

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

**CWP-25034-2021 (O&M)
Date of Decision:10.12.2021**

Munni Rani

... Petitioner

Versus

Haryana Shehari Vikas Pradhikaran & others

... Respondents

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

Present:- Mr. V.P. Sangwan, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

As per pleadings on record, petitioner had submitted a bid online for Plot No.38, Sector-13, Bhiwani in pursuance to an auction process that had been initiated by the Haryana Shehari Vikas Pradhikaran (herein after to be referred to as 'the respondent'). The bid amount was for Rs.58,24,400/-.

Instant writ petition has been filed raising a prayer that such bid for the plot 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 the brochure (Annexure P-4) which contained the detailed terms and conditions of the e-auction on the

assertion that the same was arbitrary and unconstitutional.

Counsel submits that the respondent issued a brochure with regard to e-auction of certain properties to be conducted in the month of July, 2020. Copy of the brochure stands appended as Annexure P-4 to the instant petition. The base price of each property/plot was duly indicated. Petitioner being desirous of participating in the auction process pertaining to Plot No.38, Sector- 13, Bhiwani, deposited earnest money @ 5% i.e. Rs.2,25,720/- of the base price that had been indicated as Rs.45,14,400/-. Petitioner participated in the e-auction conducted on 08.07.2020 and he was notified as the highest bidder for the site in question for the bid of Rs.58,24,400/-. 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 bid of the petitioner, the amount deposited was credited back in the bank account of the petitioner on 09.10.2020. It is submitted that repeated representations having been filed for issuance of LOI and even a legal notice having been served, a response dated 25.11.2020 at Annexure P-6 was issued under the signatures of the Accounts Officer for Chief Controller of Finance, HSVP, Panchkula informing the petitioner that the bid submitted by the petitioner in respect of Plot No.38, Sector-13, Bhiwani had been evaluated by the competent authority but the same was rejected for the reason that it was below the reserve price.

Learned counsel has argued that the petitioner had applied with all the terms and conditions mentioned in the E-auction Policy/brochure and

had been notified as the highest bidder for the plot in question. Failure to issue LOI to the petitioner under such circumstances is contended to be patently unfair and illegal. Challenge to the brochure at Annexure P-4 containing the terms and conditions governing the E-auction is mounted on the ground that only base price for the plot had been indicated whereas reserve price kept confidential. Non-disclosing of 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 and Building) Regulation, 1978, since under the same it is incumbent upon the respondent to issue allotment/LOI to the highest bidder upon deposit of 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 herself that the E-auction process in which he had participated was governed by the E-auction brochure issued by the respondent at Annexure P-4.

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 bidder 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.*

18 to 27. xxxx xxxx xxxx

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 plot in question for which the bid was

made was Rs.45,14,400/-. Petitioner put in bid of Rs.58,24,400/-.

As would be discernible from the communication at Annexure P-6 dated 25.11.2020, the bid of the petitioner having been evaluated by the competent authority that was constituted for the purpose, has not been accepted, the same being below the reserve price. Resultantly, the amount that had been deposited by the petitioner stood credited back into her bank account on 09.10.2020.

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 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.

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 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 regard validity of the brochure at Annexure P-4 and the terms and conditions contained therein on the ground that had 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-4. Petitioner was aware of all the terms and conditions and having accepted the same, had submitted her bid. Having participated in the auction process and thereafter having come to know that

she was unsuccessful, it would not lie in her mouth to turn around and contend that the terms and conditions are void and illegal. Challenge to the brochure at Annexure P-4 after the 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 mandamus for directing the respondent to issue LOI for the plot in question in an auction process conducted as per brochure (Annexure P-4) and on the other hand, she is raising a challenge to the same very terms and conditions contained in the brochure. Both the prayers are inconsistent and the petitioner cannot be permitted to blow hot and cold.

The question as regards the validity of the terms and conditions contained in the E-auction brochure at Annexure P-4, as such, is kept open.

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

Dismissed in limine.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

10.12.2021

harjeet

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |