

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.8091 of 2020(O&M)

Date of Decision:-15.06.2020

M/s Gaur & Sons, through its Prop. Satbir Gaur.

.....Petitioner.

Versus

Union Territory Chandigarh & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Sunil Kumar Bhardwaj, Advocate for the Petitioner.

Mr. Pankaj Jain, Senior Standing Counsel for UT, Chandigarh.

JASWANT SINGH, J.

Hearing conducted through Video Conferencing.

Petitioner-M/s Gaur & Sons has filed the present writ petition seeking quashing of impugned cancellation of E-Auction ID-CH_50 (P-19) dated 25.02.2020 alongwith tender notice dated 08.06.2020 (P-28, P-29 & P-30).

Brief facts on the basis of which instant petition has been filed by the petitioner-firm are that the respondent-authorities took up e-auction proceedings for selling of old material lying in Municipal Corporation, Public Health Store, Industrial Area, Phase-I, Chandigarh. Although

petitioner was the highest bidder in the first e-auction held on 03.01.2020, but allotment letter was not issued to petitioner since e-auction was cancelled and therefore, petitioner had approached this Court by filing a writ petition being CWP No. 1396 of 2020. The said writ petition was dismissed as withdrawn on 20.01.2020 (**P-16**) with liberty to the petitioner to participate in the fresh e-auction proceedings that had been undertaken by the respondents. Fresh e-auction proceedings were held by the authorities on 22.01.2020, in which the petitioner participated and was again the highest bidder, but no allotment letter was issued to it. This inaction was challenged by petitioner vide CWP No. 2984 of 2020, which was dismissed, 'inter-alia', on the ground of being not maintainable vide order dated 04.02.2020. Finally, the said e-auction was again cancelled vide public notice dated 25.02.2020. Against the said cancellation, present writ petition has been filed by petitioner-firm seeking allotment of tender.

Ld. Counsel for the petitioner-firm has argued on the strength of the facts narrated above, that the action on part of respondent-authorities to cancel the e-auction twice, although petitioner was the highest bidder is against law, especially when no reason has been assigned for cancelling the same. It is further argued that since petitioner had deposited complete bid amount as per its first bid to the tune of Rs. 28,23,000/-, the authorities were wrong in cancelling the e-auction and calling for fresh bids. In any case, in the second e-auction as well petitioner was the higher bidder, which has also been wrongly cancelled vide impugned cancellation notice dated 25.02.2020 (**P-19**) and therefore same is liable to be set aside by awarding the tender to petitioner-firm as per the second e-auction.

On the other hand, Ld. Counsel for the respondent-authorities

have argued that the petitioner-firm is not entitled for any relief as it had voluntarily participated in the second e-auction conducted by authorities and therefore it is barred by principle of estoppel to challenge the cancellation of first e-auction. Further, it is argued that after the second e-auction was cancelled the petitioner-firm, instead of challenging the said action of respondents filed a CWP No. 7485 of 2020 seeking relief for refund of money. It is argued that once the petitioner-firm sought refund of money, which has been granted by this Court vide Judgment dated 20.05.2020, now it cannot be permitted to turn around and seek performance of e-auction, being barred principle of 'res-judicata'. In support of his argument, Ld. Counsel has relied upon the Judgment passed by Hon'ble Supreme Court in **Kunjan Nair Sivaraman Nair Vs Narayan Nair and ors** cited as **2004 (3) SCC 277**. Hence prayer has been made for dismissal of writ petition.

We have heard Ld. Counsel for parties at length and have perused the paper book with their able assistance. However, we are of the view that present writ petition is liable to be dismissed.

It is evident from the facts and pleadings of the present case that the petitioner-firm had challenged the action of cancellation of first e-auction proceedings before this Court vide CWP No.1396 of 2020. However, petitioner withdrew the same and took liberty to participate in the e-auction process again, which was permitted vide order dated 20.01.2020 (P-16). It is further apparent that petitioner-firm participated in the second e-auction and was a successful bidder again. However, in view of the fact that petitioner was not being granted allotment letter, it filed a CWP No.2984 of 2020, which was dismissed by this Court vide order dated

04.02.2020, holding as follows:

“ Having heard learned counsel for the petitioner, it is observed that there is nothing on record to indicate that the authorities are bound to accept the highest bid of the petitioner. In fact, it is settled law that the right to accept or not to accept the highest bid rests with the respondent-authorities.

Quite apart from the above, it is also noted that the previous petition filed by the petitioner had been permitted to be withdrawn after extensive arguments were made by the petitioner **and this Court was of the view that in the absence of any privity of contract between the parties, no direction could be issued to the respondent-authorities to accept the highest bid of the petitioner and enter into a contract with the petitioner. The situation in the present case is identical and therefore, we are of the considered opinion that no direction can be issued to the respondent-authorities to mandatorily enter into a contract or agreement with the petitioner at this stage.** More so, as the tender proceedings are yet to be finalized and the matter is pending before the authorities, in such circumstances, we feel that the petition is not maintainable as the same is premature and it is accordingly, dismissed. ”

(Emphasis Supplied)

It is also not disputed that petitioner-firm had preferred CWP No7485 of 2020 seeking refund of money only after cancellation of second e-auction, which was allowed by this Court vide judgment dated 20.05.2020. It is only after passing of the said judgment dated 20.05.2020, the petitioner has filed present writ petition.

In view of these admitted facts, we are of the view that petitioner-firm is not only barred by principles of res-judicata and Order 2 Rule 2 of CPC but also by ‘doctrine of election’. When the petitioner elected to seek only refund of money deposited by it on the strength of same facts as pleaded in the present writ petition while filing the previous writ

petition, it goes without saying that it had abandoned its claim to seek enforcement of its right for issuance of allotment in its favor, as is being claimed in the present writ petition. We are fortified in our view by the judgment passed by Hon’ble Supreme Court in *Kujan Nair’s case supra*.

Even otherwise, the issue of whether the petitioner-firm can, as a matter of right, claim enforcement of its claim being a successful bidder, has already been adjudicated by this Court in CWP No. 2984 of 2020 whereby it was categorically held that in the absence of privity of contract amongst the parties, respondents-authorities cannot be forced to accept the highest bid of petitioner and enter into contract.

In view of the above, the present writ petition is hereby ordered to be dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

June 15, 2020
Vinay

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