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

CWP-14412-2024 (O&M)
Reserved on : 15.07.2024
Pronounced on : 27.08.2024

M/s Norton Chemicals & Specialities Pvt. Ltd. ...... Petitioner

Versus

State of Haryana and others ...... Respondents

**CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

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Present : Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana
with Mr. Karan Jindal, AAG, Haryana
for respondent No.1.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur and Ms.Saanvi Singla, Advocates
for respondents No.2 and 3.

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VIKRAM AGGARWAL, J

1. The petitioner assails the order dated 24/27.05.2024 **(Annexure P-11)** vide which the decision of the Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) (for short 'the respondent-Corporation') to not accept the highest bids given by the petitioner with regard to two industrial plots, each measuring 7875 square meters has been upheld. The petitioner also seeks the issuance of a mandamus directing the respondent-Corporation to accept the bids given by

the petitioner.

2. The petitioner claims to be one of the leading manufacturers of Diesel Exhaust Fluids (DEF) & Genuine Oil Grease & Specialty Oils with a significant presence both in India and Overseas. On 04.11.2021, the respondent-Corporation announced the e-auction of industrial plots **(Annexure P-1)** in Udyog Vihar, Gurugram, Industrial Estate, Panipat, Karnal, Dharuhera and IMT Rohtak. The registration was to commence on 04.11.2021 and was to continue upto 03.12.2021. The procedure for e-auction and allotment of the plots was laid down in the Brochure **(Annexure P-2)**. The petitioner was desirous of purchasing two plots, each measuring 7875 square meters for which the base price was fixed as ₹8800/- per square meter. Earnest money deposit (for shot 'EMD') @ 5% was ₹34,65,000/-.

3. After deposit of the EMD, the successful bidder had to complete 10% of the payment at H-1 bid price within 72 hours of the intimation. The petitioner applied for two plots of category of plot size 7875 square meters. EMD amounting to ₹69,30,000/- was deposited. As per the e-auction schedule **(Annexure P-3)**, eight plots were put to auction under the said category and the auction was held on 11.02.2022. (Annexure P-3).

4. Having participated in the e-auction, the petitioner emerged as the highest bidder and booked plot No.9 @ ₹9800/- per square meter in the first round and plot No.8 @ ₹10,600/- per square meter in the second round which was more than the reserve price fixed by the respondent-Corporation. The bid history **(Annexure P-4)** duly depicted the petitioner as the highest bidder.

5. Instead of calling upon the petitioner to complete 10% payment,

the petitioner received an e-mail dated 14.03.2022 **(Annexure P-5)** stating that the bids had not been accepted and that the EMD was being refunded. It is the case of the petitioner that on inquiry, he was orally informed that his bid has been rejected on account of less premium having been received in the said category.

6. Aggrieved by the action of the respondent-Corporation, the petitioner preferred CWP No.1546 of 2023 which was duly contested by the respondent-Corporation in which a stand was taken that the bids had not been accepted on account of low premium having been received in the category of plots, each measuring 7875 square meters as compared to plots measuring 450 square meters, 1800 square meters etc. The case set up by the petitioner is that in another case bearing ***CWP No.9502 of 2022*** titled as ***M/s S.K.Woolen Mills and others versus State of Haryana and others***, the respondent-Corporation had taken a different stand with regard to the same auction that the bids had not been accepted on account of certain complaints having been received. The writ petition i.e. CWP No.1546 of 2023, filed by the petitioner was disposed on 12.03.2024 **(Annexure P-8)** directing the respondents to pass a speaking order and to refund the amount alongwith interest @ 5.5% per annum.

7. In pursuance to the order dated 12.03.2024, the petitioner submitted a representation dated 24.03.2024 **(Annexure P-9)** which was, however, rejected, vide the impugned order dated 24/27.05.2024 leading to the filing of the instant writ petition.

8. Learned counsel for the petitioner and learned counsel representing

the respondent-Corporation, who had caused appearance on advance copy having been served, were duly heard.

9. It was strenuously urged by learned counsel representing the petitioner that the action of the respondent-Corporation in rejecting the highest bids given by the petitioner in the e-auction is completely illegal and arbitrary and, therefore, deserves to be quashed. Learned counsel referred to the terms and conditions of the brochure and various other documents annexed with the writ petition as also the clauses of the Estate Management Procedure (EMP)-2015 (for short 'EMP, 2015') and submitted that the power vested with the respondent-Corporation to accept or reject the bids has been exercised arbitrarily. Learned counsel submitted that this power had to be exercised judiciously and it would not mean that highest bids received by the Corporation were to be rejected by taking contradictory stands in different litigations with regard to the same auction.

10. Learned counsel for the respondent-Corporation, on the other hand, opposed the submissions made by learned counsel for the petitioner and submitted that the action of the respondent-Corporation in not accepting the highest bids is completely justified as the respondent-Corporation was not to suffer a financial loss by accepting bids at a comparatively lower rate, though being higher than the reserve price. Specific reference was made to the relevant clauses of the brochure **(Annexure P-2)** and the EMP, 2015 to submit that the respondent-Corporation was well within its authority to accept or reject even the highest bid. Reference was made to the judgment of a Coordinate Bench in ***S.K.Woollen Mills and others versus State of***

Haryana and others, decided on 07.10.2023 (in CWP-9502-2022) and ***Haryana Urban Development Authority and others versus M/s Orchid Infrastructure Developers Pvt. Ltd., 2017 (4) SCC 243***. It was submitted that it is well settled by now that such actions do not call for any interference while exercising the power of judicial review.

11. We have given our thoughtful consideration to the issue in hand.

12. The facts are not in dispute. The petitioner emerged as the highest bidder qua two plots each measuring 7875 square meters by offering bids of ₹9800 per square meter qua plot No.9 and ₹10600/- per square meter qua plot No.8. Vide e-mail dated 14.03.2022, the petitioner was informed that his bids had not been accepted by the competent authority and that the EMD was being refunded. After the decision rendered on 12.03.2024 in CWP No.1546 of 2023 titled as M/s Norton Chemicals & Specialities Pvt. Ltd. Versus State of Haryana and others, the respondent-Corporation passed a speaking order thereby justifying its action of not accepting the highest bids. While justifying its action, reliance has been placed upon the relevant clauses of the brochure as also EMP, 2015. Clause - C.9.i of the brochure states as under:-

> **"The HSIIDC shall reserve to itself the right to accept any bid subject to approval of the Competent Authority or reject any bid, even the highest bid or withdraw the site from auction at any stage without assigning any reason."**

13. Further Clause 3.4.ii.d(viii) of the EMP, 2015 lays down as under:-

> **"<u>Clause – 3.4ii.d(viii)</u>**
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> **After successful completion of the auction, the**

> **Managing Director may accept or reject any bid, even the highest bid, without assigning any reason and finalize the allotment."**

14. A perusal of the aforesaid Clauses makes it manifestly clear that the right to accept or reject the bid was retained by the competent authority and it was specifically laid down that even the highest bid may be accepted or rejected without assigning any reason.

15. Now coming to the law on the subject, it is by now well settled that in the absence of a concluded contract, no right would accrue to the highest bidder. The Supreme Court of India was dealing with one such issue in the case of ***'Haryana Urban Development Authority and Others Vs. Orchid Infrastructure Developers Private Limited'*** (supra) where after the rejection of the bid of M/s Orchid Infrastructure Developers Private Limited, a suit for declaration had been filed. In that case, the plaintiff had given the highest bid which, as per the plaintiff had been accepted. Formal letter of allotment was, however, not issued and ultimately, the 10% amount deposited by the plaintiff was refunded on the ground that the bid had not been accepted. This action was challenged by way of a suit which was decreed by the trial Court. However, appeal against the same was allowed by the Court of the District Judge and the suit was dismissed. The High Court then allowed the second appeal and restored the judgment and decree of the trial Court after which the matter reached the Apex Court and the Apex Court ultimately upheld the decision of the First Appellate Court and held that no right had accrued to the highest bidder. The Supreme Court of India while

relying upon other decisions in the case of ***'State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others', (1982) 2 SCC 365, 'Laxmikant and Others Vs. Satyawan and Others', (1996) 4 SCC 208, 'Meerut Development Authority Vs. Association of Management Studies and Another', (2009) 6 SCC 171, 'M/s Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Limited and Others', (1990) 3 SCC 280 and 'Kalu Ram Ahuja and Another Vs. Delhi Development Authority and Another', (2008) 10 SCC 696***, held as under:-

> ***"27. This Court in the case of State of Uttar Pradesh & Ors. v. Vijay Bahadur Singh & Ors. (1982) 2 SCC 365 has laid down that there is no obligation to accept the highest bid. The Government is entitled even to change its policy from time to time according to the demands of the time.***
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> ***28. In Laxmikant & Ors. v. Satyawan & Ors. (1996) 4 SCC 208, this Court has laid down that in the absence of completed contract when the public auction had not culminated to its logical end before confirmation of the bid, no right accrued to the highest bidder.***
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> ***29. In Meerut Development Authority v. Association of Management Studies & Anr.(2009) 6 SCC 171, this Court has laid down that a bidder has no right in the matter of bid except of fair treatment in the matter and cannot insist for further negotiation. The Authority has a right to reject the highest bid.***
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33. We are constrained to observe in the instant case that with respect to reserve price also, there was a hitch to fix and approve it right from the word go. It was a case of auction of big commercial tower having a huge area of 9.527 acres. Only the reserve price of the same was forwarded for fixation to the Chief Administrator, whereas the reserve prices of other properties were fixed by the Administrator. When the bids were received, the Administrator considering the huge stakes involved, forwarded the matter to the Chief Administrator. However, the Chief Administrator washed off his hands and did not decide it and sent the matter back to the Administrator, clearly indicating that the Administrator was delegated with the power to decide the bids. Thus, under compelling circumstances and duly considering the reports, the Administrator had taken the decision to reject the bids not only of the plaintiff but also six others. For the first time in the history of State of Haryana, such big properties were put to hammer on the prices indicated. The hitch in fixing the reserve price also indicates that the reserve price was not determined in a fair manner in the instant case. Not only the plaintiff but HUDA also did not place the delegation of power on record of the courts below. None of the officials of HUDA had been examined. Only an Assistant – a junior ranking person had been examined who was not posted there when the auction was held and came only in 2008. As the property was a commercial tower in Sector 29, Gurgaon, with huge commercial complex, the first appellate court was right in dismissing the suit.

> ***34. Plaintiff came to the court for mandatory injunction, for issuance of allotment letter without payment of court fee also. It was incumbent upon the plaintiff to pay the ad valorem court fee as prevailing and the valuation of the suit should not have been less than the bid amount of Rs.111.75 crores, as rightly held by the first appellate court. The plaintiff is directed to pay the ad valorem court fee not only before the trial court but also before the High Court. Plaintiff is directed to deposit the court fee within two months from today, as payable.***
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> ***35. Resultantly, the appeal is allowed. The judgment and decree passed by the High Court is set aside and that of the first 7 of 14 appellate court is restored. In the facts and circumstances of the case, we impose costs of Rs.5 lakhs on the plaintiff/respondent to be deposited as : L 2.5 lakhs in the Advocates' Welfare Fund and Rs.2.5 lakhs in the Supreme Court Employees' Welfare Fund within a period of two months from today."***

16. A similar issue arose before a Co-ordinate Bench of this Court in the case of ***Dr. Sarika Gautam and Others Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others*** (supra). The petitioner therein had submitted an online bid for a plot in Sector 38, Gurugram for ₹1,87,99,300/-. Despite being the highest bid, the same was not accepted nor was any specific order passed informing the petitioners as regards the fate of the bid. Here also, the clauses of the E-auction policy were considered and it was held that there would be no vested rights with the petitioner which would obligate the respondents to accept the highest bid of the petitioners. It was held that to

the contrary, the highest bidder only had a right of consideration for such bid to be evaluated against the reserve price determined by the committee. The contention regarding deemed acceptance of the highest bid was rejected. Clause 28 of the said policy which obligated the acceptance or rejection of the H-1 bid within a period of 07 working days was also examined and it was held that such provision were not mandatory and they are incorporated only to prevent undue delays on the part of the competent authority in taking a final decision:-

> ***"14. 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 petitioners. 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.***
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> ***15. In the facts of the case there is no material for us to conclude that any contract came into force between the petitioners 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.***
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> ***16. 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 petitioners and the respondents in the light of Clause 28 of the E-auction policy, is not well-founded."***

Another such view was taken by a Co-ordinate Bench of this Court in the case of Mahavir Singh Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others (supra), in which it was held as under:

> ***"8. The Apex Court also in Orchid Infrastructure's case (supra) examined the issue of the competency of the Administrator to accept or reject the bid and also the issue whether there was legality regarding the rejection of the bid and held that any action where there are sufficient reasons to indicate the stand of the authorities and there are valid reasons and on account of public money being involved, interference should be minimal.***
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> ***11. It is in such circumstances, the respondents have taken a conscious decision to refund the amount. The reasons, thus, are apparent on the file and, therefore, in our considered opinion that the same has been done in view of the settled position of law. Merely because***

the petitioner was the highest bidder, there is no vested right as such on the basis of which a writ of mandamus can be issued to him for confirmation of the auction. There are no such allegations that the process of rejection of bids was mala fide or intended to grant benefit to another set of persons and, therefore, interference would not be warranted as one has to keep in mind the fact that the larger issue would be of public funds involved which would be affected if the reserve price was not properly fixed. The stipulations as such of the clause which provided that the action had to be taken within a specified period cannot be held to be mandatory and binding as such and it has only been put in for the purpose of expediting the process so that the authorities should act at the earliest. The perusal of the files would go on to show that the larger picture all over the State as such was examined and a conscious decision was thereafter taken and there have been valid reasons as such in taking such stand. We do not find any reasonable ground as such to take a contrary view keeping in mind the above settled position and are also of the considered opinion that the petitioner has not been able to make out a case as such for interference."

17. The law is, therefore, very clear that the highest bidder would have no right in the absence of her bid having been accepted by the competent authority.

18. Coming to the impugned order, the same is well reasoned and relies upon the Clauses of the brochure and the EMP, 2015. It further relies upon the judgments referred to in the preceding paragraphs. All contentions

raised have been duly dealt with. It was clearly stated in the impugned order as under:-

> **"1. Proposal for accepting the bids of 450 square meters and 1800 square meters are approved.**
> **2. Keeping in view the low premium over reserve price, quoted by the bidders, for the categories of 4050 square meters and 7875 square meters, bids in these two categories are not accepted. EMD for these two categories be refunded within a week.**
> **3. Please discuss regarding the 1012.50 square meters category of plots"**

19. Reliance was also placed in the impugned order upon the Clauses of the brochure and the EMP, 2015 as also the law on the subject including the judgments in the cases of ***Haryana Urban Development Authority and others versus M/s Orchid Infrastructure Developers Pvt. Ltd.*** (supra), ***Mahavir Singh versus Haryana Shehari Vikas Pradhikaran and others,*** decided on 07.08.2023 (CWP No.13656 of 2023), ***M/s S.K.Woolen Mills and others versus State of Haryana and others*** (Supra), ***Sanjay Garg and another versus State of Haryana and another***, decided on 29.11.2019 (CWP-29916-2019), ***Rohit Garg versus State of Haryana and others***, decided on 01.03.2021 (CWP No.1972-2021), ***Delicasy Infratech Pvt. Ltd. Versus State of Haryana and others*** decided on 09.08.2023 (CWP-22225-2022) etc.

20. Having considered the arguments addressed by learned counsel for the parties, the relevant Clauses as have been discussed in the preceding paragraphs, the impugned order dated 27.05.2024 as also the law on the

subject, we are of the considered opinion that no interference is called for in the impugned order which is well reasoned and perfectly legal and valid in view of the power vested in the respondent-Corporation by virtue of the clauses incorporated in the brochure and EMP, 2015.

In view of the aforementioned facts and circumstances, we do not find any merit in the instant writ petition and the same is accordingly dismissed.

(ARUN PALLI) **(VIKRAM AGGARWAL)**
JUDGE **JUDGE**

Reserved on : 15.07.2024
ronounced on : 27.08.2024
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No