

CWP No.26470 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.26470 of 2015 (O&M)

Date of decision: July 12, 2016

Winsoft Technologies (An Educational Trust)

.....Petitioner

Vs.

Haryana Urban Development Authority and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Pardeep Kumar Rapria, Advocate for the petitioner.

Mr. Anshul Jain, Advocate for Mr. Amar Vivek, Advocate for respondent Nos. 1 and 2.

Mr. Aman Chaudhary, Advocate for respondent No.3.

Ajay Kumar Mittal,J.

1. Written statements on behalf of respondent Nos. 1, 2 and 3

are allowed to be taken on record.

2. The petitioner prays for quashing the order dated 7.12.2015,

Annexure P.10 passed by respondent No.2 cancelling the auction of the site

of primary school measuring 7500 square meters situated at Sector 28,

Faridabad. Further prayer has been made for restraining the respondents

from re-auctioning the site.

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3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner trust is part of the Winsoft group of Institutions owning many schools and institutions across North India. The Haryana Urban Development Authority (HUDA), Faridabad advertised E-auction of 12 commercial sites at Faridabad in collaboration with its official partner respondent No.3 i.e. Nextenders (India) Pvt. Limited which provides technical platform for E-auction. On 20.11.2015, the petitioner with a view to impart education at primary level to children applied for e-auction of primary school site measuring 7500 square meters at Sector 28, Faridabad and deposited ₹ 1000/- towards service charges. On 21.11.2015, the petitioner deposited security deposit i.e. ₹ 14.20 lakhs as 2% of the reserve price of ₹ 7,09,87,500/- for the site. On 23.11.2015, Annexure P.4 the respondents generated user ID and password for the petitioner which is required for participating in the bidding process. On 23.11.2015, the petitioner was declared highest bidder at ₹ 10,83,87,500/- against the reserve price of ₹ 7,09,87,500/- for the site in question. Accordingly, the respondents generated challan of ₹ 1,08,38,750/- i.e. 10% of the bidding amount as earnest deposit money. On 26.11.2015, Annexure P.6 the petitioner deposited ₹ 1,08,38,750/- as the earnest money for which acknowledgement dated 27.11.2015, Annexure P.7 was issued to the petitioner. On 1.12.2015, the petitioner visited the office of respondent No.2 and sought allotment letter. The petitioner was asked to complete all

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the requisite formalities of depositing the documents. On 2.12.2015, the petitioner submitted all the relevant documents within the stipulated period. Thereafter, the petitioner approached respondent No.2 for issuing the allotment letter but he was informed that respondent No.2 was considering to reject the successful bid of the petitioner. The petitioner sought documents under Right to Information Act, 2005 relating to the bidding process and reasons for rejection. However nothing was heard. Vide order dated 7.12.2015, Annexure P.10 respondent No.2 arbitrarily rejected the successful and highest bid of the petitioner. Hence the instant writ petition.

4. A written statement has been filed on behalf of respondent Nos. 1 and 2 by Shri Rajesh Kumar, HCS Estate Officer, HUDA, Faridabad, wherein it has been inter alia stated that as per report generated from E-auction site, the last bid received was of Winsoft Technologies of ₹ 10,83,87,500/- as highest but a complaint had been made by Anil Kumar, representative of DPS society. The competent authority sought report from the concerned agency which was not found appropriate. The HUDA website showed the bid of DPS as invalid. The Administrator HUDA sought information from the office. It transpired that the whole bidding pattern was likely to cause huge revenue loss to HUDA. Further, as per Clause 13, the authorized officer was not bound to accept the higher bid or any or all bids and reserved the right to accept or reject any or all the bids or cancel, postpone E-auction without assigning any reasons thereof. On these premises, prayer for dismissal of the petition has been made.

5. A short reply has been filed on behalf of respondent No.3 inter alia stating that it is neither necessary nor proper party in the present case between the petitioner and HUDA. Its main function is merely to facilitate E-tendering/E-auction process. It is not within its jurisdiction to either accept or reject any offer or cancel or re-schedule or re-conduct the process. All the interested bidders placed their bids on the portal in which process the respondent has no role to play. It comes into picture only when any of the bidders faces any difficulty in operating the software platform or has any query regarding the online bidding process.

6. We have heard learned counsel for the parties.

7. Admittedly, the Haryana Urban Development Authority, Faridabad advertised E-auction of 12 commercial sites at Faridabad in collaboration with its official partner respondent No.3 which provides technical platform for E-auction. On 20.11.2015, the petitioner applied for E-auction of primary school site measuring 7500 square meters at Sector 28, Faridabad and deposited the requisite E-service charges and security deposit. Accordingly, user ID was generated and password was given to the petitioner required for participating in the bidding process. On 23.11.2015, the petitioner was declared highest bidder at ₹ 10,83,87,500/- against the reserved price of ₹ 7,09,87,500/-

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for the site in question. Accordingly, the respondents generated challan of ₹ 1,08,38,750/- i.e. 10% of the bidding amount as earnest deposit money. The petitioner deposited the same within the stipulated period. The petitioner also deposited the relevant documents with the HUDA. When the petitioner approached respondent No.2 for issuing the allotment letter, he came to know that the said respondent was considering to reject the successful bid of the petitioner. As per report generated from E-auction site, the last bid received was of the petitioner of ₹ 10,83,87,500/- whereas one Anil Kumar from DPS society had quoted ₹ 11,28,87,500/- before closing by fourteen seconds which was shown as invalid. The auction had been concluded before 14 seconds. Another bidder Mr. Nishant Bansal from Vatsalaya Charitable Trust Panipat had also made a complaint that there was time gap of 10 seconds and auction was concluded 10 seconds before the fixed time upto 5 PM on 23.11.2015. In this situation, keeping in view the bid trend for the last 10 minutes just before closing of the bids, it appeared that if the bidding would have continued for more time, it would certainly have generated more revenue for the HUDA and thus it would be in public interest to have more time for bidding for the site in question. Further, as per clause 13 of the terms and conditions of the advertisement Annexure R.3, the authorized officer

was not bound to accept the highest bid or any or all bids and reserved the right to accept or reject any or all the bids or cancel, postpone or E-auction without assigning any reasons thereof. Still further, as per Condition No.22 of the terms and conditions, the competent authority had the right to accept/reject any bid or withdraw any property from E-auction without assigning any reasons. The respondent authorities were of the view that there were chances to fetch more money in respect of the site in question. Thus, the bid given by the petitioner was cancelled as the whole bidding pattern was likely to cause huge revenue loss to the HUDA. The action of the respondent authorities in cancelling the bid cannot be held to be illegal or arbitrary keeping in view clause 13 in the terms and conditions of the advertisement.

8. Adverting to the judgments cited by the learned counsel for the petitioner, it may be noticed that in ***City Industrial Development through its Managing Director vs. Platinum Square Trust and another***, (2015) 1 SCC 558, allotment of government lands for erecting entertainment complex without inviting tenders was held to be not justified. Such is not the position in the present case.

9. Learned counsel for the petitioner has not been able to show that the action taken by the respondent authorities is, malafide,

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illegal or arbitrary. Consequently, finding no merit in the petition, the same is hereby dismissed.

10. This order shall also dispose of all the miscellaneous applications.

(Ajay Kumar Mittal)
Judge

July 12, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes