IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 25.09.2024
Pronounced on: 04.12.2024

1) CWP No.20866 of 2024

Mrs. Prachi Garg and another ....Petitioners

V/s

State of Haryana and others ....Respondents

2) CWP No.20880 of 2024

Ashish Rana and another ....Petitioners

V/s

State of Haryana and others ....Respondents

3) CWP No.20871 of 2024

Mr. Gopal Nagdev @ Gopal Krishan Nagdev and another....Petitioners

V/s

State of Haryana and others ....Respondents

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

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajan, Advocate
Mr. Rohit Chandel, Advocated and
Mr. Saurav Gautam, Advocate, for the petitioners.

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

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

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VIKRAM AGGARWAL, J.

1. For, the issue involved is identical in all the three writ petitions, they shall be disposed of by way of a common judgment. The facts are primarily being derived from CWP-20866-2024, titled Mrs. Prachi Garg and another V/s State of Haryana and others, though reference to the facts of

CWP-20880-2024 and CWP-20871-2024 shall also be made wherever necessary.

2. The petitioners pray for the issuance of a writ of certiorari quashing the order dated 27.05.2024 (Annexure P-9), vide which the request of the petitioners for allotment of Plot Nos.513, Sector 19A and Plot No.643, Sector 20A, IMT Sohna, both measuring 4050 sq. mtr (hereinafter to be referred to as the "disputed plots") was declined despite the petitioners having emerged as the highest bidders in the e-auction conducted pursuant to e-auction notice dated 12.04.2022 (Annexure P-1). The petitioners also pray that the respondents be restrained from further auctioning the disputed plots.

3. The facts, in brief, are that pursuant to e-auction notice dated 12.04.2022, the petitioners participated in the e-auction. Registration for the same was to start from 12.04.2022 and was to continue till 11.05.2022. The tentative date of start of e-auction was stated to be w.e.f. 24.05.2022 onwards. Total 22 industrial plots in the size category of 4050 sq. mtr. were scheduled to be offered. As per the E-Brochure (Annexure P-2), an applicant was supposed to pay 5% of the reserve price as earnest money. The base price for the disputed plot category i.e. IMT Sohna-4050 sqm, was fixed at Rs.11050 per sq. mtr. The petitioners registered within the stipulated period and participated in the e-auction held on 03.06.2022 and also deposited 5% i.e. Rs.22,37,625/- as earnest money along with processing fee. They were declared successful and emerged as the highest bidders qua the disputed plots.

4. Having submitted their successful bids, the petitioners were waiting for their H-1 bid to be accepted by the competent authority so that they could pay 10% of the total price within 72 hours of the acceptance of

the bid as provided in Clause C(9)(h) read with E(ii) of the E-Brochure. However, the respondents did not send any intimation regarding approval of the H-1 bids. Subsequently, vide e-mail dated 10.08.2022 (Annexure P-6), the petitioners were informed that their bids for the disputed plots had not been accepted. The said e-mail is stated to be *non-est* as no reason was mentioned for non-acceptance of the bids nor did it say that the bids had been rejected.

5. It is the case of the petitioners that despite their having given the highest bids, plots were not allotted to them. The communication dated 10.08.2022 (Annexure P-6) assigned no reason for non-acceptance of the bids of the petitioners and it was simply mentioned that the H1 bids had not been accepted. It is the case of the petitioners that the communication /email dated 10.08.2022 and consequential proceedings were challenged by them and other similarly situated persons before this Court by filing separate writ petitions, the leading case being CWP-12995-2023 and vide a common judgment dated 12.03.2024 all the writ petitions were disposed of. Pursuant to the said order, the respondent-corporation issued email dated 05.04.2024, affording an opportunity of hearing to the petitioners. The petitioners accordingly appeared before the respondents and made their submissions. However, vide order dated 27.05.2024, their claim was rejected leading to the filing of the instant writ petition.

6. Mr. Sumeet Mahajan, learned Senior Counsel for the petitioners and Mr. Ankur Mittal, learned Addl. Advocate General, Haryana representing the respondents, who had caused appearance on advance copy having been served, were heard.

