

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1657-2022 (O&M)
Date of Decision:18.02.2022

M/S BKN Fruits

..... Petitioner

versus

Haryana State Agricultural Marketing Board
and another

..... Respondents

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

Present: Mr.Sandeep Lather, Advocate for the petitioner.

Mr.Aman Bahri, Addl.AG, Haryana.

TEJINDER SINGH DHINDSA, J.

Petitioner is aggrieved of the action of the respondent-Haryana State Agricultural Marketing Board (hereinafter to be referred to as 'the Board') in having rejected the bid submitted for shop plot No.45, New Vegetable Market, Jind. A writ of mandamus is sought directing the Board to issue a Letter of Intent in favour of the petitioner by way of acceptance of the bid that had been duly submitted.

Brief facts pleaded are that the auction notice dated 06.12.2021 was issued by the Board through Market Committee, Jind for sale of commercial shop plots and booth plots and the online auction was scheduled for 23.11.2021. The detailed terms and conditions of the auction notice were contained in a brochure placed on record and appended as Annexure P-3.

It has been averred that the petitioner was desirous of participating in the

e-auction and accordingly had deposited an amount of Rs. 50,000/- to be eligible to submit a bid for a shop plot. The reserve price indicated for shop No. 45(C) was Rs.43,31,000/-. On 23.12.2021 petitioner submitted a bid of Rs. 1,84,51,000/- and was notified as the highest bidder. As per terms and conditions of the Auction Notice, petitioner deposited 10% of the sale consideration amount within the stipulated time frame. However, vide communication dated 20.01.2022 (Annexure P-7) approval has been denied qua the bid submitted by the petitioner.

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. It has further been argued that against a reserve price of Rs.43,31,000/-, petitioner had submitted a bid of Rs 1,84,51,000/- i.e. almost four times that of the reserve price. It is contended that the petitioner being the highest bidder was vested with a right for the bid to be accepted and the Letter of Intent to be issued. Counsel submits that the petitioner was and is still ready to pay the balance amount as per terms and conditions of the Auction Policy.

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/brochure at Annexure P-3.

Certain terms and conditions of the e-auction brochure would be relevant to the issue at hand and the same read as under:-

***“TERMS AND CONDITIONS FOR E-AUCTION OF
COMMERCIAL SITES OF HSAMB/MARKET
COMMITTEES IN THE STATE OF HARYANA***

A. DEFINITIONS:-

- 1. EMD :- EMD means Earnest Money Deposit in respect of the property for which intending bidder wants to bid.*
- 2. BOARD:- Board means Haryana State Agricultural Marketing Board.*
- 3. LOI:- LOI means Letter of Intent which is to be issued to the successful bidder on making the payment of 10% of the bid amount and approval from the competent authority.*
- 4. MC:- MC means Market Committee.*
- 5. Reserve Price:- Reserve Price means reserve price determined by the Chief Administrator of the Board in respect of specific immovable property developed and owned by the Board or Market Committee.*

B. ELIGIBILITY FOR PARTICIPATION:

1 to 8 xxxx xxxx xxxx xxxx

- 9. The Competent Authority of HSAMB shall reserve to itself the right to accept or reject any bid or withdraw any or all the properties from auction or cancel/postpone the e-auction, without assigning any reason thereof.*
- 10. No bid below the reserve price shall be accepted.*
- 11. 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 or any part of the amount deposited by the bidder.*

D. HOW TO PARTICIPATE:

1 to 7 xxxx xxxx xxxx xxxx

8. *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 **thirty working days** after date of e-auction.*

E . PAYMENT TERMS

1 to 3 xxxx xxxx xxxx xxxx

4. *After the approval of the Chief Administrator, a Letter of Intent (LoI) shall be issued to the highest bidder by Secretary-cum-E.O., Market Committee concerned and henceforth he shall be called successful bidder. The successful bidder shall be bound to deposit the fifteen percent of the bid amount within thirty days from the date of issuance of Letter of Intent. In case he fails to deposit the fifteen percent amount within the stipulated period, the Letter of Intent shall be lapsed and the whole deposited amount, including earnest money, shall be forfeited.”*

A conjoint reading of the relevant terms and conditions reproduced herein above would clarify that a Letter of Intent is to be issued to the successful bidder on making good the payment of 10% of the bid amount and after approval from the competent authority. Reserve price is to be determined by the Chief Administrator of the Board in respect of the specific immovable property developed and owned by the Board or the Market Committee. The competent authority under the Board reserved to itself the right to accept or reject any bid or withdraw all or any of the

properties from the auction without assigning any reason thereof. A bid below the reserve price was not to be accepted. The decision regarding acceptance or rejection of H₁ (highest bid) was to be taken by the competent authority under the Board within a period of thirty days from the date of e-auction. Clause 4 under the heading '*Payment Terms*' clarifies in no uncertain terms that it is only after approval of the Chief Administrator that an Letter of Intent (LOI) is to be issued to the highest bidder by the Secretary-cum-E.O. of the Market Committee concerned and henceforth such bidder would be termed as the successful bidder.

In the facts of the present case the reserve price stipulated for the shop site in question was Rs.43,31,000/-. Petitioner had entered a bid of Rs. 1,84,51,000/-.

Counsel has not been able to point out any provision under the e-auction Policy which would obligate the respondent-Board 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 competent authority.

Since an advance copy of the writ had already been served upon the respondents, Mr. Aman Bahri, learned Addl.AG, Haryana has joined proceedings on behalf of the Board and has made available for our perusal a copy of memo dated 17.02.2022 issued from the office of the Chief Administrator of the Board at Panchkula and addressed to the learned counsel. The contents of such memo dated 17.02.2022 would be material and are reproduced hereunder:-

“From

*The Chief Administrator,
Haryana State Agricultural Marketing Board,
Panchkula.*

To

*Shri Aman Bahri, Advocate
Punjab & Haryana High Court,
Chandigarh.*

Memo No.L.A.-II-2022/11487

Dated:- 17.2.222

Subject:- CWP No. 1657 of 2022 titled as BKN Fruits vs. Haryana State Agricultural Marketing Board and another – rejection of bid of plot No. 45, Size 20' x 47'.6”, New Vegetable Market, Jind.

The plot No. 45, Size 20' x 47'.6”, New Vegetable Market, Jind was put in e-auction held on 23.12.2021 and M/s. BKN Fruits gave a bid of this plot for Rs.1,84,51,000/- against the reserve price of Rs.43,31,000/-. This is a professional plot (corner plot).

However, this size of ordinary plot No. 51, Size 20' x 47'.6”, New Vegetable Market, Jind was sold in e-auction held on 23.11.2021 for Rs.2,68,57,000/- against the reserve price of Rs. 39,37,000/-. In the interest of Board/Market Committee, the competent authority i.e. Chief Administrator Board rejected the bid of plot No.45, size 20' x 47'.6”, New Vegetable Market, Jind so that no financial loss is caused to the Board/Market Committee, Jind. This plot will now be put up in fresh e-auction in due course of time.

This is for your informatory and necessary action please.

*Supdt. (LA),
For Chief Administrator”*

Thus it becomes clearly discernible that the plot No. 45 for which the petitioner had submitted a bid of Rs.1,84,51,000/- was a preferential/corner plot. The reserve price for the same had been indicated

as Rs.43,31,000/-. In the same very auction process in the case of a shop plot carrying identical size but an ordinary location i.e. plot No. 51, the same had been sold in the e-auction for Rs. 2,68, 57,000/- against a reserve price of Rs. 39,37,000/-. Accordingly the Chief Administrator of the Board took a decision to reject the bid of the petitioner to ensure that no financial loss is caused to the Board/Market Committee, Jind. Further it had been recited that such plot would be put to re-auction in due course of time.

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. Keeping in view such principle we are satisfied that the reasoning adopted by the Chief Administrator of the Board in rejecting the bid of the petitioner is cogent and well founded.

Even otherwise it is a case where even the Letter of Intent had not been issued in favour of the petitioner. There is no material for us to conclude that any contract came into being between the petitioner and the respondent-authority. 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 **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 find no merit in the instant writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

18.02.2022

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No