

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 20th OF DECEMBER, 2023

WRIT PETITION No. 18688 of 2023

BETWEEN:-

**RUPESH DERIYA S/O BHAGWANDAS
DERIYA, AGED ABOUT 28 YEARS,
OCCUPATION: SERVICE 246, LALAPURA
NEAR PATNIPURA INDORE DIST. INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AKASH RATHI, ADVOCATE)

AND

- EXECUTIVE DIRECTOR UJJAIN SMART
1. CITY LTD. MELA KARAYALAY, KOTHI
ROAD, UJJAIN (MADHYA PRADESH)
DISTRICT COLLECTOR CUM CHAIRMAN
2. UJJAIN SMART CITY LTD. DISTRICT
UJJAIN (MADHYA PRADESH)
ADMINISTRATOR MAHAKAL MANDIR
3. PRABANDH SAMITI UJJAIN (MADHYA
PRADESH)
VIJAY GHANWARI S/O LATE
4. NATHUSINGHI GHANWARI 21 BHERU
NALA VALMIKI BASTI UJJAIN (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI KOUSTUBH PATHAK, ADVOCATE)

*This petition coming on for admission this day, the court passed the
following:*

ORDER

1] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

- “1. Allow this Petition and
2. Impugned approval for retendering in respect of Shop No.40 vide note sheet dated 20/03/2023 may kindly be set aside and
3. The respondent authorities may kindly be directed to open and declare the status of financial bids submitted in respect of shop no.40 situated in Midway Zone of Shri Mahakal Mahalok and not to cancel the auction process and not to initiate fresh auction process.
4. Any other appropriate relief which this Hon’ble High Court deems fit in the interest of Justice may kindly be provided in favour of the Petition.”

2] The grievance of the petitioner is that his tender has not even been opened, and fresh tender has been issued in respect of Shop No.40 in Shri Mahakal Mahalok Midway Zone, Ujjain only because there were less than three bidders for the aforesaid shop.

3] Counsel for the petitioner has drawn the attention of this Court that in Indore, when tenders were also issued by the Indore Municipal Corporation/ Indore Smart City Ltd., the tender of only one tenderer was also accepted. Counsel has submitted that it was incumbent upon the respondents to open the financial bid and only after their satisfaction that it was not as per their norms, it could have been rejected, however, despite the fact that the petitioner’s bid was more than the minimum reserved price, the respondents’ action to cancel the bid outright is arbitrary, unjust and improper. In support of his submission, Shri Rathi has relied upon the decision rendered by

the Supreme Court in the case of *State of Punjab and others vs. Mehar Din reported as (2022) 5 SCC 648*, in which it is held that the allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills, and in the present case also, the order passed by the respondents is not only irrational but proper procedure has also not been followed as it was incumbent upon the respondents to open the financial bid.

4] A reply has also been filed by the respondents opposing the relief sought by the petitioner and it is submitted that no interference is made out as the respondents have not only cancelled the petitioner's bid but other three bids have also been cancelled for shop No.46, 47 and 20, as there were less than three bidders for the said shops. Counsel has submitted that a policy decision has been taken by the respondents Ujjain Smart City Ltd. and the same cannot be faulted with as no discriminatory treatment has been given to the petitioner and the petitioner is always free to participate in the next bid. It is also submitted that the EMD received from the petitioner has also been refunded to him, and so far as the documents in respect of Indore Smart City is concerned where only one bid has been accepted, it is submitted that such policy may vary from city to city and is not binding on the respondents Ujjain Smart City Ltd. In support of his submissions, counsel for the respondents has relied upon the decisions rendered by the Supreme Court in the case of *E-City Entertainment Pvt. Ltd. vs. State of UP and another reported*

as (2017) 3 SCC 271 and South Delhi Municipal Corporation vs. Ravinder Kumar and another reported as *(2015) 15 SCC 545*.

5] Heard. Having considered the rival submissions and on perusal of the record, this Court finds that it is not disputed that the petitioner's financial bid has not been opened only on the ground that there were less than three bidders for the said shop no.40, and the same treatment has also been accorded in respect of other three shops No.46, 47 and 20. This court is also of the considered opinion that although there was no technical difficulty for the respondents to open the financial bid as well, before rejecting the petitioner's claim, however, they have decided even not to open the bid before cancelling the same for the simple reason that they have received less than three bidders for four shops.

6] This Court is of the considered opinion that the aforesaid decision taken by the respondents Smart City Ujjain Ltd. cannot be faulted with as it is a policy decision causing no prejudice to the petitioner, and otherwise also, had the financial bid of the petitioner been opened and rejected, the petitioner had no say in the matter as it was the sole discretion of the respondents to accept or cancel a bid. Thus, if the respondents are of the opinion that when the bidders are less than three, the tender may not fetch the proper value, they are well within their rights to assume the same and it cannot be termed as arbitrary, unjust or improper, and it cannot be said that the petitioner's fundamental right under Article 14 of the Constitution of India is infringed in any manner.

7] So far as the decision relied upon by counsel for the petitioner in the case of *Mehar Din* (supra) is concerned, the same is distinguishable and is no avail to the petitioner.

8] In such circumstances, this Court is not inclined to interfere with the impugned order, and accordingly, the petition being devoid of merits is hereby *dismissed*.

Petition stands *disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi