2024:PHHC:152883-DB

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

**CWP-20265-2024**
**Reserved on : 22.08.2024**
**Pronounced on : 21.11.2024**

Komal Aggarwal and another ...... Petitioners

Versus

Haryana Shehri Vikas Pradhikaran and others ...... Respondents

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

***

Present : Mr. Johan Kumar, Advocate
for the petitioners.

Mr. Deepak Sabharwal, AAG, Haryana
for the respondent(s)-State.

***

**VIKRAM AGGARWAL, J**

1. The petitioners pray for the issuance of a *certiorari* for quashing the order dated 11.07.2024 (Annexure P-13), passed by respondent No.1-Haryana Shehri Vikas Pradhikaran, Panchkula (for short 'the respondent-HSVP') vide which the claim of the petitioners in respect of SCO (Commercial Plot No.S-64, Sector 12, Faridabad) (hereinafter referred to as the 'plot in dispute') has been declined despite the fact that they were the highest bidders and further to quash the re-auction process of the plot in dispute which was stated to be fixed for 23.08.2024. The petitioners also seek the issuance of a mandamus directing the respondents to issue Letter of Intent (for short 'LOI') to them.

2. The facts, as emanating from the paper book are that the respondent-HSVP framed a policy dated 20.07.2022 (Annexure P-1) for the sale of commercial, residential and institutional properties. On 14.12.2022, the respondent-HSVP announced the e-auction of various commercial properties in various sectors of Faridabad and published the list of commercial properties (Annexure P-2). The auction was to be held on 14.12.2022. The procedure for e-auction and allotment of the plots was laid down in the Policy/Brochure (Annexure P-1). As the petitioners were desirous to purchase the plot in dispute, they jointly registered themselves in the said auction. They deposited an amount of Rs.15,23,600/- i.e. 5% of the reserve price of Rs.3,04,71,200/- as earnest money deposit alongwith registration charges of Rs.1,000/-.

3. Having participated in the e-auction on 14.12.2022, the petitioners emerged as the highest bidders. The bid history (Annexure P-4) duly depicts the petitioners as the highest bidders. On that very day i.e. 14.12.2022, the petitioners received an e-mail (Annexure P-6) from the e-mail address of respondent-HSVP that as per the policy dated 20.07.2022, the petitioners being the highest bidders were required to make the payment upto 19.12.2022. The petitioners deposited an amount of Rs.15,26,520/- i.e. 10% of the quoted bid of Rs.3,05,01,200/- vide receipt dated 17.12.2022 (Annexure P-7).

4. As per the policy dated 20.07.2022, after deposit of 10% of the quoted amount, the respondent-HSVP had to issue LOI in favour of the petitioners but it did not issue the same. It has been averred that petitioners

approached Estate Office, Faridabad many times about the issuance of LOI but they were informed that the file had gone to the head quarters and the LOI shall be issued shortly.

5. Instead of issuing LOI in favour of the petitioners, the respondent-HSVP deposited the whole amount as deposited by the petitioners, in the bank account of petitioner No.2 in two installments without giving any intimation to them. On 12.01.2023, the respondent-HSVP again put the plot in dispute for e-auction which was slated to be held on 28.01.2023. It has been averred that the petitioners submitted a representation to respondent No.3 on 18.01.2022 but respondent No.3 refused to accept the same. Thereafter, the petitioners sent an e-mail dated 18.01.2023 (Annexure P-10) at the e-mail address of respondent-HSVP seeking reasons for the refund of the amount deposited by the petitioners. However, no response was given by the respondent-HSVP to the said e-mail.

6. Aggrieved by the action of the respondent-HSVP, the petitioners preferred CWP No.1417 of 2023 which was duly contested by the respondent-HSVP in which a stand was taken that the authorities were well within their 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. The said writ petition was disposed vide order dated 12.03.2024 (Annexure P-11) directing the respondents to pass a speaking order within a period of two months from the date of the order.

7. Pursuant to the order dated 12.03.2024, the petitioners submitted a representation dated 26.03.2024 (Annexure P-12) which was,

however, rejected vide the impugned order dated 11.07.2024 (Annexure P-13) leading to the filing of the instant writ petition.

8. Learned counsel for the petitioners and learned counsel representing the respondent-HSVP, who had caused appearance on advance copy having been served, were duly heard.

9. It was strenuously urged by learned counsel representing the petitioners that the action of the respondent-HSVP in rejecting the highest bid given by the petitioners 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 policy and submitted that the power vested with the respondent-HSVP 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 HSVP were to be rejected by taking contradictory stands in different litigations with regard to the same auction.

10. Learned counsel for the respondent-HSVP, on the other hand, opposed the submissions made by learned counsel for the petitioners and submitted that the action of the respondent-HSVP in not accepting the highest bid is completely justified as the respondent-HSVP was not to suffer a financial loss by accepting bid at a comparatively lower rate, though being higher than the reserve price. Specific reference was made to the relevant clause of the Policy to submit that the respondent-HSVP 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 petitioners emerged as the highest bidders qua the plot in dispute. After the decision rendered on 12.03.2024 in CWP No.1417 of 2023, the respondent-HSVP passed a speaking order dated 11.07.2024 thereby justifying its action of not accepting the highest bid. While justifying its action, reliance has been placed upon the relevant clause of the policy:-

> **"17. 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."**

13. A perusal of the aforesaid Clause 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. Be that as it may, on directions having been issued by this Court, a speaking order was passed after giving due hearing to the petitioners. It has been observed that the highest bid amount was more than 20% below the average auction price of such property as a

result of which the H1 bid of the property in dispute could not be accepted by the competent authority.

> **"The Competent Authority found the bid on the lower side and rejected the bid and refunded 10% deposited amount on 10.01.2023 i.e. Rs.30,50,120/-. As per para No.17 of the policy dated 20.07.2022 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.**
>
> **After hearing the representanist and perusal of the record submitted before me, and considering the present market conditions, I found that the refund has already been made to the petitioner as per the then prevailing policy and there is no contractual obligation left between the parties as such allowing the request of petitioner at this stage will not be in the interest of State Exchequer."**

14. 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 cases 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 the demands of the time.**
>
> **- - - - - - - -**
>
> **- - - - - - - -**
>
> **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.**

**- - - - - - - -**

**- - - - - - - -**

**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.**

**- - - - - - - -**

**- - - - - - - -**

**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.**

**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."**

15. 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.***

***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.***

***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.***

***- - - - - - - -***

***- - - - - - - -***

***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."***

16. 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.

17. Having considered the arguments addressed by learned counsel for the parties, the relevant Clause of the policy dated 20.07.2022 as has been discussed in the preceding paragraphs, the impugned order dated 11.07.2024 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-HSVP by virtue of the clause incorporated in the policy/brochure. It is also no longer *res integra* that merely offering the highest bid does not clothe a person with any right and that it is ultimately the decision of the authorities as to whether such a bid is to be accepted or not. Of course, reasons which may be found to be extraneous and malafide can always be looked into but in the present case the impugned order does not reflect any reason other than bonafides of the respondent-HSVP which could have impelled this Court to interfere.

2024:PHHC:152883-DB

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)**
**JUDGE**

**(VIKRAM AGGARWAL)**
**JUDGE**

**Reserved on : 15.07.2024**
**Pronounced on : 21.11.2024**
mamta

| | |
|---|---|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |