

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

CWP No.15610 of 2017 (O&M)
Date of decision:- December 21,2017

Mukesh Kumar

.. Petitioner

vs.

State of Haryana and others

.. Respondents

**Coram: HON'BLE MR.JUSTICE S.J.VAZIFDAR,CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Dinesh Arora, Advocate
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana

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HARINDER SINGH SIDHU, J.

C.M.No.17671 of 2017 is allowed. Rejoinder to the written statement filed on behalf of respondents No.2 to 4 is taken on record.

CWP No.15610 of 2017 :

In this writ petition the petitioner has challenged the order dated 06.07.2017 (Annexure P-8) passed by respondent No.4 – Estate Officer, Haryana Urban Development Authority, Rohtak, whereby, the e-auction in respect of five plots including plot No.780 has been cancelled. The petitioner has further prayed that respondent No.4 be directed to issue him allotment letter for plot No.780, he being the successful bidder for the same in the e-auction held on 20.3.2017.

The respondents published a brochure for auction of 13 plots at various sites in Urban Estate, Rohtak. The relevant terms and conditions for the e-auction which have been relied on in this petition are as under:-

**“TERMS AND CONDITIONS FOR E-AUCTION OF
LEFT OUT RESIDENTIAL PLOTS**

E-AUCTION WILL START AT 9.00 AM ON 20.03.2017

A. ELIGIBILITY FOR PARTICIPATION:

1. Any person legally competent to enter into a contract will be eligible to participate in the auction.

xxxx xxxx xxxx xxxx xxxx
 xxxx xxxx xxxx xxxx xxxx

5. The competent Authority of HUDA shall reserve to itself the right to accept any bid or reject any bid or withdraw any or all the sites from auction or cancel/postpone the e-auction, without assigning any reason thereof.

xxxx xxxx xxxx xxxx xxxx

7. In the event of default or breach or non-compliance of any of the terms and conditions as indicated or for furnishing any wrong or incorrect information at the time of auction etc. the competent Authority shall have the right to cancel the bid and forfeit whole or any part of the amount paid by the bidder-purchaser.

B. HOW TO PARTICIPATE

8. Intending bidders will be required to sign-up and obtain user ID and password on the portal <https://huda.haryanaeprocurement.gov.in> and thereafter earnest Money Deposited EMD/Security and Rs.1000/- towards non-refundable E-service fee for participation in the e-auction. The intending bidders shall be required to deposit the EMD/ Security amount online through RTGS/NEFT/OTC and e-service fee online through debit card/net-banking, as detailed in Annexure-I.

xxxx xxxx xxxx xxxx xxxx

10. The e-Auction will start at 9.00 AM on 20.03.2017 at the portal <https://haryanaeprocurement.gov.in>. However, in case any bid in respect of any site is received 10 minutes prior to time fixed for closure of the bids i.e. 2.00 PM or further extended time interval, then the time for closure of the complete auction programme would be extended automatically by 10 minutes in addition to Auction Ends Time reflecting on <https://haryanaeprocurement.gov.in>, so that equal opportunity is made available to the persons participating in the bidding process. Such extensions of ten minutes will continue till bids are received within next 10 minutes of last bid for any of the site, otherwise the complete auction event will get concluded.

11. It will be the sole responsibility of the bidder/participant to obtain a compatible computer terminal with internet connection to enable him/her to participate in e-auction process.

xxxxx xxxx xxxx xxxx

D. PAYMENT TERMS:

14. The successful/highest bidder shall be required to remit an amount equivalent to 10% of his quoted bid amount by 5.00 PM of the day succeeding to final bid closing day by way of generating 'General Purpose Challan' from www.huda.org.in in EARNEST MONEY Head and deposit that Challan in HUDA authorized Bank. In case the successful/highest bidder fails to deposit the said amount as specified above, his bid shall stand rejected and the EMD deposited by him for participation in the e-auction shall stand forfeited in favour of HUDA.

xxxx xxxx xxxx xxxx

16. After acceptance of the bid, the successful bidder will further be required to deposit another 15% of the quoted bid amount within 30 days of the date of auction."

As per the brochure, the interested bidder was to sign up and obtain

I.D. and password and thereafter, deposit an amount of Rs.1000/- as e-

service fee for participation in the auction. The intending bidders were also

required to deposit the EMD/ security amount online. The auction was to start at 9.00 AM on 20.3.2017 and close at 2.00PM. There was a provision for extension in time if a bid in respect of any site was received 10 minutes prior to the time fixed for closure of the bids, so that equal opportunity is available to persons participating in the bidding process. As per clause D (14) the highest/successful bidder was required to remit an amount equal to 8% of his quoted bid amount by 5.00PM of the day following the day of the closing of the bid.

The petitioner participated in the e-auction for plot No.780, Sector 2P, Rohtak. The said plot was at Sr. No.7 in the brochure. According to the petitioner, for this auction, he competed with three other bidders. It is his case that he gave his last bid of Rs.14,70,000/- at 14:21:27. No further bid was received after 14:21:27 for the said plot. The petitioner being the highest and successful bidder, deposited the requisite 10% amount of the total cost i.e. Rs.1,50,000/- on 21.3.2017. He immediately intimated respondent No.4 of this fact and requested that allotment letter be issued in his favour. Similar letters were sent on 3.4.2017 and 19.4.2017 requesting respondent No.4 to issue the allotment letter as 15% of the amount was to be deposited within 45 days. The petitioner was surprised when he received order dated 6.7.2017 informing that the e-auction in respect of five plots, including plot No. 780 for which the petitioner had bid was cancelled. The reason for the cancellation was that after the conclusion of the E-auction, various complaints were received from the participants that they could not bid for plots for which they were bidding especially when the E-auction was nearing completion. A report was sought from the service provider M/s Nextenders India Pvt. Ltd. which reported that error occurred in respect of

five plots including plot No. 780. As thereby fair opportunity was denied to the applicants bidding for these plots, keeping in view public interest, the e-auction in respect thereof was cancelled and it was decided that these plots would be put to re-auction.

The case of the petitioner is that as per his information, no complaint was received by the respondents in respect of plot No.780, for which the petitioner was the successful bidder. Even for plot No.719-B and 719-C which also were cancelled, the other bidders did not complain of any error on the site and participated in the bid. It is further his case that the service provider M/s Nextender Private Ltd. had informed one Arun Malik (a bidder) that no error on the system had been detected. The error, if at all, was in the internet connectivity of the bidder and that nothing could be done about it after the closure of the bid. In this regard he refers to an e-mail communication dated March 20, 2017 (Annexure P-9) from the service provider to Arun Malik which reads thus:

“Dear Sir

In reference to your email, we would like to inform you that there is no issue on our website. We also confirm you that we have received the last bid at 3/20/2017 2:23:56 PM. It may be internet connectivity problem at your end.”

In the written statement filed on behalf of the respondents, it has been stated that the bid was cancelled due to technical fault. The respondents had received complaints from the other bidders that the system stopped working and no last bids were shown. The Department received error reports in respect of five plots, as per report of the Service Provider vide its mail reply dated 5.4.2017 (Annexure R-1). Respondent No.4 has cancelled the e-auction in respect of plot No.780, Section 2(P), Urban Estate, Rohtak and four other plots, due to band width choking. The

information/ page has not been updated in system and resulted into error message of 'NON'. It has been asserted that the action is bonafide and in public interest.

Ld. Counsel for the petitioner raised the following contentions:

- (i) The e-mail message dated March, 20, 2017 (Annexure P-9) confirmed that there was no error on the website of the service provider. If there was any internet connectivity problem at the end of a bidder, that was entirely his problem. Clause B (11) of the brochure specifically states that it would be the sole responsibility of the bidder to obtain a compatible computer terminal with internet connection to enable him to participate in the e-auction. Thus, a bidder could not rely on his own default to question or negate the e-auction.
- (ii) If the fault at the end of one or two individual bidders, could be made the basis of the cancellation, then the entire auction ought to have been cancelled instead of limiting it to five plots.
- (iii) The petitioner was the highest bidder and after the close of the bid he had deposited 8 per cent of the quoted bid. Thus his bid is deemed to have been accepted leading to the formation of a contract between the parties. Subsequently it could not be unilaterally cancelled by the respondents.

Ld. Counsel for the respondents on the other hand supported the cancellation and argued that the respondents were not bound to accept the highest bid. The respondents received error report in respect of five plots as per report of the service provider. So the auction was cancelled in respect of those five plots in public interest.

Heard Ld. Counsel for the parties and perused the record.

The impugned order reads thus:

“HARYANA URBAN DEVELOPMENT AUTHORITY

OFFICE ORDER

No. 5270

Dated 06.07.2017

E-Auction for 13 plots was conducted on 20.03.2017 from 9.00 am to 2.00 pm. After the conclusion of E-Auction, various complaints were received by this office from participants alleging that they could not bid for the plots they were earlier bidding especially when E-Auction was nearing to the completion. A report was sought from the service provider M/s Nextenders India Pvt. Ltd. which is entrusted with the responsibility of conducting E-Auction. M/s Nextenders India Pvt. Ltd. submitted their report vide their E-mail stating that error occurred in following E-Auction ID.

Sr.No.	E. Auction ID No.	Plot No.
1.	35532	729
2.	35527	586-A
3.	35529	719-B
4.	35530	719-C
5.	35536	780

Hence it is apparent fair opportunity was denied to the applicants bidding for above mentioned plots. Therefore, keeping public interest in view E-Auction with respect of the above said plots is hereby cancelled. These plots will again be put-up in E-Auction shortly.

Sd/-

*Estate Officer,
HUDA, Rohtak”*

As per this order after the conclusion of the E-auction, various complaints were received from the participants that they could not bid for plots for which they were bidding especially when the E-auction was nearing completion. A report was sought from the service provider M/s Nextenders India Pvt. Ltd. which reported that error had occurred in respect of five plots including plot No. 780. As fair opportunity was denied to the applicants bidding for these plots, keeping in view public interest, the e-auction in respect thereof was cancelled. The plots would be put to re-auction.

The report dated April 5, 2017 (Annexure R-1) on which the respondents have based their decision reads as under:

“Complaint regarding auction of plot # 729 Sector-2P Rohtak

Dear Sir,

There were error on the page while quoting bids for below mention e-auction ID by Mr. Arun Malik and Ms. Ankita Garg. Before our helpdesk team provides the proper solutions the auction has been concluded. Since the concerned parties reported the issue after auction concluded while email dated (Mon, Mar 20, 2017 at 5.37 PM) & (Mon, Mar 20, 2017 at 2.49 PM).

Auction id-35527, 35529, 35530, 35532 and 35536.”

The e-auction ID 35536 relates to plot No.780 for which the petitioner was one of the bidders.

The service provider in his report mentions error while quoting bids in respect of five plots. And e-auction in respect of those very plots have been cancelled. As the error was mentioned in respect of five plots, in the absence of any other reason warranting cancellation of the entire e-auction, the respondents were clearly right in cancelling the auction only in respect of those five plots and not all the thirteen plots. No fault can be found therewith.

We are also unable to accept the argument of the Ld. Counsel for the petitioner that there being no error in the website of the service provider and the error being only due to internet connectivity problem at the end of some of the bidders, only the defaulting bidders should suffer the consequences thereof as specifically provided for in Clause B (11) of the brochure. It should not have resulted in cancellation of the auction. In our view the only implication of clause B(11) is that a bidder may not be able to question the auction for any default in the internet connection at his end affecting his participation in the auction. But it does not mean that the authorities are precluded from cancelling an auction where one or more participants are unable to participate because of connectivity problems at their end. In such a situation the authorities may well conclude, that they

have not received the best offer because of the failure of some of the bidders to effectively participate in the auction and a re-auction would be in public interest. That is precisely what appears to have been done in the present case. We find no fault therewith. In any case as per clause A(5) of the brochure the authority has reserved to itself the right to accept or reject any bid without assigning any reason. A highest bidder cannot insist on acceptance of his bid.

