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

CWP No.15602 of 2021 (O&M)
Date of Decision:- 02.02.2022

Shivam Gandhi

.......Petitioner

Versus

Haryana Shehari Vikas Pradhikaran and others

......Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Narender Singh, Advocate for the petitioner.

Mr. Aman Bahri, Addl. A.G. Haryana.

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TEJINDER SINGH DHINDSA J.

As per pleadings on record, petitioner had submitted a bid online for SCO Site No.92, 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 'respondents'). The bid amount was for Rs.4,71,43,800/-.

Instant writ petition has been filed raising a prayer that such bid for the site in question be accepted, being the highest bid. Challenge has been laid to Clause 8 and 16 of the E-auction policy/brochure (Annexure P-2) circulated by the respondent wherein it has been stipulated that the reserve price shall remain confidential.

Counsel submits that the auction process conducted by the respondents and in which the petitioner had participated was as per terms and conditions contained in the E-auction policy/brochure appended as Annexure P-2 alongwith the writ petition. The base price of each property/site was duly indicated. Petitioner being desirous of participating in the auction process pertaining to SCO Site No.92, 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. Petitioner was notified as the highest bidder for the plot in question with a bid of Rs.4,71,43,800/- as against the base price of Rs.4,52,23,800/-. 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, the Letter of Intent for the site in question was not issued and the amount that the petitioner had deposited was refunded back in his bank account on 08.12.2020.

Learned counsel has argued that the petitioner had 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 respondents/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 respondents pertaining to SCO Site No.92, Sector-56, Gurugram.

It is further asserted that since the petitioner had deposited the required amount of money promptly, proposal given by the petitioner has become binding and enforceable by operation of law as the respondent had failed to take any decision for rescinding the contract between the stipulated time which was "*7 working days*".

As regards challenge to Clause 8 and 16 of the E-auction policy/brochure (Annexure P-2) is concerned, counsel has argued that these clauses are illegal and unconstitutional, the same being against public interest and public policy. Not disclosing the reserve price results in lack of transparency in the auction process and gives unbridled discretion to the authority concerned to tweak the reserve price as it may deem fit and necessary after receiving the bids online.

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

It is the case of the petitioner that the E-auction process in which he had participated was governed by the E-auction policy/brochure 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.

18 to 27 xxx xxx xxx

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 has been made was Rs.4,52,23,800/-. Petitioner put a bid of Rs.4,71,43,800/-.

As would be discernible from the affidavit of the Administrator, HSVP, Gurugram, that has been placed on record, the bid of the petitioner upon being evaluated by the competent authority was not accepted as the same was found below the reserve price.

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 respondents. 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 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 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 examine the issue as regards validity and legality of Clause 8 and 16 of the E-auction policy/Brochure. We take such view for the reason that the E-auction policy/brochure and the terms and conditions contained therein were put in public domain. We take it that the petitioner had not only read but had understood all the terms and conditions of the E-auction policy including Clause 8 and 16 and had thereafter participated in the E-auction process.

Having taken a chance and his bid having not been accepted, petitioner cannot be permitted to turn around and raise a challenge to the same very terms and conditions governing the E-auction process in which he had participated without any protest or demur.

Question as regards validity of Clause 8 and 16 of the E-auction policy/brochure at Annexure P-2 as such is kept open.

For the reasons recorded above, we do not find any merit in the instant writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(LALIT BATRA)
JUDGE

02.02.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No