IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 25.09.2024
Pronounced on: 04.12.2024

1. CWP-20895-2024

Ritu Bhutani and Others

….Petitioners

Versus

State of Haryana and Others

....Respondents

2. CWP-20950-2024

Sumeet Singh Kullar

….Petitioner

Versus

State of Haryana and Others

....Respondents

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

Present: Mr. Sunil Kumar Nehra, Advocate, with
Ms. Rajeshwari Nehra, Advocate, for the petitioner(s).

Mr. Deepak Sabherwal, Advocate, for the respondents.

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<u>VIKRAM AGGARWAL, J.</u>

1. The issue in the aforetitled writ petitions being identical, they are being decided by way of this common judgment. The facts, however, are being derived from ***CWP-20895-2024*** titled as '***Ritu Bhutani and Others Vs. State of Haryana and Others'.*** Reference to the facts of ***CWP-20950-2024*** titled as '***Sumeet Singh Kullar Vs. State of Haryana and Others'*** shall, however, be also made at the appropriate place.

2. The petitioner prays for the issuance of a writ of *certiorari* quashing the orders dated 04.07.2024 and 19.07.2024 (Annexure P-9), passed by

respondent No.2-Haryana Shehri Vikas Pradhikaran, Panchkula (for short 'the respondent- HSVP') vide which the claim of the petitioner in respect of Plot No.70, Sector 19 P-1, Sirsa) (hereinafter referred to as the 'plot in dispute') has been declined despite the fact that she was the highest bidder. The petitioner also seeks the issuance of a mandamus directing the respondents to issue Letter of Intent (for short 'LOI') to her.

3. The facts, as emanating from the paper book are that the respondent-HSVP framed a policy dated 20.05.2021 (Annexure P-1) for the e-auction of residential/institutional/commercial properties followed by a revised e-auction policy dated 20.07.2022 (Annexure P-2). On 17.11.2022, e-auction of various commercial properties in different areas of Sirsa, Hansi and Hisar was announced. The e-auction was held on different dates i.e. on 23.11.2022 and 21.12.2022 for Urban Estate Sirsa, on 13.12.2022 and 18.12.2022 for Urban Estate Hansi and on 25.11.2022 for Urban Estate Hisar. The procedure for e-auction and allotment of the plots was laid down in the Policy (Annexure P-1). As the petitioner was desirous of purchasing the plot in dispute, she registered herself in the said auction. She deposited 10% amount of the reserve price as earnest money deposit alongwith registration charges of Rs.1,000/-.

4. Having participated in the e-auction on 23.11.2022, the petitioner emerged as the highest bidder as mentioned in the e-mail received from the respondent-HSVP on 21.12.2022 which said that as per the policy dated 20.05.2021, the petitioner, being the highest bidder, was required to make the payment up to 23.12.2022 and accordingly, the petitioner deposited 10% amount of the quoted bid.

4.1 It would be essential to mention here that all the 13 petitioners in ***CWP-20895-2024*** are similarly situated and had submitted their bids for different plots in Sirsa, Hisar and Hansi. The petitioner in ***CWP-20950-2024*** had submitted its bid against plot No.320 P in Sector 19, Hisar.

4.2 The details of the plots *qua* which all petitioners had submitted their bids, the reserve price for the said plots, the bid amount and other details shall be indicated in the subsequent paragraphs and while discussing the merits of the case.

5. As per the policy dated 20.05.2021, after deposit of 10% of the quoted amount, the respondent-HSVP had to issue LOI in favour of the petitioner but instead of doing the same, it refunded the deposited amount. It has been averred that petitioner approached Estate Officer, Sirsa many times as regards the issuance of LOI but she was informed that the file had gone to the head quarters and the LOI would be issued shortly.

6. Instead of issuing LOI in favour of the petitioner, the respondent-HSVP refunded the entire amount deposited by the petitioner without giving any intimation to her. It has been averred that the petitioner submitted a representation to respondent No.2 but respondent No.2 refused to accept the same. However, the representation did not evoke any response.

7. Aggrieved by the action of the respondent-HSVP, the petitioner preferred CWP No.2528 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 of vide order dated 12.03.2024 (Annexure P-4) directing the respondents to pass a speaking order within a period of two months from the date of the order. In compliance thereof, the impugned orders were passed, leading to the filing of the instant writ petitions.

8. A short reply has been submitted by the respondent HSVP by way of affidavit of the Estate Officer, HSVP, Sirsa. It has been averred that the highest bid submitted by the petitioner was Rs.90,40,900/- whereas the average auction price of the current year in that area was Rs.1,32,69,500/- and 80% of the said auction price was Rs. 1,06,15,536/- and, therefore, the bid of the petitioner was more than 20% below the current average auction price. A table has also been given depicting all the details.

9. Learned counsel for the parties were heard.

10. It was strenuously urged by learned counsel representing the petitioner that the action of the respondent-HSVP in rejecting the highest bid 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 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. Reference was made to the contents of paragraph 4 of the writ petition and an effort was made to submit that the bid was more than 20% below the average auction price. It was also submitted that letters of intent were issued to various highest bidders where the bid price was marginally above the reserve price. Reference was also made to contents of paragraph 12 of the writ petition in this regard.

11. Learned counsel for the respondent-HSVP, on the other hand, opposed the submissions made by learned counsel for the petitioner 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. 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. Specific reference was made to the table in the short reply. It was also submitted that after certain allotments had been made, it was realized that simply on account of highest bids having been given, the same could not be accepted and a decision was taken that bids which were more than 20% below the average auction price would not be accepted.

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

13. The facts are not in dispute. The petitioner emerged as the highest bidder qua the plot in dispute. After the decision rendered on 12.03.2024 in CWP No.2528 of 2023, the respondent-HSVP passed a speaking order dated 04.07.2024 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."**

14. 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 petitioner. It has been observed in the impugned order 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 table given in the short reply also clarifies the said position. The averment in the writ petition that the bids were actually not more than 20% below the average auction price is devoid of merit because the petitioner is comparing the bid with the 80% of the average auction price and not with the full average auction price. At the cost of repetition, it would be essential to mention here that as per the table given in the short reply, the average auction price of the current year qua the plot in dispute was Rs.1,32,69,500/-. 80% of the said price was Rs.1,06,15,536/- and the highest bid given by the petitioner was Rs.90,40,900/- which was below Rs.1,06,15,536/- meaning thereby that it was more than 20% below the average auction price for the current year. Similar is the position with regard to all 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.***
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> ***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' (CWP-19447-2021, decided on 27.09.2011)***. 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.***

> ***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 Clause of the policies in question as has been discussed in the preceding paragraphs, the impugned orders dated 04.07.2024 and 19.07.2024 (Annexure P-9) as also the law on the subject, we are of the considered opinion that no interference is called for in the impugned orders which are 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. The impugned orders also do not appear to have been passed for reasons which may be found to be extraneous and *malafide* 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

Pronounced on: 04.12.2024
Prince Chawla

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*