IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7618-2018 (O&M)
Date of decision:- 28.03.2018

Islamuddin Khan

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present:- Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Lokesh Sinhal, Additional Advocate General, Haryana,
for the respondents.

* * * *

S.J. VAZIFDAR, CHIEF JUSTICE

The petitioner seeks a writ of certiorari to quash an order dated 22.03.2018 and a public notice dated 23.03.2018 for the re-allotment of retail liquor vends in certain zones of Faridabad, Haryana. The petitioner has in effect challenged the respondents' decision to abandon the tender process and to invite fresh tenders and seeks an order directing the respondents to enter into a contract with him pursuant to the tender process.

2. We have decided to dismiss the petition having found that the decision was based on valid grounds. For instance, it appeared that a cartel had operated with the object of adversely affecting the price. It was also felt that the bids submitted did not reflect the price realizable.

3. The 1st respondent issued the Excise Policy for the financial year 2018-2019 under the provisions of the Punjab Excise Act, 1914, as applicable to the State of Haryana, for

the purpose of regulating the liquor trade. The policy, inter alia, provides for the issuance of various types of liquor licenses and states that a detailed procedure regarding the invitation of e-bids would be finalized by the Excise and Taxation Commissioner(Financial Commissioner) to be displayed on the department's website.

4. The petitioner's application through e-tender made on 16.03.2018 was registered and the petitioner was the highest bidder with a bid of ₹ 4.33 crores against the reserve price of ₹ 3.75 crores in respect of Sirohi Zone, Faridabad. He was also the highest bidder in respect of Bengal Suiting Zone, Faridabad with a bid of ₹ 16.05 crores against a reserve price of ₹ 15 crores. The petitioner deposited the requisite amounts. The bids, however, were not accepted. A contract was not entered into between the parties.

5. The Excise and Taxation Commissioner – respondent No. 2 addressed the impugned letter dated 22.03.2018 to the Deputy Excise and Taxation Commissioner (Excise), Faridabad – respondent No. 3, which reads as under:-

> *"Subject: Report regarding result of evaluation of e-tenders for the year 2018-19.*
>
> *Reference: Your office memo No. Spl2/Ex, dated 21.03.2018*
>
> *Memo:*
>
> *Kindly refer to the subject cited above.*
>
> *It is hereby informed that the Excise and Taxation Commissioner (FC), in exercise of such powers as are conferred under Rule 36-A(11) of the Haryana Liquor License Rules, 1970 and under Cl. 2.13.2 of the Excise Policy for the year 2018-19, has rejected the allotment of fifteen Zones of retail liquor outlets of your district; accepting the recommendations forwarded by you. The list of these zones is tabulated below:*

Sr. No.	*Name of Zone*	*Name of the Highest Bidder*	*Business Entity Name*
1.	*XXXX*	*XXXX*	*XXXX*

2.	*XXXX*	*XXXX*	*XXXX*
3.	*XXXX*	*XXXX*	*XXXX*
4.	*XXXX*	*XXXX*	*XXXX*
5.	*XXXX*	*XXXX*	*XXXX*
6.	*XXXX*	*XXXX*	*XXXX*
7.	*ZFBD13*	*Islamuddin Khan*	*Islamuddin Khan*
8.	*XXXX*	*XXXX*	*XXXX*
9.	*XXXX*	*XXXX*	*XXXX*
10.	*XXXX*	*XXXX*	*XXXX*
11.	*ZFBD19*	*Islamuddin Khan*	*Islamuddin Khan*
12.	*XXXX*	*XXXX*	*XXXX*
13.	*XXXX*	*XXXX*	*XXXX*
14.	*XXXX*	*XXXX*	*XXXX*
15.	*XXXX*	*XXXX*	*XXXX*

The participation fee, the earnest money deposit (EMD) and the security installment, if any, of all the participants in the bidding process in respect of these fifteen Zones is hereby restored/refunded, as the case may be.

Further, you are hereby directed to ensure that the above orders are served upon each of the highest bidder of these fifteen Zones by 23.03.2018 positively under intimation to this office.

Sd/-

Addl. Excise and Taxation Commissioner (HQ),
For Excise and Taxation Commissioner, Haryana."

Thus, the bids in respect of fifteen zones were rejected. The petitioner was the highest bidder for the zones at Serial Nos. 7 and 11.

6. Mr. Ashok Aggarwal, the learned senior counsel for the petitioner submitted that Rule 36A (11) and clause 2.13.2 were irrelevant indicating a non-application of mind.

