

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5101 OF 2016
(ARISING OUT OF SLP (CIVIL) NO. 19310 OF 2013)

Om Prakash Sharma

....Appellant

Versus

Ramesh Chand Prashar & Ors.

.... Respondents

JUDGMENTUday U. Lalit, J.

1. Leave granted.
2. This appeal by special leave challenges correctness of the judgment and order dated 20.05.2013 passed by the High Court of Himachal Pradesh at Shimla in L.P.A. No.441 of 2012 affirming the decision dated 14.08.2012 of the Single Judge of the High Court in CWP No.1557 of 2010.

3. On 03.11.2008, an advertisement was issued by Himachal Tourism inviting bids from interested parties for outright purchase of sites located at three places in Himachal Pradesh including Café Aabshar in District Solan situated at 3 kilometers from town named Kandaghat. The relevant conditions mentioned in the advertisement were as under:-

“A Bidder is free to bid for one or more than one cafes. However all bidders need to provide the following information for consideration of their EOI.

Area of business interests (please enclose firm profile or corporate brochure)

Annual turnover & Net worth in last three (3) years (please submit audited financial statements and income Tax Return of last three financial years supporting this information).

Interest in particular café(s) and proposed usage.

Offer to “Outright purchase of the café” (a separate rate will be quoted for each café).”

4. In so far as Café Aabshar was concerned, the appellant as well as respondent No.1 participated in the bid process. The bid submitted by the appellant for Rs.27,15,000/- was the highest. Respondent No.1 had given a bid of Rs. 17,00,000/- which was the 4th highest. The bid of the appellant having been found to be the highest, it was accepted and Letter of Intent was issued on 02.03.2010. Thereafter Sale Deed

in respect of the Café was executed in favour of the appellant on 31.03.2010.

5. After the execution of the Sale Deed, respondent No.1 who has been running a Dhaba next to the site, filed CWP No.1557 of 2010 in the High Court of Himachal Pradesh submitting that the appellant had not submitted his annual turnover and net worth for last three years as stipulated in the advertisement. No allegation was made of any arbitrariness, bias, favoritism or malice in the auction process. The appellant filed his reply in opposition. An affidavit in reply was also filed by the State Government opposing the Writ Petition stating that the highest bid submitted by the appellant was rightly accepted after due consideration by the Committee comprising of high ranked officials and that the entire process was completely fair and transparent.

6. The aforesaid Writ Petition was allowed by Single Judge of the High Court by his judgment and order dated 14.08.2012. It was observed that the condition regarding submission of the net worth was mandatory and the Committee could not have over-looked such condition. It was further observed that the Expert Committee had fixed the reserve price in respect of the Café at Rs.30,78,000/- while

the bid submitted by the appellant at Rs.27,15,000/- was accepted. Interestingly, respondent No.1 himself had given a bid for Rs.17,00,000/-, far below the alleged reserve price. However, the Single Judge while accepting the submissions made on behalf of the respondent No.1 allowed the Writ Petition and quashed the Letter of Intent dated 02.03.2010 and Sale Deed dated 31.03.2010 and directed the authorities to re-do the entire process of selling said Café in accordance with law.

7. This decision of the Single Judge was challenged by the appellant by filing LPA No.441 of 2012. The Division Bench upheld the view taken by the Single Judge on both counts namely that offer of the appellant was below the reserve price and that the condition regarding submission of annual turnover and net worth for last three years was not complied with by the appellant. The Division Bench thus dismissed LPA No.441 of 2012 by its order dated 20.05.2013.

8. This appeal challenges the correctness of the decisions so rendered by the High Court. While issuing notice, this Court by order dated 04.07.2013 had directed that Status quo be maintained by the parties. By subsequent order dated 08.10.2014 the respondent No.1 was directed to deposit in this Court a sum of Rs.30,00,000/-, which

the respondent had offered after the finalization of the bid. The amount having been deposited by the respondent No.1, it now stands invested in an interest bearing term deposit.

9. We have heard Mr. Tushar Bakshi, learned Advocate for the appellant and Mr. Mahavir Singh, learned Senior Advocate for respondent No.1 and Mr. Suryanarayan Singh, Senior Additional Advocate General for the State.

10. Mr. Bakshi, learned Advocate is right in his submission that no reserve price was fixed while inviting bids from interested parties. The Expert Committee may have indicated a figure as reserve price, however, the advertisement did not indicate any. Precisely for this reason, even the bid given by respondent No.1 was far below the figure of Rs.30,78,000/-. The High Court was clearly in error in accepting this plea on behalf of respondent No.1

11. Now, the question that remains to be considered is whether requirement to furnish Annual Turnover and Net Worth for last three years was a mandatory condition for infraction of which the bid made by the appellant had to be rejected. In ***Poddar Steel Corporation v. Ganesh Engineering Works and Others***¹, this Court considered

¹ (1991) 3 SSC 273

conditions which are essential conditions of eligibility and those which are ancillary or subsidiary with the main object to be achieved.

It was observed in para 6 of the decision as under:-

“.....As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

12. In the present case, the site in question was to be sold on outright sale basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid. The condition was not an essential condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed would be executed and not a relationship which would

have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfill his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simpliciter. As a matter of fact, the appellant did pay the entire bid amount within the prescribed period and the Sale Deed was also executed in his favor. In the circumstances the relevant condition in the advertisement would not fall in the first category of cases as dealt with by this Court in *Poddar Steel Corporation (supra)*. The authorities could therefore validly deviate from and not insist upon strict literal compliance. The discretion so exercised by the authorities could not have therefore been faulted. Thus, the assessment made by the High Court that the condition in question was an essential condition for non-compliance of which, the bid furnished by the appellant was required to be rejected, in our view was not correct.

13. We, therefore, allow this Appeal and set aside the decisions rendered by the Single Judge and the Division Bench of the High

Court in the present matter. The Letter of Intent dated 02.03.2010 and consequent Sale Deed dated 31.03.2010 in favor of the appellant are held valid and correct. The Writ Petition namely CWP No.1557 of 2010 preferred by respondent No.1 stands dismissed. The amount deposited by the respondent No. 1 in this Court pursuant to order dated 08.10.2014 shall be returned to respondent No.1 along with interest accrued therein.

14. The appeal is disposed of accordingly without any order as to costs.

.....CJI.
(T. S. Thakur)

.....J.
(Uday Umesh Lalit)

New Delhi,
May 13, 2016

JUDGMENT