

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Case No.	WP No.18012/2021
Parties Name	Vatash Sharma Vs. Indore Development Authority & another
Case No.	WP No.18476/2021
Parties Name	Aditya Jain Vs. Indore Development Authority & another
Date of Order	28/10/2021
Bench Constituted	<u>Division Bench:</u> Justice Sujoy Paul Justice Pranay Verma
Order passed by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	<p>Shri A.K.Sethi, learned Sr.counsel with Shri Rahul Sethi, counsel for the petitioner in WP No.18012/2021.</p> <p>Shri R.S.Chhabra, learned counsel for petitioner in WP No.18476/2021.</p> <p>Shri Pushyamitra Bhargav, learned counsel and Shri Shrey Raj Saxena, learned counsel for Indore Development Authority.</p>
Law laid down	<p>1. Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Madhya Pradesh Vikas Pradhikarano Ki Sampatiyon Ka Prabandhan Tatha Vyayan Niyam, 2018 - Vyayan Niyam prescribes the method for disposal of the property of Development Authority. The IDA issued NIT for third and fourth time respectively. After cancelling the bid of petitioners, the new NIT was issued based on the fact that after end of Corona curfew, the market value of shops is enormously enhanced. This is not the</p>

factor on which a new NIT can be issued or previous NIT can be annulled as per the **Vyayan Niyam**.

2. Interpretation of statutes – If statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. It is equally settled that if language of statute is plain and unambiguous, it should be given effect to irrespective of its consequences.

3. The judicial review in contractual/tender matter - The judicial review is limited to examine the illegality, irrationality and procedural impropriety i.e. the decision making process. On the touch stone of *Wednesbury Principles* also the impugned decision can be tested.

4. The rejection of bid of H-1 - Rejection is solely based on the assumption that value of properties enhanced post Covid period which will fetch more revenue, which will be in the interest of IDA. When authorities are not governed by any statutory provision like **Vyayan Niyam**, they may have a greater discretion to take a decision in this regard in a judicious manner but when statutory provision regulates decision making process, the authorities have to act strictly in consonance with the statutory provisions.

5. The highest bidder - A letter dated 15/3/2021 informing him that he is the highest bidder and website remark that bid is “accepted” does not mean that petitioner’s bid was ‘approved’ by the competent authority. The **Vyayan Niyam** makes it clear that only after satisfaction of competent authority

(Board in this case) the bid can be treated to be “approved”. In absence *there of* the aforesaid communications will not result into “approval” of the bid.

6. The right of the highest bidder – Merely because a party is the highest bidder, no enforceable right is created in his favour. It is open to the competent authority to decline said bid based on justifiable reasons. However, such bid cannot be rejected arbitrarily and in a capricious manner.

7. Practice and procedure - The petitioner filed a writ petition which was permitted to be withdrawn with the liberty to file a properly constituted petition. The averment of previous petition which was not properly constituted and permitted to be withdrawn, have lost significance when new petition is filed. Apart from the above, any averment of previous petition which runs contrary to the statute (*Vyayan Niyam*) will not operate as Estoppel against the petitioner.

8. Irrelevant consideration/ discrimination - The *Vyayan Niyam* do not permit IDA to fix a rate 30% over and above the reserve price while issuing third or second NITs. Indeed Rule 6(vi) permits the IDA to *reduce* the reserve price. The respondents accepted five bids mentioned in the Chart wherein the bid price was admittedly below the 30% ceiling mentioned in the Resolution dated 27/7/2021. Merely because NITs for those shops were issued prior in time, those shops cannot be treated to be belonging to a different class altogether. There is no reasonable classification and, therefore,

	petitioners were subjected to discrimination in the matter of fixing a price over and above the reserve price.
Significant paragraph numbers	35-48

O R D E R
(Passed on this 28th day of October, 2021)

Sujoy Paul, J. :

These petitions filed under Article 226 of the Constitution take exception to the Resolution No.69 dated 27/7/2021 whereby the petitioner's bid were rejected. The consequential Notice Inviting Tender (NIT) No.160 dated 10/8/2021 is also called in question whereby fresh bids for the same shops were invited by respondent Indore Development Authority (IDA). On the joint request of the parties the matters were analogously heard and decided by this common order.

