IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-9639-2021
Date of decision: 11.11.2021

RAMESHWAR DASS SAINI **...Petitioner**

Versus

STATE OF HARYANA AND OTHERS **...Respondents**

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

****

Present:- Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Aman Bahri, Additional Advocate General, Haryana

Mr. Lokesh Sinhal, Advocate for HSVP.

****

VINOD S. BHARDWAJ. J. (ORAL)

The petitioner has approached this Court with a prayer that the respondents-Haryana Shehri Vikas Pradhikaran be directed to confirm the sale of Booth No. 197, Sector 13-17, Panipat in his favour being the highest bidder for an amount of Rs. 26,33,000/-.

Learned counsel on behalf of the petitioner submits that the respondent-Haryana Shehri Vikas Pradhikaran had invited applications for participation in the e-auction of the commercial booths. Being eligible, the petitioner participated in the e-auction process held on 20.10.2020 and submitted bid for Booth No. 197, Sector 13-17, Panipat. Against the base price fixed by the respondents at Rs. 13,23,000/-, the petitioner submitted the highest bid at Rs. 26,33,000/-. In terms of clause 29 of the e-auction policy, the highest bidder was required to deposit an amount equivalent to 10% of his/her quoted bid amount within the prescribed time period. The relevant clause of the e-auction policy is extracted as under:

> *"29. The successful/highest bidder shall be required to remit an amount equivalent to 10% of his/her quoted bid amount (including EMD already deposited) in the following time period:-*

Sr. No	Total Value of the bid (Rs.)	No. of working days succeeding the final bid closing day
1.	≤ Rs. 50 lacs	1 (One)
2.	Rs.50 lacs to Rs.1 Crore	2 (Two)
3.	Rs. 1 Crore to Rs. 5 Crore	3 (Three)
4.	≥ Rs. 5 Crores	4 (Four)

> *The successful bidder has to deposit the amount by way of online payment through Net banking etc. or through RTGS/NEFT by generation of challan on the e-auction portal. The link will be visible only to the Highest Bidder i.e. H1 of that property. In case of the successful/highest bidder fails to deposit the said amount as specified above, his bid shall stand automatically rejected and the EMD deposited by him for participation in the e-auction shall stand forfeited in favour of HSVP. No further communication in this regard shall be issued separately."*

The petitioner submits that the requisite compliance of the e-auction policy was made by him. It was further contended that the acceptance of the bid and issuance of the letter of intent was to be undertaken by the respondents-Haryana Shehri Vikas Pradhikaran and upon such communication, the successful bidder was required to deposit another 15% of the quoted bid amount within a period of 30 days of dispatch of letter of intent. The relevant extract of the terms and conditions No.30 of the e-auction policy is extracted as under:

> *"After acceptance of the bid and verification of requisite documents, the successful bidder will be issued*

Letter of intent (LOI) by the Estate Officer concerned. The LOI will be sent through registered post and through email at the registered address and email id of the successful bidder. All the payment schedule of the bid amount is linked with the date of dispatch of LOI through email. HSVP will not be responsible if LOI is not received by the Successful bidder due to change in his correspondence address or email id. It will be in the interest of such bidder to get his correspondence address or email id, if any, updated from time to time, the allottee will be further required to deposit another 15% of the quoted bid amount within 30 days from the date of dispatch of LOI. In case of failure to deposit the said amount within the above specified period, the LOI shall stand automatically withdraw without any further notice in this behalf and the 10% amount deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for damages.

An argument has been advanced on behalf of the petitioner that the respondent-HSVP did not communicate any decision on the bid submitted by the petitioner despite the petitioner having visited and contacted the office/officials of the respondent-HSVP. Reliance was also placed on Clause 28 of the e-auction policy to contend that in the event of failure on the part of respondents to communicate a decision within a period of seven working days after the date of auction, it shall be deemed to be an acceptance of the bid submitted by the petitioner and the respondent-Haryana Shehri Vikas Pradhikaran is bound to issue the letter of intent in terms of Clause 28 of the e-auction policy which is extracted as under:

"28. The Earnest Money (EMD) of the unsuccessful

> *bidders (except H1 of each property) will be refunded by the system automatically on the closing of the auction. Regarding acceptance and rejection of H1 bid competent Authority shall take the decision within seven working days after date of e-auction."*

It has been argued that the respondents credited an amount of Rs. 2,63,300 in the Bank account of the petitioner on 04.12.2020. The auction having take place on 20.10.2020, the decision not having been taken or conveyed within a period of seven working days, the action of the respondent-Haryana Shehri Vikas Pradhikaran violates its own e-auction policy. Resultantly, the petitioner is entitled to the issuance of letter of intent /allotment regarding Booth No. 197, Sector 13-17, Panipat.

Learned counsel for the petitioner has also argued that the respondent-Haryana Shehri Vikas Pradhikaran has revised its e-auction policy on 20.05.2021 and a new Clause 29-A has been incorporated which provides for negotiations so as to extend the highest bidder an opportunity to offer a bid at par/above the reserve price in order to be successful.

The relevant clause of the revised e-auction policy dated 20.05.2021 is extracted as under:-

> *"29-A:- In case the highest bid is quoted above reserve price and the payment of 10% of bid (including already depoited amount of EMD) has been made by the Highest Bidder, he/she will be declared as successful bidder by the competent authority. However, in case the highest quoted bid is below reserve price and the Highest Bidder deposited the 10% amount of the quoted bid (including EMD already deposited), the same will be*

> *evaluated by the competent committee. The Competent Committee may make a counter offer to the highest bidder as it deems fit in the fact and circumstances of the matter. The highest bidder shall be required to deposit the balance amount i.e. 10% of the counter offer minus bid amount within 2 days of making counter offer in order to be declared as successful bidder by the competent committee."*

Learned counsel for the petitioner has however failed to controvert that the revised e-auction policy dated 20.05.2021 is not retrospective in operation and thus can not be read in to e-auction policy dated 16.06.2020 (Annexure P-1) in force at time when the e-auction process in question was undertaken. It is, however, submitted that the incorporation of such clause in the revised e-auction policy would have persuasive value for determination of right of the highest bidder.

Even though formal notice in the petition had not been issued, however, an advance copy of the writ petition having been served upon the respondent-Haryana Shehri Vikas Pradhikaran, the same was represented by counsel.

It has been informed by the learned counsel on behalf of the respondent Haryana Shehri Vikas Pradhikaran that the bid submitted by the petitioner was below the reserve price and was thus rejected. In furtherance thereto, the amount deposited by the petitioner in terms of Clause 29 of the e-auction policy, stands credited to the account of the petitioner much prior to the filing of the writ petition.

We have heard learned counsel for the parties at length and have perused the record.

It is not disputed that the e-auction process in which the petitioner is stated to have participated was governed by the e-auction policy endorsed on 16.06.2020 (Annexure P-1).

Apart from the conditions of the e-auction extracted above, certain additional clauses that will be material for adjudication of the instant petition are extracted as under:

> *"TERMS AND CONDITIONS FOR E-AUCTION OF RESIDENTIAL, INSTITUTIONAL AND COMMERCIAL SITES/BUILDING*
>
> ***A. DEFINITIONS:-***
>
> *Base Price: The base price of a property put to auction shall be the current collector rate of that area of that financial year fixed by District Collector for that particular property including the factor of FAR. Bids for e-auction shall start from the base price. However, the base price is not necessarily the reserve price of a property.*
>
> *2 to 5 xxxxx xxxxx xxxxx*
>
> *6. LOI:- LOI means Letter of Intent which is issued to the successful bider on making the payment of 10% of the bid amount.*
>
> *7 xxxxx xxxxx xxxxx*
>
> *8. Reserve Price:- The reserve price shall be decided by the Committee constituted for the purpose. The reserve price shall remain confidential and shall be used evaluating the highest bid (for accepting or rejecting a bid).*
>
> *B. Eligibility and Conditions for Participation*
>
> *9 and 10. xxxxxx xxxxx xxxxx*
>
> *11. The intending bidder shall be required to deposit an earnest money equivalent to 5% (Five percent) of cost at base price of each property separately (for which the bidder intends to participate in eauction) before participating in the e-Auction. Thus, anyone intending to bid for more than one property shall be required to deposit*

the EMD for multiple properties he/she wishes to bid before participating in e-auction. In other words, EMD will have to be deposited separately for each property for which an intending bidder wants to participate.

12 to 14 xxxxx xxxxx xxxxx

15. The competent authority of HSVP reserves the right to accept or reject any bid or withdraw any or all the properties from eauction or cancel/postpone the e-auction, without assigning any reason.

16. The bidding will start from the Base Price. The reserve price shall remain confidential and shall be used for evaluating the highest bid by the competent authority.

17. In the event of default or breach or non-compliance of any of the terms and conditions as indicated above or for furnishing any wrong or incorrect information at any point of time of E-auction and afterwards, the Competent authority shall have the right to cancel the bid and forfeit whole amount of EMD deposited by the bidder.

A conjoint reading of the terms and conditions reproduced hereinabove would clarify that the base price of a property being put to an auction would be the current Collector rate of that area of the relevant financial year. The base price would not necessarily be the reserve price of the property. The reserve price is to be determined by a committee constituted for such purpose. Furthermore, reserve price was to remain confidential and was the relevant parameter for evaluating the highest bid.

As is the case, against the base price of Rs. 13,23,000/- the bid of the petitioner at Rs. 26,33,000/- was, in the opinion of the competent authority, below the reserve price and has thus not been accepted.

Counsel has not been able to point out any provision under the E-auction policy which would obligate the respondents to accept the highest bid. There would be no such right vested with the petitioners. To the contrary the highest bidder only has a right of consideration and for such bid to be evaluated against the reserve price determined by the Committee.

In the facts of the case there is no material for us to conclude that any contract came into force between the petitioners and the respondents merely on the strength of being the highest bidder and upon depositing 10% of the Bid money. Any biding arrangement can at best be said to arise only after acceptance of the bid. There is however no material before us to infer that 'acceptance' as per the mandate of Contract Act stood communicated. The right of the highest bidder at public auctions has been examined repeatedly by the Apex Court as also this Court and the consistent view taken is that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest bid. A reference in this regard may be made to the decisions of the Hon'ble Supreme Court in ***Trilochan Mishra etc. v. State of Orissa (1971) 3 SCC 153: AIR (1971) 3 SC 733: State of Orissa v. Harinarayan Jaiswal (1972) 2 SCC 36: AIR 1972 SC 1816; Union of India v. Blum Sen Walaiti Ram (sic), (1969) 3 SCC 146 : AIR 1971 SC 2295 and State of U.P. v. Vijay Bahadur Singh (1982) 2 S.C.C. 365.*** Same view was taken by a Division Bench of this Court in ***Laxmi Narain Vs., State of Haryana and another (2009) 1 RCR (Civil) 556.***

The contention raised by counsel as regards a deemed acceptance of the highest bid and on the basis thereof a concluded contract having come into force between the petitioners and the respondents in the light of Clause 28 of the E-auction policy, is not well-founded.

We are of the considered view that in a case of disposal of public property, the question whether the right of a person who has put in the highest bid in the public auction is to be preferred over the right of the public in ensuring that valuable public assets are not disposed of except for a fair price, public interest ought to prevail. Undoubtedly clause 28 of the E-auction policy obligated the acceptance or rejection of the H1 bid by the competent authority within a period of 7 working days from the date of e-auction. Stipulations of such nature and the question as to whether the same are to be viewed as mandatory or directory would depend upon the intent of the policy maker and the object that is sought to be achieved. We hold that such time frame stipulated in the terms and conditions governing an e-auction was only with the objective to prevent undue delay on the part of the competent authority in taking a final decision. Clause 28 and the time frame of 7 days stipulated therein cannot be permitted to be invoked to propound a theory of a concluded contract in the realm of disposal of public property by the State or State instrumentality in an E-auction process. Holding otherwise would run contrary to public interest.

In the facts of the present case and in the absence of any document/material reflecting acceptance of the bid submitted by the petitioners at the hands of the competent authority, no concluded contract had come into being.