7. The reference to Rule 36-A(11) of the Haryana Liquor License Rules, 1970 and clause 2.13.2 of the Excise Policy for the year 2018-2019 was unnecessary. The effect of the decision was only to abandon the tender process in respect of these fifteen zones. The reliance upon these provisions for the same was not even necessary. The question is whether the decision to abandon the tender process and to invite fresh tenders was valid or not.

8. Mr. Lokesh Sinhal, the learned counsel appearing on behalf of the respondents, produced the office memo from the Deputy Excise and Taxation Commissioner (Excise), Faridabad to the Excise and Taxation Commissioner, Haryana dated 21.03.2018 which is referred to in the impugned decision dated 22.03.2018. The note reads as under:-

> *"Subject:- Report on allotment of Zones (Liquor Vends) for the year 2018-19.*
>
> *The e-tendering process for allotment of all the 28 Zones in District Faridabad was initiated and finalized on 16.03.2018 and 17.03.2018 respectively. Out of these 28 Zones, there has been found satisfactory increase in 10 Zones. One Zone (ZFBD 28) remained un-allotted due to non receipt of any bid. In two Zones (ZFBD 06 & ZFBD 27) though there has been no increase over the last year's license fee, yet has shown competitive increase over the reserve price of the Zones and, therefore, considered to be satisfactory in view of the fact that the command area of these two Zones was modified.*
>
> *In the remaining 15 Zones (Annexure-A), though the bids have been received marginally above the reserve price, yet the bid amount is lesser than the last year's license fee of the Zone and, therefore, not considered representing the true potential of the respective Zone. Besides, there is a feedback that cartelization has come into play in the Zones scuttling the competitive bidding and thus denting the State Revenue. In this back drop, I am of the opinion that allotment of these 15 Zones may not be approved.*
>
> *Deputy Excise and Taxation Commissioner (Excise)*
> *Faridabad"*

9. It is for the party inviting tenders to decide whether the tender process has yielded the best result or one to its satisfaction or not. It is not for the Court to sit in judgement over such commercial decisions of the parties. Admittedly, a concluded contract was not entered into between the parties. The highest bidder is not entitled as a matter of right to have the license issued in his favour or the work allotted to him merely because his bid was the most competitive one.

10. We are not inclined to accept the contention that there was non-application of mind by respondent No. 2 while arriving at a decision merely because he relied upon the views of and the information supplied by respondent No. 3. He has analyzed the information furnished by respondent No. 3 and come to the conclusion in what he perceived to be the best interest of the respondents. Respondent No.3 was entitled to consider the views of respondent No.2 and to rely upon the information supplied by him. Prima-facie, at least the decision is not irrational or illegal.

11. Mr. Aggarwal, submitted that though in respect of two zones there was no increase over last years license fee the bids were accepted but in respect of the remaining zones, the bids were not accepted although the bids were higher than those of the previous year. This he submitted indicated at best non-application of mind and worse *mala-fides.*

12. The submission is not based on a fair construction of the communication. The bids for the two zones were not accepted although they were only marginally higher. Added to this was the fact that the command area of these zones was also modified. This would make a significant difference to the price bid.

13. The effect of these factors cannot be judged by this Court in a petition under Article 226 of the Constitution of India.

14. Moreover as far as the other zones are concerned these was at least a perception of a cartel in operation with a view to adversely affecting the price bids. In that event the petitioner would certainly be justified in not accepting the bids and in inviting fresh tenders. It would be difficult in this petition to adjudicate the issue. A bona-fide apprehension of cartelization is sufficient to justify a

refusal to accept the highest bid and to abandon the tender process. It is not necessary for the respondents to establish or even to arrive at a definite conclusion with respect to the factors that justify a decision not to proceed further with a tender process. A bona-fide perception of such facts and aspects would justify abandoning a tender process and initiating a fresh one.

The petition is, therefore, liable to be dismissed.

15. We are unable to entertain the application for interest on the amounts to be refunded by the respondents in this writ petition. Although there may be nothing on record at this stage, the claim to this effect would have to be adjudicated. This is especially in view of the respondents' contention that cartelization has come into play in the zones scuttling competitive bidding and thus denting the State's revenue. If indeed cartelization did take place with such an intention, there would be no question of granting the petitioner interest. The question of interest could arise only if the petitioner was not at fault. We do not for a moment suggest that anything is established against the petitioner. All we say is that the matter would have to await an investigation.

16. The writ petition is accordingly dismissed, but subject to the above observations regarding the petitioner's claim for refund together with interest thereon.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

28.03.2018
Amodh

Whether speaking/reasoned	Yes
Whether reportable	Yes