7. It was submitted by learned Senior Counsel for the petitioner

that the action of the respondents in not accepting the highest bids given by the petitioners is completely illegal and arbitrary besides being unduly harsh. The reason given by the respondents that the disputed plots received less premium during online process is not justified as the respondent-corporation itself fixed the minimum reserved price i.e. 11050/- per sq. mtr. Plot No.643, IMT Sohna received bid of Rs.11450/- per sq. mtr. and Plot No.513 received bid of Rs.11250/- per sq. mtr. Respondent-corporation is a Government entity incorporated with the objective to develop industrial infrastructure in the State of Haryana and works for the sustainable development of the State/Society, running on the principle of "no profit no loss", and should not act like a capitalist. Reference was also made to the minutes of the 377th meeting of the Board of Directors of HSIIDC held on 22.06.2023, wherein it was held that the criteria of decision for H1 bids is to be made in terms of the decision of the 375th meeting of the Board of Directors held on 29.12.2022 (Annexure P-11). In the said meeting, it was approved that where the plots size is up to 2000 sq. mtr., all H1 bids above the reserved price be selected/approved in auto mode. It was submitted that under the circumstances, the H1 bids were required to be accepted.

8. *Per contra*, learned counsel representing the respondents submitted that there is no illegality in the action of the respondents and that the bids were rejected strictly as per terms and conditions laid down in the brochure. It was submitted that the terms and conditions of the brochure are binding upon both sides and in no manner can the respondents violate the same. As regards the minutes of the meeting (Annexure P-11), it was submitted that the same are not applicable to the auction in question, as they were to be applied to subsequent auction.

9. Having heard learned counsel for the parties, we find the writ petition to be devoid of merit.

10. The Brochure containing the procedure for e-auction and allotment of industrial plots is on record as Annexure P-2. Clause B(2) of the Brochure reads as under:-

> ***"B(2). The categories indicated in the e-Auction Brochure are tentative and the Corporation reserves the right to withdraw any category from allotment or add any category for allotment at any stage, without assigning any reason. Size of the plots is tentative subject to actual demarcation at the time of physical possession."***

11. Further, Clause C(9)(i) lays down 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".***

12. It is well settled that the terms and conditions of the e-brochure as it is in the case of a prospectus in admission matters are binding upon both sides. Once an action is taken in terms of the procedure or the provisions envisaged in such a document, the same cannot be said to be illegal, arbitrary or harsh.

13. In CWP-20880-2024 and CWP-20871-2024, the facts are similar to that of CWP-20866-2024. In CWP-20880-2024, the petitioners gave the highest bid for Plot No.644, measuring 4050 sq. mtr. situated in IMT Sohna and in CWP-20871-2024 for Plot No.512, measuring 4050 sq. mtr. In all the three cases, vide communication/e-mail dated 10.08.2022, the petitioners were informed that their bid for the disputed plots had not been accepted.

14. The action of the respondents is in conformity with the

procedure laid down in the brochure and there is, therefore, not even an irregularity in the same much less an illegality. It needs to be mentioned that these are purely administrative decisions which are not liable to be interfered with until and unless the decisions are shown to be perverse or are shown to have been taken for some extraneous consideration. A perusal of the impugned order shows that the same is a detailed order in which every aspect has been considered. Reference has been made to the relevant clauses of the Estate Management Procedure, the brochure and the schedule of e-auction. We also do not find any illegality in the decision taken by the respondents to reject the highest bids on account of lower/lesser premium being fetched in case of the bids being accepted. The respondents could not have been expected to auction the plots at a lesser price, and, therefore, while exercising the powers vested in them, rejected the highest bids of the petitioners.

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. M/s Orchid Infrastructure Developers Private Limited, 2017(2) RCR (Civil) 145,*** 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 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.

> ***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 Coordinate Bench of this Court in the case of ***Dr. Sarika Gautam and Others Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others, (CWP-19447-2021, decided on 27.09.2021)***. 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 provisions 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 found 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 rissa 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 wellfounded."***

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,*** **2023(4) RCR (Civil) 121,** 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 the bid having been accepted by the competent authority.

18. Having considered the arguments addressed by learned counsel for the parties, the relevant Clauses of the brochure in question as has been discussed in the preceding paragraphs and the impugned orders dated 27.05.2024 (Annexure P-9), 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-HSIIDC by virtue of the clauses incorporated in the brochure. The impugned order also does not appear to have been passed for reasons which may be found to be extraneous and *mala fide* warranting interference.

In view of the facts and circumstances aforementioned, we find the writ petitions to be devoid of merit and the same are accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 25.09.2024
Pronounced on: 04.12.2004
vcgarg

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No