



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2026
(Arising out of SLP (Civil) NOS.21419-21420 of 2023)

**SUSHIL KAMALNAYAN BHARUKA
& OTHERS**

... Appellants

VERSUS

**STATE OF MAHARASHTRA
& OTHERS**

... Respondents

JUDGMENT

NAGARATHNA, J.

Leave granted.

2. The appellants herein were the writ petitioners in W.P. No.3872/2022 filed before Aurangabad Bench of the High Court of Judicature at Bombay, assailing the cancellation of the auction of Plot No.P-4/2 admeasuring 4800 square meters situated at Chikhalthana Industrial Area at Aurangabad which auction was conducted by the respondent - Maharashtra Industrial

Development Corporation Limited (“MIDC”, for the sake of convenience). The said writ petition was heard along with W.P. No.1324/2023 filed by the respondent-Pratik Group. By the impugned order dated 09.08.2023, the Aurangabad Bench of the Bombay High Court observed as under:

“14. For the reasons stated above, we are of the view that Writ Petition No.3872 of 2022 lacks merit and is liable to be dismissed and is dismissed accordingly. We further direct Respondent Nos.2 and 3 to start fresh bidding process in relation to the property being plot No.P-4/2 admeasuring 4800 square meters situated in Chikhalthana Industrial Area at Aurangabad.

15. As far as Writ Petition No.1324 of 2023 is concerned, we are of the view that in view of dismissal of the aforesaid Writ Petition, present Writ Petition can be disposed of in terms of prayer clause (A) (ii) which reads as under:-

“(A)(ii) Issue fresh tender process in respect of the writ plot i.e. No.P-4/2, admeasuring 4800 sq. mtrs situated in Chikhalthana Industrial Area, Aurangabad by giving time bound scheduled.”

3. Being aggrieved, the appellants/writ petitioners in W.P. No.3872/2022 are before this Court.

4. We have heard learned senior counsel for the appellants and learned counsel for respondent No.4 and learned counsel for

respondent Nos.2 and 3 who are the contesting respondents at length. We have also perused the material on record.

5. Briefly stated, the facts of the case are that respondent-MIDC by way of e-bidding notice dated 20.01.2022, initiated a tender process for the allocation of industrial, commercial and residential plots across various industrial areas in Maharashtra, including Plot No. P-4/2 admeasuring 4800 sq. mtrs. situated in Chikalthana Industrial Area, Aurangabad ('subject plot') through a centralised e-bidding system. As per the said tender notice, the bid submission window remained open from 21.01.2022 at 11:00 a.m. until 04.02.2022 up to 5:00 p.m. It also stipulated a two-way bid system, including submission of a technical bid in Envelope A and a commercial bid in Envelope B.

6. The appellants herein, by way of an application for the allocation of the subject plot, proposed a bid amount of Rs.16,299/- per square meter and deposited earnest money of Rs.12,55,120/- along with their application. Subsequently, by way of an intimation email dated 11.02.2022, the appellants herein were declared as the highest bidders. In the absence of any

intimation regarding the deposit of the balance amount, the appellants sent an email to the respondent-MIDC, requesting the issuance of a Letter of Allotment in favour of the appellants with respect to the subject plot.

7. However, respondent-MIDC by way of office note bearing No. MIDC/IFMS/HQ/IT/IT CELL/2022 dated 02.03.2022, cancelled the aforesaid e-bidding process and invited a fresh tender for six plots, including the subject plot herein, on account of having received multiple complaints concerning the e-bidding process in respect of the said plots.

8. Being aggrieved, the appellants herein preferred W.P. No. 3872/2022 before the High Court of Judicature at Bombay, Bench at Aurangabad, seeking certain reliefs.

9. Meanwhile, respondent No.4-Pratik Group also filed Writ Petition No.1324/2023 before the High Court seeking directions to be issued to the respondent-MIDC to open and consider the rate quotation of the said firm in respect of the subject plot and in the alternative, sought a fresh tender process to be issued in respect of the said plot. In the said writ petition, the appellants herein

preferred an intervention application bearing Civil Application No.2067/2023, contending that the act of the respondent No.4 in submitting multiple bids at the belated stage was deliberate and as such, there was no technical glitch in the e-bidding process inasmuch as respondent No.4 was able to successfully submit bids for other plots from the same I.P. address on the same date.

10. By way of the common impugned order dated 09.08.2023, the High Court dismissed the writ petition preferred by the appellants herein and allowed the writ petition preferred by respondent No.4-Pratik Group. Consequently, a direction was issued to respondent-MIDC to issue a fresh tender process in respect of the subject plot by giving a time-bound schedule.

11. During the course of submissions, learned senior counsel for the appellants drew our attention to an order of the Principal Bench of the Bombay High Court in W.P. Nos.3993/2022, 5368/2022 and 3841/2022 by which the said Writ Petitions were disposed of on 18.11.2022. The relevant portions of the order read as under:

“5. Mr. Sakhardande, learned senior counsel for the petitioners invited our attention to the email annexed at page 126 of the Writ Petition No.3993/2022 and submitted that the petitioners were informed that the bids of the

petitioners were highest in respect of three plots. He submitted that the excuse now given by the respondents that there was technical glitch and as a result thereof, the bids of 6 bidders could not be received by the MIDC is a false excuse. The respondents could not point out any such technical glitch alleged to have been occurred as a result of which some of the other bidders were unable to submit their bids and participate in the tender process.

6. In view of this statement made by the learned senior counsel for the petitioners, we enquired with the learned counsel for MIDC whether any of those six bidders who, according to MIDC could not submit their technical bid, had challenged the action on the part of the MIDC with a prayer to cancel the tender process and to accept their bids or to allow them to participate in the tender process, learned counsel for the respondents on instructions fairly stated that no proceedings were filed by any of the bidders, who according to MIDC were unable to submit their bids due to technical glitch. The respondents could not point out any correspondence or objection from any of those six bidders alleging the technical glitch as a result they could not submit their bid and could not participate in the tender process.

7. We are informed that except those six bidders, who had applied in the tender process, the other bidders have withdrawn their bids and have accepted refund of their earnest money deposits.

8. Since the other bidders have withdrawn their bids and already accepted the refund of the earnest money deposits, the petitioners are the only bidders, who had challenged the action on the part of the respondents in cancelling the tender, we quash and set aside the impugned decision of the respondents in cancelling the tender and restore the tender on file insofar as the petitioners are concerned.

9. The respondents are directed to consider those bids in accordance with the tender conditions and to pass appropriate order within two weeks from today.

10. The above writ petitions are allowed in aforesaid terms. Rule is made absolute. There shall be no order as to costs.”

12. It was submitted that when the Principal Bench of the Bombay High Court at Bombay had passed the aforesaid order dated 18.11.2022, the same ought to have been considered and followed by the Aurangabad Bench of the High Court since the issues raised in both the writ petitions were identical inasmuch as the question essentially was, whether, the cancellation of the auction process itself was erroneous. The principal Bench had held that the cancellation of the auction process was erroneous and therefore insofar as the writ petitioners who had approached the Principal Bench, relief was granted to them by setting aside the cancellation of the auction in question.

13. Learned senior counsel for the appellants-writ petitioners also drew our attention to paragraph 7 of the affidavit of the respondent-MIDC before the Aurangabad Bench of the High Court which reads as under:

“The answering respondent submits that the petitioner has submitted its bid for the plot of land Plot No.P-4/2 admeasuring 4800 sq. mtrs. situated at Chikalthana Industrial Area. The upset price of the plot as declared was Rs.5,210/- The last date of submission of tender was 4th February 2022 and the bids were opened on 10th February 2022. As the petitioner had completed all the technical requirements with respect to the E-bid tender notice hence the automatic system generated mail dated 11th February was addressed to the petitioner stating that the petitioner is qualified for the commercial bid. It is further submitted that for the Writ plot in all 7 bids were received. After scrutinizing all the bids, the petitioner was again through a system generated mail informed that its bid stood as the Highest in respect of the plot and hence declared as the highest bidder and the same was communicated to the petitioner.”

14. However, insofar as the appellants/writ petitioners who approached the Aurangabad Bench a similar relief was not granted to them. It was submitted that although the respondent-Pratik Group had also assailed the auction process and both the writ petitions filed by the appellants and respondent-Pratik Group were heard together, when once the Principal Bench had set aside the cancellation of the auction process that order ought to have been followed by the Aurangabad Bench. Instead, the Aurangabad Bench set aside the entire auction process and this, consequently, has resulted in contradictory orders by two different benches of the Bombay High Court. He therefore submitted that having regard to

the fact that the connected SLP Diary No.45650/2024 having been dismissed by this Court on the ground of delay and having regard to the fact that there cannot be contradictory orders by the very same High Court in respect of the very same issue raised by different parties before different Benches, the impugned order passed by the Aurangabad Bench may be set aside and the relief(s) similar to what has been granted by the Principal Bench may be granted to the appellants herein.

15. *Per contra*, learned counsel for the respondent-Pratik Group and learned counsel for the respondent-MIDC pressed into service the fact that the respondent-Pratik Group had in fact challenged the very auction process in view of there being technical glitches and lack of opportunity to the said entity to make a bid. On the other hand, the writ petitioners before the Principal Bench are the persons who have participated in the auction process and it is only at their instance that the Principal Bench had granted relief by setting aside the cancellation of the auction process. Therefore, the said order could not have been applied to the case of the respondent- Pratik Group inasmuch as the very auction process

was assailed by the said entity before the High Court. It was therefore submitted that irrespective of the order passed by the Principal Bench, this Court may dismiss the appeal filed by the appellants herein and sustain the impugned order.

16. We have considered the arguments advanced at the bar in light of the two contradictory judgments passed by the two Benches of the Bombay High Court.

17. We have also taken into account the fact that the Special Leave Petition which was filed by the respondent-Pratik Group which also assailed the very same impugned order has been dismissed by us on the ground of delay. The contention of the learned counsel for the respondent-Pratik Group was that the mere cancellation of the auction process was not a sufficient relief at all. In fact, the respondent-Pratik Group was the highest bidder and therefore the MIDC ought to have allotted the subject plot and executed the sale deed in favour of the Pratik Group.

18. In reply to such a submission, learned senior counsel for the appellants drew our attention to the communication which is at Annexures P-8 to the effect that the appellants herein had been

intimated that they had successfully qualified the technical bid and they were the highest bidders and therefore their offers had been accepted.

19. In light of this fact it was submitted that a speculative writ petition filed by the respondent-Pratik Group could not have been the reason for denying relief to the appellants herein. For this reason alone, it was submitted that the impugned order may be set aside and the relief consistent with the Principal Bench may be granted to the appellants herein.

20. We find considerable force in the submissions made by learned senior counsel for the appellants inasmuch as there cannot be any litigation with regard to a bid having been declared as the highest bid.

21. In ***K. Kumara Gupta vs. Sri Markendaya & Sri Omkareswara Swamy Temple, (2022) 5 SCC 710***, it was observed by this Court that unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or the auction was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of the highest

bidder on the basis of some representation made by a third party who did not even participate even in the auction proceedings and did not make any offer. If there is repeated interference in the auction process, the object and purpose of holding public auction and its sanctity would be frustrated. That unless there are allegations of fraud, collusion, etc., the highest offer received in the public offer should be accepted as a fair value. Otherwise, there shall not be any sanctity of any public auction.

22. The question, as to, whether, the cancellation of the e-auction process was justified or not has also already been adjudicated upon by the Principal Bench of the Bombay High Court and it has set aside the cancellation of the auction. The said order has attained finality inasmuch as respondent-MIDC has not assailed the same and has accepted the same. In the circumstances, we do not think that there can be two contradictory orders of different benches of the High Court on the very same issue.

23. Hence, in the interest of judicial consistency and on the merits of the case as well, we find that the relief that was granted to the writ petitioners who filed the writ petitions before the

Principal Bench of Bombay High Court ought to be also granted to the appellants herein.

24. Consequently, the impugned order is set aside. The MIDC is directed to process the allotment to be made to the appellants herein and execute the sale-deed to the appellants subject to the balance payments to be made.

25. The said exercise to make balance payments to respondent MIDC shall be carried out within a period of four weeks from the date this order is made available.

26. Consequently, the impugned order is set aside and these appeals are allowed in the aforesaid terms.

No costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
FEBRUARY 03, 2026