2. Facts are taken from WP No.18012/2021.
3. By issuing NIT No.226 dated 26/9/2019, NIT No.274 dated 14/11/2019 and NIT No.97 dated 27/6/2020 the bids were invited for the shops situated at RCM 13 which includes shops No.1 and 2 which are subject matter of present lis and RCM No.14 situated at Scheme No.140, Anandvan, Phase II, Indore. Since no bids were received by IDA, a fresh NIT No.220 dated 18/12/2020 (Annexure P/2) was issued. The petitioner participated in the aforesaid NIT through e-tendering and submitted his bid for shops No.1 and 2 jointly ad-measuring 415.92 sq.mtr. The base price fixed by the IDA for the said shops was Rs.145260 per sq.mtr. The petitioner's bid stood at Rs.6,28,52,582.64 (six crore twenty eight lakh fifty two thousand five hundred eighty two and paisa sixty four) which comes to Rs.1,51,117 rupees per sq.mtr which was Rs.5,857 per sq.mtr. higher than the reserve/base price fixed by the respondents.
4. The respondents opened the bids for the shops in question on

15/2/2021 and petitioner was found to be the highest bidder (H-1).

5. The IDA issued letter dated 15/3/2021 and declared the petitioner as the highest bidder and it was further informed that remaining formalities will be communicated to the petitioner. In turn, the tender status report was uploaded on the official website of the tenders of Madhya Pradesh showing the name of petitioner in the awarded bid's list. The technical and financial bids of petitioner were approved/accepted by the respondents. Heavy reliance is placed on the document dated 15/3/2021 (Annexure P/7).

6. Shri A.K.Sethi, learned Sr.Counsel by placing reliance on Clause 6 of NIT submits that entire tender process was required to be completed within 90 days from the date of opening of the bid. The acceptance of petitioner's bid is well within the aforesaid time limit. The petitioner deposited an amount of about Rupees 67 lacs as E.M.D in furtherance of above NIT dated 18.12.2020

7. The contention of learned Sr.Counsel is that the petitioners were shocked and surprised to see the fresh NIT dated 10/8/2021 (Annexure P/9) whereby fresh bids were invited for the shops in question. Upon noticing this NIT, the petitioner enquired about the reason and came to know about the impugned resolution dated 27/7/2021 (Annexure P/11). By assigning four reasons, the petitioner's bid was rejected.

8. Criticising the impugned decision dated 27/7/2021, it is submitted that the petitioner was the highest bidder and his bid was duly accepted by the respondents which is clear by communication dated 15/3/2021 (Annexure P/7) and 28/9/2021 (Annexure P/16) filed with the second rejoinder. This shows that it is a case of concluded contract and, therefore, the respondents could not have passed the impugned Resolution rejecting the bids.

9. The Earnest Money Deposit (EMD) of petitioner was not refunded by the IDA whereas EMD of other bidders was immediately

refunded. In both the replies filed in this case on 17/9/2021 and 24/9/2021 it is averred that amount of EMD of petitioner will be refunded within 2-3 days but till date said amount has not been refunded. The said huge amount is still unauthorisedly kept by the IDA. Since said amount of Rupees about 67 lakhs is not refunded, it deprived the petitioner to submit his bid as per fresh NIT dated 10/8/2021 (Annexure P/9). This action of respondents is arbitrary, unreasonable and capricious in nature.

10. The **Madhya Pradesh Vikas Pradhikarano Ki Sampatiyon Ka Prabandhan Tatha Vyayan Niyam, 2018** (hereinafter called as “Vyayan Niyam”) is referred to contend that these statutory rules govern the aspect of disposal of properties by the IDA. Shri Sethi has taken pains to contend that Rule 6(v) and (vi) makes it clear that the bid of applicant stood ‘approved’ in view of acceptance of the bid. Apart from this, as per Clause (vi), the new NIT could have been issued provided the bids so received are less than the reserve price or (ii) no bid was received at all. Since Vyayan Niyam do not permit the IDA to issue NIT in the manner it is issued in the instant case, NIT dated 10/8/2021 is liable to be interfered with.

11. The minutes dated 1/7/2021 are referred to contend that in this meeting, the properties situated in RCM 13 and 14 (Anandvan Phase II) were considered. For the reasons best known to the respondents, no decision was taken about the petitioner’s shops in question. For similarly situated shops/residential accommodations the decision was taken to accept the bids and issue allotment orders.

12. The petitioner filed a Chart showing the allotment done by the IDA to the bids slightly higher than the base/reserve price. By placing reliance on this Chart (Page 91), it is contended that the last column shows the difference of percentage from base price for said allotments which was not above 30% of reserve price. Yet the bids were accepted. The petitioner’s bid was declined on the ground that it

is not 30% above the base/reserve price.

13. The criteria of above 30% of base price is a magic percentage decided by the respondents which is not based on any real or logical formula. It runs contrary to the statutory rules and could not have been introduced in the mid of the game. It is argued that neither in the Vyayan Niyam nor in the NIT it was mentioned that respondents after inviting the bids can fix a different formula or percentage which is higher than the base price. This exercise of fixing percentage of 30% above the base price is arbitrary.

14. It is common ground that all the four reasons mentioned in the impugned Resolution dated 27/7/2021 are bad in law because after the end of Corona curfew, the market value of all the properties were enhanced which includes the properties for which decision was taken on 1/7/2021 and whose description is given in the aforesaid chart.

15. The completion certificate of the shops in question was issued on 4/3/2021 (Annexure R/1) whereas occupancy certificate was issued on 18/6/2021 which is reflected in the communication dated 18/6/2021.

16. The second reason assigned in the impugned resolution is attacked by contending that aforesaid certificates were received much before taking of impugned decision on 27/7/2021. These certificates were very much available when decision was taken on 1/7/2021 in relation to other bids. Nothing prevented the respondents to take similar decision in relation to shops in question on the said date. The petitioner's bids were bifurcated in order to deprive them from the benefit of parity and they were subjected to a calculated discrimination.

17. The third reason assigned in the impugned resolution is assailed by contending that this Court by order dated 23/9/2020 in *WP No.21131/2019 (PIL) Santosh Vs. State of MP* directed the Municipal Corporation to construct the road from its own funds in respect of RE

2 road. The compliance report was directed to be submitted before 20/10/2020. Thus, it is clear that the said fact of construction of road in RE2 is not a subsequent event. Indeed, it was very much known to the respondents when NIT pursuant to which petitioner's submitted his bid was issued on 18/12/2020.

18. The fourth reasons mentioned in the impugned resolution is also assailed by stating that the respondent IDA does not have any unfettered right to cancel a valid and accepted bid in anticipation of getting more revenue pursuant to a new NIT. In the impugned Resolution, the respondents have repeatedly mentioned the NIT dated 30/3/2021 which has no relation with petitioner's bid because petitioner never submitted their bid pursuant to NIT dated 30/3/2021. Albeit, they submitted their bid pursuant to NIT dated 18/12/2020. Thus, on irrelevant considerations and reasons, the bid of petitioner is rejected.

19. By placing reliance on the second reply dated 24/9/2021 filed by IDA it is submitted that index contains the date of filing as 24/9/2021 whereas affidavit shows that it was filed on 25/9/2021. The petitioner repeatedly pleaded in the writ petition and rejoinder that so called rejection order dated 16/8/2021 was never supplied to him. It was filed for the first time along with second reply whereas rejection order is dated 17/8/2021. The learned Sr.Counsel submits that this rejection order of petitioner's as well as similarly situated bidders contains same number i.e. 5405 which is not possible. This rejection order appears to have been prepared lateron and is a forged document. It is not clear as to by which mode the said document was sent to the petitioner.

20. The petitioner also raised eye brows on the fresh NIT dated 10/8/2021 by contending that if petitioner's bid was rejected only on 16/8/2021, where was the occasion to issue a fresh NIT prior to it on 10/8/2021.

21. Shri R.S.Chhabra, learned counsel borrowed the argument of Shri Sethi, learned counsel while arguing WP No.18476/2021. In addition, he urged that the singular question needs consideration by this Court is whether impugned resolution dated 27/7/2021 and consequential NIT dated 10/8/2021 are arbitrary, unreasonable, irrational and runs contrary to the Vyayan Niyam and public interest.

22. To buttress the aforesaid submission, it is submitted that the back ground of Covid crisis was equally applicable to all sets of properties/bids which became subject matter of consideration before IDA on 1/7/2021 and 27/7/2021. The legal maxim "*Nullus commodum capere potest de injuria sua propria*" is referred to contend that IDA cannot take benefit of its own wrong. He placed reliance on the following judgments:-

(i) *Ram and Shyam Company Vs. State of Haryana & Ors. (1985) 3 SCC 267.*

(ii) *Tata Cellular Vs. Union of India (1994) 6 SCC 651.*

(iii) *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. and another (2016) 16 SCC 818.*

(iv) *Deepak Sharma Vs. Jabalpur Development Authority & another ILR(2020) MP 377.*

(v) *G.D. Anklesaria & Co. Vs. M.P. State Industrial Development Corporation Ltd. passed in WP No.9165/2020.*

(vi) *Mohammed Sultan Khan Vs. Union of India & Ors. passed in WP No.17290/2020.*

23. Furthermore, the documents Annexure P/16 (cumulatively) show that shop number 6 & 16 in RCM-13 were allotted on 17/8/2021 and 29/7/2021 respectively. The petitioner's bid was cancelled thereafter on 17/8/2021. There is no iota of difference between the cases of petitioner and the persons whose bids were accepted despite the fact that it was below 30% over and above the reserved price. The respondents are trying to make an artificial

distinction which is impermissible.

24. Shri Pushyamitra Bhargava, learned counsel assisted by Shri Shrey Raj Saxena opposed the contentions and by taking this Court to Rule 6(v) of Vyayan Niyam contended that the relevant bids were opened as per these rules and statutory format prescribed in the said rules. The intimation given on the website regarding 'acceptance' does not mean 'approval' by the competent authority. The bid can be finalised and contract can be treated to be completed only when competent authority after his satisfaction approves the highest bid which situation eventually did not arise because the bids were cancelled by the impugned Resolution dated 27/7/2021.

25. The respondents contended that the case of petitioners are different than the cases which were dealt with by Resolution dated 1/7/2021. The NITs (Annexure P/1) were read in juxtaposition to Resolution dated 1/7/2021 to bolster the submission that the shops which were considered on 1/7/2021 are relating to NIT (Annexure P/1) which shows that it relates to 'under construction (निर्माणाधीन) shops' whereas shops related to petitioner of WP No.18476/2021 is related with NIT dated 30/3/2021 which is related with a 'constructed' (निर्मित) shop. The 'under construction shops' and 'constructed shops' are to be dealt with by applying different parameters. No 'under construction shop' is allotted whose bid was less than 30% formula as mentioned in Resolution dated 27/7/2021.

26. The issuance of NIT, calling bids and taking decision thereupon is a commercial and managerial function. The whole purpose behind cancelling the petitioner's bid was to fetch more money and revenue and strengthen the public interest. In a matter of this nature, the IDA is best suited to take a decision. The decision is neither tainted with mala-fide nor there exists any scope of arbitrariness or discrimination. The shops of petitioners are uncomparable with those which became subject matter of

consideration in the Resolution dated 1/7/2021.

27. The petitioner Vatash Sharma earlier filed WP No.15584/2021 which was dismissed as withdrawn with the liberty to file a properly constituted petition. In the said petition, the petitioner himself prayed that 30% rate over and above the reserve price may be fixed. Thus, no fault can be found in the said price fixed by the impugned Resolution.

28. The Vyayan Niyam are relied upon to contend that the third and fourth NITs were rightly issued in the light of these rules.

29. To support aforesaid contentions, Shri Bhargava placed reliance on following judgments:-

(i) *U.P. Avas Evam Vikas Parishad & Ors. Vs. Om Prakash Sharma 2013 AIR SCW 2484.*

(ii) *Siemens Public Communication Pvt. Ltd. & another Vs. Union of India & Ors. AIR 2009 SC 1204(1).*

(iii) *Maa Binda Express Carrier AIR 2014 SC 390.*

(iv) *Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat & Ors (2014) 4 SCC 156.*

(v) *Division Bench of this Court in M/s. Narang Cold Storage Vs. State of MP & two others WP No.7608/2020 dated 10.6.2020.*

30. To elaborate, it is urged that technical defects in the process without any bad intention cannot be a ground for interference. The division bench judgment in *M/s. Narang Cold Storage* (supra) was pressed into service by contending that in view of judgment of Supreme Court reported in *(2019) 10 SCC 738 Municipal Council, Neemuch Vs. Mahadev Real Estate*, the scope of judicial review by this Court in the decision making process is very limited.

31. In order to meet the argument of Shri Sethi that EMD amount was never returned, Shri Bhargava placed reliance on para 4 of additional reply and contended that the said EMD was returned by

speed post on 27/9/2021. The original speed post envelope was produced before us to show that the petitioner Vatash left the address given and, therefore, it could not be served. Shri Bhargava fairly submits that admittedly the EMD was returned after issuance of NIT dated 10/8/2021. However, IDA has no objection if petitioner after obtaining the said EMD amount is permitted to participate in the NIT which is kept in abeyance because of this court's order.

32. In rejoinder submissions, Shri Sethi, learned counsel emphasised on the pleadings of various returns and urged that there is no iota of pleadings about sending of EMD amount to the petitioner on 27/9/2021. In absence of pleadings, the document is of no assistance. Shri Sethi submits that the NIT dated 18/12/2020 was the fourth NIT, whereas Shri Chhabra submits that NIT dated 30/3/2021 was the third NIT. It is common ground that the four reasons on which Resolution dated 27/7/2021 is founded upon are equally applicable to the properties considered in Resolution dated 1/7/2021.

33. Parties confined their arguments to the extent indicated above.

34. We have heard the parties at length and perused the record.

35. Before dealing with the rival contentions, it is apposite to remind ourself the scope of judicial review in the matters of this nature. In *(1985) 1 AC 374, at 415 (Council for Civil Services Union v/s Minister of Civil Services)*, Lord Diplock opined as under:-

“.....one can conveniently classify under three heads the grounds on 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'.”

36. This opinion of Lord Diplock contains a three-fold classification on which an administrative decision can be reviewed by a Court. These are as under:-

(i) '**Illegality**' which means that the “decisionmaker

must understand correctly the law that regulates his decision-making power and must give effect to it". It means that the decision-maker must keep within the scope of his legal power. Illegality means that the decision-maker has made an error of law; it represents infidelity of an official action to a statutory purpose. Such grounds as excess of jurisdiction, patent error of law, etc. fall under the head of "illegality".

(ii) **'Irrationality'** denotes unreasonableness in the sense of *Wednesbury* unreasonableness.

(iii) **Procedural Impropriety** - The expression includes failure to observe procedural rules including the rules of natural justice or fairness wherever these are applicable."

(emphasis supplied)

37. The test laid down by *Lord Diplock* was quoted with profit by Supreme Court in *Tata Cellular v/s Union of India reported in (1994) 6 SCC 651*.

38. The aforesaid *acid test* was further considered by the Supreme Court in *catena* of judgments. In *Tata Cellular (supra)* and in *(2015) 15 SCC 137 (Electron Lighting Systems (P) Limited v/s Shah Investments Financial Developments & Consultants (P) Ltd.)*, it was held that in contractual matters, interference is possible if action impugned is shown to be arbitrary. Similarly, in *Ramana Dayaram Shetty v/s International Airport Authority of India, (1979) 1 SCC 489, Dutta Associates (P) Ltd. v/s Indo Merchantiles (P) Ltd., (1997) 1 SCC 53, Heinz India (P) Ltd. v/s State of U.P., (2012) 5 SCC 443 and Kalinga Mining Corpn. v/s Union of India, (2013) 5 SCC 252*, it was held that if decision making process is capricious, unreasonable or discriminatory, interference can be made in contractual matters. In *Sterling Computers Ltd. v/s M & N Publications Ltd., (1993) 1 SCC 44, Master Marine Services (P) Ltd. v/s Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138, Michigan Rubber (India) Ltd. v/s State of Karnataka, (2012) 8 SCC 216 and State of Jharkhand v/s CWE-SOMA Consortium, (2016) 14 SCC 172*, the *Wednesbury Principle* is also applied. The said principles were followed in *Caretel Infotech Ltd. v/s Hindustan Petroleum Corpn. Ltd., (2019) 14 SCC 81* and

Silppi Constructions Contractors v/s Union of India & Another, 2019 SCC OnLine SC 1133.

39. In *Meerut Development Authority v/s Assn. Of Management Studies (2009) 6 SCC 171*, the question for consideration was regarding nature of rights of a bidder participating in the tender process. In no uncertain terms, it was held that disposal of public property by State or its instrumentality partakes the character of a Trust. The methods to be adopted for disposal of public property must be fair and transparent. It was further held that authority has a right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exists good and sufficient reasons. However, the authority's action in not accepting or refusing the bid must be free from arbitrariness and favouritism.

40. In view of said parameters laid down for judicial review, the present matters need to be tested.

41. The stand of Shri A,K. Sethi, learned Senior Counsel for the petitioner was that the NIT in question dated 18.12.2020 was fourth NIT whereas Shri Chhabra submits that NIT dated 30.03.2021 was the third NIT. Shri Pushyamitra Bhargav, learned counsel for IDA did not dispute the aforesaid contention.

42. **Vyayan Niyam** deals with the disposal of proper by inviting bid. The relevant portion reads as under:-

6. Disposal of properties by inviting bid.

The following procedure shall be adopted where the property has to be disposed through the process of inviting bids in sealed cover/online-

.....

(v) The offers received through the bids shall be opened in the manner prescribed in the relevant bid document and the rates received shall be presented to the Competent Authority described in rule 28 for decision. The Competent Authority, if it is **satisfied** that there was sufficient competition or sufficient efforts were made to obtain the best bid, may **approve the highest bid if it exceeds the reserve price;** even if single bid is received.

(vi) In case the bids so reserved are less than the reserved price or in case no bid is received, fresh bids maybe invited

for the second and if necessary for the third time;

(vii) If after the third time the bid continues to be less than the reserve price or no bid is received, the CEO shall prepare a report in Form-D and submit it to the Board of the Authority. The Board of the Authority may reduce the reserve price upto seventy five percent of the reserve price fixed in the first three rounds and invite fresh bids. The CEO shall ensure that a period of at least three months has elapsed between the first invitation of bids and the invitation at reduced reserve price;

If the price of the bids received is found to be less than the revised price or in case no bid is received, then in such condition new bids can be called for the second and if require for the third time as well. If the bids called for the third time are also found to be less than the revised price or no bid is received then the CEO will upload the information of all such properties on the website of the related Authority and the disposal of all such properties shall be done as per the revised price during the same financial year, on the basis of the offers received till first Monday of every month of that financial year. (emphasis supplied)

43. Shri Sethi, learned Senior Counsel for the petitioner contended that that communication dated 15.03.2021 (Annexure-P/7) and status of bid shown on the website on 28.09.2021 (Annexure-P/16) as 'accepted' shows that contract was complete, therefore, it could not have been cancelled and new NIT could not have been issued. We do not see much merit in this contention. Rule 6(v) of **Vyayan Niyam** makes it clear that bids were required to be opened in the prescribed manner and then required to be placed for consideration before the competent authority under Rule 28 of the said Rules. Rule 28 shows that as per amount involved in the present tender, the competent authority in the instant case was admittedly the 'Board' of IDA. A conjoint reading of Rule 6 (v) with prescribed form 'C' shows that the bid is always subject to acceptance by the competent authority. There is no material to show that there exist any 'acceptance' of bids by the competent authority/Board. Thus communication dated 15.03.2021 and website remark 'accepted' cannot be equated with 'approval' by the competent authority. If rule prescribed a thing to be done in a

particular manner, it has to be done in the same manner and other methods cannot be accepted. [See AIR 1959 SC 93 (Baru Ram vs. Prasanni), 2001 (4) SCC 9 (Dhananjaya Reddy vs. State of Karnataka), 2002 (1) SCC 633 (Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala) and judgment of this Court in 2011 (2) MPLJ 690 (Satyanjay Tripathi & Anr. vs. Banarsi Devi). Thus, this contention is devoid of substance.

44. The ancillary question is whether the decision of rejecting the petitioners' bid is arbitrary, capricious and violates Vyayan Niyam. In the impugned resolution dated 27.07.2021 following reasons are assigned for rejecting the bid of the petitioners:-

- संकल्प क्रमांक-69 दिनांक 27.07.2021 (शाखा-संपदा)
1. मण्डल द्वारा प्रकरण पर विस्तृत विचार विमर्श किया गया। विचारोपरांत आनंदवन फेस-2 की संपत्तियों के संबंध में प्रकरण में यह तथ्य परिलक्षित हुआ कि:-
- (अ) कोरोना कर्फ्यू की समाप्ति के पश्चात संपत्तियों की बाजार दरों में वृद्धि हुई है एवं पश्चात्वार्ति निविदाओं में अधिक दरें प्राप्त हुई हैं।
- (ब) आनंदवन फेस-2 बहुमंजिला भवन का कार्यपूर्णता एवं आक्यूपेंसी प्रमाण पत्र प्राप्त हो चुका है जिससे संपत्ति के मूल्यों में तेजी से बढ़ोतरी हुई है।
- (स) आनंदवन फेस-2 की विचाराधीन संपत्तियों पीपल्याहाना चौराहे से बायपास को जोड़ने वाले मुख्य मार्ग एवं आर.ई.-2 के जक्शन पर स्थित है। चूंकि आर.ई.-2 मार्ग के निर्माण की प्रक्रिया प्रारंभ हो रही है इस कारण से आनंदवन फेस-2 संपत्ति के मूल्यों में तीव्र वृद्धि हुई है
- (द) उपरोक्त कारणों से विचाराधीन संपत्तियों में भविष्य में प्राधिकारी को अधिक राजस्व प्राप्त होने की संभावना है।

प्राधिकारी के समक्ष यह अभिलेख भी प्रस्तुत किये गये कि प्राधिकारी द्वारा पूर्व में भी संकल्प क्रमांक 252 दिनांक 29.10.2006 एवं संकल्प क्रमांक 147 दिनांक 22.08.2014 में न्यूनतम दर से अधिक प्राप्त दर को निरस्त किया गया था। इसी प्रकार संकल्प क्रमांक 138 दिनांक 04.10.2018 में भी न्यूनतम दर से अधिक प्राप्त दर को निरस्त किया जाकर अधिक दर तय की गई थी जिसमें अधिक दर पर निविदा प्राप्त हुई थी जिससे प्राधिकारी को अधिक राजस्व प्राप्त हुआ था।

अतः उपरोक्त कारणों से मण्डल द्वारा यह निर्णय लिया गया कि निविदा विज्ञापन में निर्धारित न्यूनतम दर से 30 प्रतिशत अधिक से ऊपर की प्राप्त उच्चतम निविदा दरों को स्वीकृत किया जाता है तथा शेष अर्थात् निर्धारित न्यूनतम दर से 30 प्रतिशत अधिक से कम प्राप्त निविदाओं को अस्वीकृत किया जाता है।

(emphasis supplied)

45. A bare perusal of the reasons mentioned hereinabove shows that fundamental reason behind rejecting the bids of petitioners was to fetch more revenue for the IDA. The said idea of IDA on the first

blush appears to be attractive and permissible in law. However, such decision needs to be tested on the anvil of **Vyayan Niyam** and principles laid down by Apex Court in *catena* of judgments. On deeper scrutiny, the said idea lost much of its shine.

46. In cases where there exists no statutory provision for disposal of properties, the authorities have a great amount of discretion which can be exercised in a judicious manner. However, when the method of disposal of property by inviting tender is prescribed by statutory rules such as **Vyayan Niyam**, the IDA is bound to invite bids and take decision thereupon strictly in consonance with those rules. '*Law has reached its finest moments*', stated **Douglas, J.** in United States v. Wunderlich [96 L Ed 113: 342 US 98 (1951)] '*when it has freed man from the unlimited discretion of some ruler... where discretion is absolute, man has always suffered.*' (quoted with profit in **Natural Resource Allocation, In Re.Special Reference No.1/2012 (2012) 10 SCC 1**). At the cost of repetition, we again reiterate the legal position that if a statute requires a thing to be done in a particular manner, it has to be done in the same manner [See para 43]. Similarly it is trite that if language of statute is plain and unambiguous, it should be given effect to irrespective of its consequences. [See **(1992) 4 SCC 711 Nelson Motis Vs. Union of India & another & (2020) 9 SCC 161 P. Gopalkrishnan @ Dileep Vs. State of Kerala & another**].

47. Rule 6(vi) and (vii) of **Vyayan Niyam** leaves no room for any doubt that impugned NIT dated 10.08.2021 could have been issued provided the second/third NIT could not fetch a price equal to or above the 'reserve price' or no bids were received at all. Pertinently, Clause (vii) of Rule 6 aforesaid makes it clear that if after third time, the bid received is less than the reserve price or no bid is received, the CEO shall prepare a report in a prescribed format and submit it before the Board for its consideration to *reduce* the reserve price up to 75%

of the reserve price fixed in the first three rounds and invite fresh bids. The statutory provision aforesaid permits for going for third or fourth bid provided conditions mentioned therein are satisfied. The condition is that either bid submitted is pregnant with value which is less than the 'reserved price' or no bid is received. This is not the case of IDA while justifying issuance of fresh NIT dated 10.08.2021. The idea ingrained in clause (vii) of said Niyam is to 'reduce' the reserve price while issuing NIT on the fourth occasion.

48. The judgment of Supreme Court in **Municipal Council Neemuch** (supra), which was followed by Division Bench in **M/s. Narang Cold Storage** (supra) was heavily relied upon by IDA. A careful reading of this judgment shows that it was poignantly held that the judicial review of administrative action is permissible where decision-maker acts contrary to the regulatory decision making power and where its decision is irrational and suffers from procedural impropriety. The relevant portion reads as under:-

“11. In the case of *Municipal Council, Neemuch v. Mahadeo Real Estate*, (2019) 10 SCC 738, the Apex Court has examined the scope of power of the High Court for judicial review of administrative action and summarized the ground upon which the administrative action is subject to control by judicial review i.e. (i) illegality- means the **decision-maker must understand correctly the law that regulates his decision-making power** (ii) irrationality & (iii) procedural impropriety.”
(emphasis supplied)

In the other judgments cited by Shri Bhargava, the disposal of property was not governed by any statutory provision and hence it was held a simple technical flaw cannot be a ground for interference wherein in the instant case statutory rules namely Vyayan Niyam prepared under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 admittedly govern the field. Thus, the said judgments are distinguishable. This is trite that a single different fact or a different governing statutory provision may make a world of difference on the

precedential value of a judgment. *[See Haryana Financial Corporation & another Vs. Jagdamba Oil Mills & another (2002) 3 SCC 496]*. Apart from this, we are unable to hold that illegality, irrationality and procedural impropriety in the impugned action is only technical in nature.

49. In our view, the impugned Resolution and issuance of NIT falls within the ambit of “illegality” as defined by *Lord Diplock* and followed by Supreme Court in the case of *Tata Cellular*. We say so because the impugned Resolution and NIT were issued in utter disregard to regulatory decision making power mentioned in Rule 6 of **Vyayan Niyam**. For the same reason, issuance of impugned Resolution and NIT amounts to procedural impropriety. It was not open to the IDA to act in a different manner than the statutory method prescribed in the **Vyayan Niyam**. The impugned decision is also “irrational” and hits *Wednesbury Principles*. As per **Vyayan Niyam**, the third or subsequent NITs can be issued in two eventualities mentioned in Rule 6(5) and 6 (6) of **Vyayan Niyam**. The price hike of properties post Corona period cannot be a relevant consideration for taking a decision to reject the bid. Had it been a relevant consideration, the same should have been applied to all the properties including the properties which became subject matter of consideration in the Resolution dated 1/7/2021. Since **Vyayan Niyam** contains the parameters on which subsequent NITs can be issued, no other factor can become reason for inviting new NIT. Thus, impugned Resolution and fresh NIT dated 10/8/2021 are based on irrelevant factors which cannot be permitted to stand.

50. The **Vyayan Niyam** do not permit IDA to fix a rate 30% over and above the reserved price. The respondents by resolution dated 01.07.2021 have admittedly accepted the bids which did not have value more than 30% than the reserved price. The chart prepared by the petitioners in this regard is reproduced hereinbelow:-

S.N.	Shop No	Base Price (as per NIT dated 26.09.2019 for per sq.mtr.)	Super Built Up Area as per NIT	Bid price received (excluding GST)	Date of E.M.D	25% amount received till date	% difference from base price
1.	06/RCM13	1,34,500/-	116.84 sq.mtr	1,34,600/-	16.04.21	41,28,250/-	1.007%
2.	16/RCM13	1,29,120/-	118.62 sq.mtr	1,33,800/-	07.04.21	41,67,417/-	1.03%
3.	17/RCM13	1,29,120/-	148.73 sq.mtr	1,33,833/-	07.04.21	52,25,063/-	1.03%
4.	15/RCM14	1,07,600/-	143.27 sq.mtr	1,07,786/-	06.06.20	40,53,657/-	0.93%
5.	25/RCM14	1,07,600/-	18.20 sq.mtr	1,07,750/-	19.06.20	5,14,780/-	1.001%

51. The contents of chart were not disputed by the IDA. We are not satisfied with the artificial distinction shown by Shri Bhargava between the shops for which petitioners submitted their bid and those mentioned in the aforesaid chart. Thus, we are constrained to hold that the petitioners were given a discriminatory treatment based on irrelevant reasons which cannot sustain judicial scrutiny.

52. So far argument relating to pleadings in the previous petition is concerned, wherein 30% price over and above the reserve price was pleaded, suffice it to say that previous petition was not treated to be properly constituted by the petitioner and, therefore, the same was permitted to be withdrawn with the liberty to file afresh. Thus, said pleadings which were part of an improperly constituted petition which was permitted to be withdrawn, pale into insignificance. Even otherwise, any such pleading which runs contrary to the statutory provision ingrained in Rule 6 of **Vyayan Niyam** cannot bind the petitioner. Putting it differently, none can claim 'estoppel' against a statutory provision. Thus, this argument of Shri Bhargava cannot cut any ice.

53. In view of foregoing analysis, in our considered opinion, the respondents have arbitrarily and contrary to **Vyayan Niyam** passed the Resolution dated 27.07.2021 cancelling petitioners' bids and

committed further error in issuing the NIT no.160 dated 10.08.2021.

54. Resultantly, Resolution no.69 dated 27.07.2021 and NIT No.160 dated 10.08.2021 are set aside. The respondents are directed to consider the bids of the petitioner and take a decision on the bids in accordance with law expeditiously preferably within three weeks from the date of communication of this order.

55. The petitions are **allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(PRANAY VERMA)
JUDGE

vm