Respondent No.4 has taken the decision to cancel the e-auction on receipt of report of the service provider that there was error on the page while quoting bids for five e- auction ID by two bidders. No material has been shown to us that this report is false or motivated. The communication Annexure P-9 relied on by the petitioner is addressed to one bidder. It merely states that there was no issue with the website of the service provider but there may be internet connectivity problem at the end of the bidder. It does not refer to the complaints received from other bidders and/or the nature and consequences thereof. It does not specify as to how many complaints were received from the different bidders in respect of the different plots. It is the E-mail dated April 5, 2015 (Annexure R-1) which deals with that aspect and confirms that error occurred in five E-auction IDs.

The last argument of learned counsel for the petitioner that as he was the highest bidder and had deposited 10% of the amount, his bid was deemed to have been accepted and could not have been unilaterally cancelled, also is without merit. Similar argument has been negated by a Division Bench of this Court in CWP No.7084 of 2017 titled “**Bhavika Verma vs. State of Haryana and others**” decided on 27.11.2017,

containing identical terms and conditions of e-auction.

The relevant paragraphs from that judgment are extracted below:

“7. In all these cases, the petitioners had paid the initial amount. Thereafter, they paid an additional 8 per cent of the quoted bid. It was contended on behalf of the petitioners that upon their bids having been found to be the highest and upon the respondents accepting the payment of 8 per cent of the quoted bid, their bids are deemed to have been accepted leading to the formation of a contract between the parties for the sale of the plots by the respondents to the petitioners for the consideration represented by the said bid and to be paid in accordance with the said terms and conditions.

8. The submission is not well founded. The mere fact that the petitioners had submitted the highest bid and had thereafter paid an amount of 8 per cent of the quoted bid amount as per clause D(14) did not bring into existence an agreement of sale between the parties. The amount of 8 per cent deposited only constituted the bid security. This was to tie-down the bid submitted by the highest bidder. The highest bidder was not entitled thereafter to withdraw his offer except on the terms and conditions stipulated in the auction notice. That an agreement cannot be said to have been entered into merely on account of the highest bidder paying the additional 8 per cent of his quoted bid amount as per clause D(14) is evidenced by the various terms and conditions themselves.

9. Firstly, clause A-5 entitles the respondents to accept any bid or to reject any bid. This itself indicates that a contract could come into existence only upon the acceptance of the bid by the respondents. Till the acceptance of the bid, the respondents were entitled to reject the same. Thus, the mere fact that the bid is higher than the reserve price would make no difference.

10. This view is supported by clauses 15 and 16. Clause 15 requires the highest bidder to furnish the documents stipulated therein. This requirement was in addition to the payment of 10 per cent of the quoted bid amount. Thus, the mere payment of the 10 per cent of the quoted bid amount does not bring into existence a contract between the parties. The doubt, if any, is set at rest by the first sentence of clause 16: “After acceptance of the bid, the successful bidder will further be required to deposit another 15% of the bid amount within a period of 45 days of the date of auction”. The opening words of this sentence: “After acceptance of the bid” clearly indicate that the bid by itself does not bring into existence a contract. A contract comes into existence only after the acceptance of the bid.

11. The reliance upon clause 10 does not support the petitioners’ contention to the contrary. Clause 10 merely stipulates the manner in which the bids may be made and accepted. It provides for the period within which each successive bid is to be made. The concluding words of this clause: “.....otherwise the complete auction event will get concluded” does not carry the petitioners’ case further. It only refers to the completion of the auction. It has no reference to the formation of a contract pursuant to the auction.

12. The reliance upon clause D(14) itself is also not well founded. As we noted earlier, the payment of 8 per cent of the quoted amount is only towards the bid security. It does not constitute a part payment of the amount pursuant to a concluded agreement between the parties. This is clear from the second sentence of clause D(14) which states that in case the successful/highest bidder fails to deposit the said amount of 8 per cent, his bid shall stand rejected and the EMD

deposited by him for participation in the e-auction shall stand forfeited in favour of HUDA. The reference is to the bid amount which does not by itself refer to an amount paid pursuant to a contract. The Earnest Money Deposit (EMD) is not towards a contract, but only for the purpose of participation in the e-auction.”

Accordingly, there is no merit in the petition and the same is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

December 21, 2017

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No