IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26858-2021(O&M)
Date of Decision:27.01.2022

Rakesh Kumar .... **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.P.K.Ganga Advocate for the petitioner.

***

TEJINDER SINGH DHINDSA, J. (ORAL)

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

The amended memo of parties furnished by learned counsel representing the petitioner during the course of hearing is taken on record.

As per averments made in the petition, petitioner had submitted a bid online for shop No. 50 at New Vegetable Market, Jullana pursuant to an auction process that had been initiated by the concerned Market Committee. The bid amount was Rs. 35, 60, 000/-.

Instant writ petition has been filed raising a prayer that such bid for the shop 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 reasons for rejection of the bid inasmuch as only a communication dated 27.11.2021 (Annexure P-8) has been received whereby the EMD deposit along with 10% of the bid amount has been refunded to the petitioner and deposited back in his bank account.

Counsel has argued that the petitioner had applied as per terms and conditions contained in the e-auction notice/brochure. He had been notified as the highest bidder for the shop in question. Failure to issue Letter of Intent (LOI) to the petitioner under such circumstances is contended to be patently unfair and illegal. It is the contention raised by counsel that by virtue of being the highest bidder for the shop in question a contract came into being between the parties and as such the petitioner would be vested with a right for formal allotment.

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 brochure issued by the respondents at Annexure P-2.

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. xxx xxxxxx xxx xxx
>
> 2. xxx xxxxxx xxx xxx
>
> *3. LOI:- LOI means Letter of Intent which is to be issued to the*

SUNITA NAGPAL
2022.02.14 15:27
I attest to the accuracy and authenticity of this order

successful bidder on making the payment of 10% of the bid amount and approval from the competent authority.

4. xxx xxx xxx xxx xxx

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:

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx

9. The Competent Authority of HSAMB shall reserve to itself the right to accept or reject any bid or withdraw any or all of the properties from auction or cancel/postpone the e-auction, without assigning any reason thereof.

xxx xxx xxx xxx xxx

D. HOW TO PARTICIPATE

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx

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.*

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx

E. PAYMENT TERMS

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx

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.

xxx xxxxxx xxx xxx

xxx xxxxxx xxx xxx ”

A conjoint reading of the terms and conditions reproduced herein above would clarify that a Letter of Intent is liable to be issued to the *successful bidder* upon making payment of 10% of the bid amount and after *approval from the competent authority.* As per clause 9 under the Eligibility For Participation the competent authority has reserved to itself the right to accept or reject any bid or withdraw any or all of the properties from the auction. It is only after approval of the Chief Administrator and a Letter of

Intent having been issued to the highest bidder by the Secretary-cum-E.O., Market Committee concerned that such bidder would come to be described as a successful bidder.

Apparently the bid of the petitioner having been evaluated by the competent authority, has not been accepted. Resultantly the amount that had been deposited by the petitioner stood credited back into his bank account.

Counsel has not been able to point out any provision under the e-auction policy/brochure 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 by the competent authority.

From the facts of the case, there is no material with us to conclude that any contract came into being 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 **State of U.P. And others vs. Vijay Bahadur Singh and others, (1982)2 SCC 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 the competent authority, no concluded contract had come into being.

In **Afcons Infrastructure Ltd. vs Nagpur Metro Rail Corporation Ltd. 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 a bid by a tenderer is permissible only if the decision making process is *mala fide* or is intended to favour some one. 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 can 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 here-in-above has been made out which would call for interference.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

27.01.2022
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No