

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

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Date of decision: 20.12.2018

1. C.W.P No. 20793 of 2017 (O&M)

S.J. Memorial Education Society ... Petitioner

Vs.

Haryana Urban Development Authority & Ors. ...Respondents

2. C.W.P No. 20794 of 2017 (O&M)

Mrs. Pushpa Rana ... Petitioner

Vs.

Haryana Urban Development Authority & Ors. ...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr.Alok Mittal, Advocate, for the petitioner.

Mr. Deepak Balyan, Advocate, for HUDA.

Mr. Ankur Mittal, Addl. A.G. Haryana.

Mr. Raj K. Narang, Advocate, for respondent No.4.

MAHESH GROVER, J. (Oral)

This order shall dispose of above-said two writ petitions as the facts are common.

Learned counsel for respondent No.4 states that he may be permitted to adopt the reply filed by the State.

Permitted to do so.

These writ petitions under Article 226 of Constitution of India have been filed with a prayer that the impugned order dated 04.08.2017 be quashed.

The petitioner (in C.W.P No. 20793 of 2017) is duly registered society and applied in response to e-auction for allotment of a Nursing

Home Site No.2 located in Sector 43. It was the highest bidder in e-auction and after being declared successful deposited 10% of the bid amount and allotment letter dated 03.03.2017 was issued. The remaining 15% of the amount was also paid. As per the terms, the balance amount was to be paid within six months.

Civil Writ Petition No.10760 of 2017 was filed questioning the allotment in favour of the petitioner. The writ petitioner in this petition was respondent No.2. The said writ petition was disposed of with a direction to the official respondent to decide the representation of the said writ petitioner whereafter the allotment made in favour of the petitioner was cancelled without either calling upon it or associating it with the process. The impugned letter also said that the petitioner had been also unable to deposit the balance amount.

Similar the case of the petitioner in C.W.P No. 20794 of 2017, who also deposited 25% of the total amount and filled cancellation vide same order.

In the impugned order while canceling the allotment it was reasoned as follows:-

“17. Therefore, after considering the complete facts and circumstances of the case, the representation dated 04.05.2017 of the petitioner (Annexure P-14) is disposed of in following terms:-

(a) The auction as well as consequent allotment of nursing home site No.1 and 2 in Sector – 43, Gurugram conducted on 11.02.2017 and allotted on 03.03.2017

respectively, is ordered to be cancelled forthwith.

(b) The nursing home site No.1 and 2 in Sector – 43, Gurugram shall be disposed of, afresh through e-auction as per HUDA policy.

(c) The claim of the petitioner for allotment of nursing site No.1 & 2 in Sector -43, Gurugram is rejected.

(d) Secretary, HUDA, Panchkula is directed to put a charge sheet for major penalty against Sh. Sanjiv Singla, HCS, the then Estate Officer-II, HUDA, Gurugram for reference to the Government for further action as well as against Sh. Ram Chander, Assistant, Sh. Dinesh Kumar, Clerk and Sh. Jagmohan Gupta, Accountant for the serious lapse in not verifying before allotment, the qualification of the allottees of nursing home sites No.1 & 2 in Sector -43, Gurugram as per the eligibility conditions stipulated in the policy dated 23.7.2008 as well as in terms and conditions of auction.”

One of the primary reasons to cancel the allotment in favour of the petitioner is that the policy placed an embargo on any consideration to a non-professional. Since the site was intended for a 'Nursing Home', the applicant according to the respondents necessarily had to be a qualified M.D or M.B.B.S (in short 'Doctor').

Learned counsel for the petitioner has argued before us that what was put out as terms and conditions of the e-auction did not contain any stipulation and the 39 stipulations put out on the web-site did not

contain any such condition which is now being used to cancel the allotment in its favour for reasons best known to the respondents and that too without hearing which was essential noticing particularly the fact that amount equivalent to the 25% of the bid stood already deposited with the respondents.

We may say with some anguish that learned counsel for the respondent-HUDA forcibly denied that only 39 conditions were set out but contended that all 49 conditions were available on the net and the assertion of the petitioner is absolutely false. Time and again this argument was raised before us till the time learned counsel for the petitioner referred to certain material on record, which falsifies the assertions of the respondents authorities altogether. Our attention has been drawn to Annexure P-11 a letter dated 13.06.2017 where this fact of only 39 conditions being put up on the site is conceded and to make it a part of the narrative, we extract content of the said communication :-

“Sub:- E-auction of Nursing Home Sites of Sector-43, Gurugram held on 11.02.2017.

As per the HUDA Policy any capable person of sound mind can participate in the E-auction of Nursing Home Site. The terms & conditions of E-auction were received from the Head Quarter. The terms & conditions were 1 to 39. But 9 Nos. conditions from 40 to 49 were added in that list at the stage of this office before the date of E-auction.

You all are dealing persons at the time of E-auction. Now the matter has been challenged before the Hon'ble Punjab & Haryana High Court, Chandigarh. Therefore, you are directed to explain your conduct, as to how these 9 conditions were added before the E-auction. Your reply

must reach by tomorrow i.e. 14.06.2007 by 2.00 P.M. Sharp.”

The reply submitted by HUDA authorities is no less revealing.

In Para-5, it has been stated as below:-

“ That the procedure in case of sale or lease of land or building by auction is laid down in Regulation 6 of Haryana Urban Development (Disposal of Land & Buildings), Regulations 1978. Sub regulation (4) of this regulation provides that the general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot.”

Regulation 6 Sub-clause 4 is also extracted here:-

“4. The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot.”

Evidently it is the Chief Administrator, who would have the authority to provide general terms and conditions of auction. No other authority is empowered in this regard and neither has it been shown that the Chief Administrator parted with his authorities in favour of some other official. When confronted with the situation where mis-statement of fact was being made by the respondents they conceded that an enquiry is under way implying thereby that a wrong statement of fact was made before us when learned counsel for the respondents on instructions from the Estate Officer – II, Gurugram stated that all 48 conditions were put up on the web-site. It was then stated by learned counsel for the official respondent that an inquiry is being conducted against Sh. Sanjiv Singla, Estate Officer-I,

HUDA. It is interesting to refer to the representation which is also on

record and he states therein that the terms and conditions for e-auction held on 11.02.2017 were uploaded at the level of data entry operator. This does not bode well for the respondents as it exposes them to the allegations of maneuvering, which is further fortified by the fact when we see Annexure P-2 which is the information sent out to all the concerned officials and it contains 39 conditions with each page duly having the initials of the competent authority. It, thus, becomes clear that their had been serious bungling at the hand of the respondents which they themselves do not deny. They have candidly conceded to their mistakes. We may also notice that the conduct of the respondents has been grossly irresponsible. We had on 30.10.2018 requisitioned the records and on the next date of hearing i.e. 06.12.2018, it was stated before us that the relevant record was not brought by the officer incharge and assured that an affidavit would be filed before the next date of hearing to show that condition No. 44 was approved by the Government Authorities and incorporated with the information brochure uploaded on the site. On 17.12.2018, there was a default by the Estate Officer, who did not appear and therefore we imposed Rs.20,000/- as costs upon him whereafter he has appeared and filed an affidavit in the Court, which only strengthens our impression that there is a serious attempt to cover up. In para-7 it has been stated that the original record is not traceable and DDR has been lodged before the police authorities. A perusal of the DDR appended with the affidavit shows that it was done just one day prior i.e. 19.12.2018 at 18:59 hours, the date of hearing is today i.e. 20.12.2018. This strengthens our view that the respondents are shying away from revealing the record to the Court.

Having said so and finding no redeeming feature in the stand of the official respondents we are of the opinion that it is a clear case where a vested right accrued in favour of the petitioner who was successful bidder is being sought to be taken away without even having respect for the principles of natural justice. No opportunity of hearing was granted to the petitioner and neither was any explanation offered to it or to the Court as to why claim of the petitioner was accepted in the first place. Assuming that the entire information including clause 44 was uploaded on the site then we ask a question as to why the respondents accepted the bid of the petitioner knowing fully well that it does not fulfil the condition of the policy. The absence of information is something that the petitioner can plead to his advantage but the respondent-authorities who are dealing with the matter cannot possibly plead ignorance of their own policy and conditions. Assuming that only 39 conditions were uploaded either on account of inadvertence or mischief, the authorities which conducted the auction were expected to verify the credentials of all participants and they cannot justifiably plead that all the conditions were uploaded and yet the petitioner was considered though ineligible.

Not only in law but also in their conduct they have shown unfairness and arbitrariness by retaining the amount of 25% even though they had cancelled the allotment. We are, thus, of the opinion that the stand of the official-respondent is grossly unjust and arbitrary. It is a fit case where heads should roll. Although it is the internal matter of the authorities and we have been informed that the enquiry is going on. So let it be taken to its logical end and as far as the petitioner is concerned having been

successful in the auction and there being a consideration granted to him by accepting the amount it would be justified in asking the quashing of the impugned order qua its allotment particularly when it has been done without affording any opportunity of hearing to it.

Accordingly, writ petitions are allowed. Impugned order dated 04.08.2017(Annexure P-8) is set aside and the writ petitioners are held entitled to the plot. The petitioners shall now deposit the remaining amount within two months.

Disposed of.

(MAHESH GROVER)
JUDGE

December 20, 2018
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(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No