannot vote one and veto the other. They have to con-exist.

16. Lord Brightmen elegantly observed in case of Chief Constable of North Wales Police v. Evans (1982) 3 All ER 141 that:

'Judicial review, as the words imply is not an appeal from a decision, but a review of the manner in which the decision was made.'

17. No flaw or fault is present in 'manner' i.e. 'decision making process'. Action turns out to be right thing done rightly. There is no infirmity in matter or manner.

No ground for interference has thus been made out.

18. In the result, I find that this petition is unfit for admission. Accordingly, I say monosyllabic 'no' and dismiss this petition summarily but without any orders as to costs. The order dated 31-5-93 thus stands vacated.

19. Petitioner may now take appropriate steps, if necessary for prompt return of his earnest money.

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