IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.17019 of 2021 (O&M)
Date of Decision:06.09.2021

Mayank Dua

.......Petitioner

Versus

Haryana Shehari Vikas Pradhikaran and others

......Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VIVEK PURI

Present:- Mr. Naveen S. Bhardwaj, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA J. (Oral)

As per pleadings on record, petitioner had submitted a bid online for SCO Site No.93, Sector 56, Gurugram in pursuance to an auction process that had been initiated by the Haryana Shehri Vikas Pradhikaran (hereinafter to be referred to as the 'Respondent'). The bid amount was for Rs.4,73,68,800/-.

Instant writ petition has been filed raising a prayer that such bid for the site in question be accepted, being the highest bid. Further grievance raised in the petition is that no specific order has been passed informing the petitioner as regards the fate of his bid, the same having been accepted or rejected. A challenge has also been laid to Clause No.8 and 16 of the E-Auction Policy/Brochure (Annexure P-2) circulated by the respondent-Pradhikaran vide letter dated 16.06.2020 on the assertion that the afore-noticed clauses are arbitrary and unconstitutional.

Counsel submits that the respondent issued a public notice with regard to E-auction of commercial properties in Gurugram zone to be held on 23.10.2020. The terms and conditions with respect to the auction process were stipulated in an E-auction policy/brochure dated 16.06.2020 appended as Annexure P-2. The base price of each property/site was duly indicated. Petitioner being desirous of participating in the auction process pertaining to SCO Site No.93, Sector 56, Gurugram, deposited earnest money at the rate of 5 % i.e. Rs.22,61,200/- of the base price that had been indicated as Rs.4,52,23,800/-. Petitioner participated in the E-auction conducted on 27.10.2020 under Auction ID number 403. He was notified as the highest bidder for the site in question with a bid of Rs.4,73,68,800/- as against the base price of Rs.4,52,23,750/-. Petitioner was required to deposit 10% of the total bid amount as per applicable terms and conditions contained in the E-auction policy/brochure and the same was done within the stipulated time frame. However, without passing any order rejecting the bid of the petitioner, an amount of Rs.47,36,880/- was credited in the saving bank account of the petitioner by the respondent on 08.12.2020. It has been submitted that inspite of repeated representations having been filed before the respondent for acceptance of the bid, no favourable response has been evoked and it is under such circumstances that the instant writ petition has been filed.

Learned counsel has argued that the petitioner has complied with all the terms and conditions mentioned in the E-auction policy/brochure and had been notified as the highest bidder for the site in question. Failure to issue Letter of Intent to the petitioner under such circumstances is contended to be patently unfair and illegal. Heavy reliance has been placed upon Clause 28 of the E-Auction policy/brochure wherein it was stipulated that the earnest money deposited of the unsuccessful bidders (except H1) was to be refunded by the system automatically on closing of the auction and the decision regarding acceptance and rejection of H1 bid was to be taken by the competent authority within 7 working days of the E-auction. It is vehemently contended that since the auction in the present case was held on 27.10.2020 and the respondent/competent authority having failed to pass an order rejecting the bid of the petitioner within the stipulated time frame of 7 days, the highest bid of the petitioner is deemed to have been accepted resulting into a concluded and valid contract between the petitioner and the respondent pertaining to site No.93, Sector 56, Gurugram. In support of such contention counsel submits that it is a cardinal rule of interpretation that where a statute provides the manner in which a particular thing is to be done, it should be done in the manner prescribed and not in any another way.

Challenge to clause 8 and 16 of the E-auction policy/brochure (Anenxure P-2) is mounted on the ground that only base price for the commercial sites had been indicated whereas reserve price had been kept confidential. Non-disclosing of the reserve price, is stated to be against public interest and public policy amounting to lack of transparency in the auction process. It is contended that non-disclosure of the reserve price would also amount to an unfair practice. Such course of action, counsel submits is even in derogation of Regulation 6 of the Haryana Urban Development (Disposal of Land & Building) Regulation 1978, since under the same it is incumbent upon the respondent authorities to issue allotment/LOI to the highest bidder upon deposit of the 10% of the bid money and no discretion had been contemplated which would empower the authorities to discard such highest bid.

We have heard counsel at length and have perused the pleadings on record.

It is the case of the petitioner himself that the e-auction process in which he had participated was governed by the E-auction policy issued by the respondent at Annexure P-2.

Certain terms and conditions of E-auction policy would be relevant to the issue at hand and the same read 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 e-auction) 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 e-auction 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.

28. The Earnest Money (EMD) of the unsuccessful bidders (except H1 and 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."

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.

The base price for the site in question for which the bid has been made was Rs.4,52,23,800/-. Petitioner put on bid of Rs.4,73,68,800/-.

Apparently the bid of the petitioner having been evaluated by the Committee that was constituted for the purpose has not accepted the same keeping in view the reserve price that may have been determined. Resultantly an amount of Rs.47,36,880/- stood credited back into the saving bank account of the petitioner on 08.12.2020.

Counsel has not been able to point out any provision under the E-auction policy which would obligate the respondent to accept the highest bid. There would be no such right vested with the petitioner. 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 petitioner and the respondent. 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 petitioner and the respondent 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 petitioner 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.

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.

We decline to go into the aspect as regards validity of Clause 8 and 16 of the E-auction policy/brochure at Annexure P-2 on the grounds that have been canvassed before us. This is for the reason that the terms and conditions governing the auction process were put in public domain vide Annexure P-2. Petitioner was aware of all the terms and conditions and having accepted the same had submitted his bid. Having participated in the auction process and thereafter having come to know that he was unsuccessful, it would not lie in his mouth to turn around and contend that the terms and conditions are void and illegal. The challenge to Clause 8 and 16 of the e-auction policy at the hands of the petitioner after his bid having not been accepted can only be termed as an afterthought. Even otherwise by way of filing the instant petition, on the one hand petitioner is seeking a mandamus for directing the respondent to issue Letter of Intent for the site in question in an auction process conducted as per E-auction policy dated 16.06.2020 (Annexure P-2) and on other hand he is raising a challenge to the very terms and conditions of such auction policy. Petitioner cannot be permitted to blow hot and cold.

The question as regards validity of Clause 8 and 16 of the E-auction policy dated 16.06.2020 (Annexure P-2) as such is kept open.

For the reasons recorded above, we find no merit in the instant writ petition.

Dismissed.

We may take notice of a submission raised by counsel as a matter of last resort. It was contended that the auction had taken place on 27.10.2020 and whereas amount of Rs.47,36,880/- had been credited back in the saving bank account of the petitioner only on 08.12.2020. It is contended that in the light of Clause 28, even if the bid of the petitioner was not to be accepted, the amount ought to have been refunded immediately upon expiry of 07 days time frame.

Without opining on such aspect, we grant liberty to the petitioner to raise such issue before the respondent for grant of interest for the period the earnest money deposit refund had been delayed.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

September 06, 2021
shweta

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