In Afcons Infrastructure Limited Vs. Nagpur Metrol Rail corporation Limited and another (2016) 16, SCC 818, the Hon'ble Supreme court had held that interference in the decision making process of the competent authority in accepting or rejecting the bid of a tenderer is permissible only if the decision making process is mala fide or is intended to favour someone. Likewise interference in such matters would not be warranted unless it is shown that the action of the authority concerned is so arbitrary or irrational that the Court could say that such action is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous.

This Court has also decided on the questions raised in the present petition in certain other case bearing CWP No. 17019 of 2021 titled as ***"Mayank Dua Versus Haryana Shehari Vikas Pradhikaran and others"*** decided on 06.09.2021 and CWP No. 19447 of 2021 titled as ***"Dr. Sarika Gautam and others Versus Haryana Shehari Vikas Pradhikaran and others"*** decided on 27.09.2021 respectively. While dismissing the writ petitions raising identical questions of law and issues as raised in the instant petition, it was held that interpretation of Clause 28 can not be done in a manner as would give rise to a concluded contract merely upon failure to convey its decision within the time frame prescribed. The Clause 28 does not suggest or prescribe any consequences in the event of failure on the part of the authorities to take a decision within seven working days. In its plain impact, the use of the word 'shall' in Clause 28 is at best a directory provision and not a mandatory provision.

We find that in the facts of the present case no such ground as indicated hereinabove has been made out which would call for interference. The submission raised by counsel at the time of hearing as regards the petitioners having been denied opportunity of negotiation inspite of being a highest bidder is mis-placed and without merit. In the E-auction policy dated 16.06.2020 (Annexure P-1) pursuant to which the petitioners had participated in the auction process there was no term/condition whereby the respondents were obligated to call upon the highest bidder for negotiation. Such contention has been raised by counsel in the light of a revised E-auction policy which as per him has been issued by the respondents. Even if that be so, such revised E-auction policy would not apply to the auction process which is a subject matter of consideration in the present case. To rule out any discrimination that may have been meted out to the petitioners, we put a specific query to counsel as to whether pertaining to the other plots/sites which were a subject matter of the same auction process in which the petitioners had participated, whether the highest bidder as regards any other plot/site had been called for negotiation? The response is in the negative. As such we do not find any merit in the submission advanced by counsel as regards petitioners having a right to be called for negotiation.

While adverting to the second argument about incorporation of Clause 29-A in the revised e-auction policy vide Memo dated 20.05.2021, we are of the view that the aforesaid memo cannot be applied retrospectively. The policy in force can not be substituted by the

High Court in exercise of its power of judicial review. The same would amount to re-writing the policy, a function which falls in the domain of the authorities, especially in the light of the fact that the petitioner never raised any challenge to the e-auction policy dated 16.06.2020 (Annexure P-1). Besides, the petitioner participated in the auction process despite being aware of all the terms and conditions of the said e-auction policy. The claim of the petitioner thus has to be considered in terms of the policy which was in vogue at the time of consideration of the bid submitted by the petitioner.

We find that insufficiency of the consideration or the same being below the reserve price is a sufficient reason for the respondent-authorities to reject the highest bid and there will be no illegality or perversity in the same. The petitioner has no where alleged any mischief or malice in the action/decision of the respondent-authorities.

Before parting with the instant petition, it needs to be pertinently mentioned that a large number of cases are being forced to be filed before the High Court on account of failure of the respondent-authorities to communicate any decision on the bid submitted by the highest bidder. It is only when the bidder approach the Court that the respondent- Haryana Shehri Vikas Pradhikaran conveys its decision. It would only be appropriate and in fitness of things-aimed to ensure transparency and fairness in procedure that the respondent-authorities evolve an appropriate mechanism to ensure communication of the decision taken on the bid submitted by the highest bidder.

We are hopeful that the respondent authorities shall, in doing so not only save the litigant of unnecessary harassment in approaching the Courts but shall also evoke trust and confidence in its action.

With the aforesaid advisory and finding no merit in the present writ petition for the reasons recorded above, the instant writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

11.11.2021
Vishal sharma

Whether speaking/reasoned	:	*Yes/No*
Whether reportable	:	*Yes/No*