
(1999) 06 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5821 of 1999

Rajinder Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-06-1999

Acts Referred:

Punjab Municipal Corporation Act, 1976 — Section 173, 40, 90

Citation : AIR 2000 P&H 31 : (1999) 3 RCR(Civil) 665

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Vinod Sharma and Puneet Jindal, for the Appellant; M.C. Berry, DAG (for No. 1), R.L. Gupta, (for No. 2), Mohan Jain and Rakesh Aggarwal, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—An open auction for a contract to collect octroi was held by the Municipal Corporation, Jalandhar (for short the corporation) on 21-4-1999 for the period from 15-5-1999 to 14-5-2000. As per the terms and conditions of the auction every bidder was required to deposit a sum of Rs. 15 lacs with the corporation by way of demand draft or cash as earnest money . The reserve price fixed for the auction was Rs. 48 crores. The grievance of the petitioner is that the corporation did not accept the earnest money from him and he was not allowed to participate in the auction. He has further alleged that none of the bidders deposited the earnest money at the time of the auction and that respondent No. 3 who has been awarded the contract deposited the earnest money on the day following the date of auction and the receipt was issued to it on 22-4-1999 after closure of the accounts in the evening. It is also alleged in the petition that earnest money received from respondent No. 3 was deposited-by the corporation in its Bank account on 23 -4-1999. It is contended that the contract had been awarded to respondent No. 3 in a clandestine manner and that it is evident from the fact that against the reserve price of Rs. 48 crores a bid of Rs. 48,09 crores

was accepted.

2. In response to the notice issued to the respondents, they have filed their written statements emphatically controverting the averments made in the petition. It is pleaded that the auction was held in a fair and reasonable manner in accordance with the procedure and guidelines prescribed by the State Government and that no irregularity was committed as alleged by the petitioner. It is admitted that reserve price fixed by the State Government for the auction was Rs. 48 crores and that the highest bid being of Rs. 46.09 crores as given by respondent no. 3 had to be accepted though after seeking approval of the State Government. The case of the respondents is that every bidder was required to deposit Rs. 15 lacs at the time of the auction and only those who had deposited the earnest money were allowed to participate therein. It is averred that the petitioner did not deposit the earnest money in spite of repeated announcements made in this regard by the officers of the corporation conducting the auction and it is for this reason that the petitioner was not allowed to participate in the auction and that he did not raise any objection at the spot at the time of the auction even though he was present.

3. We have heard counsel for the parties at length and find no merit in the writ petition. When this case came up for hearing on 3-5-1999 the petitioner stated that he was willing to take the contract and offered Rs. 48 crores and one lac for the same. In order to show his bona fides he undertook to deposit a sum of Rs. 15 lacs in the Court which he did on the following day. Learned counsel for the petitioner strenuously urged that the auction held on 21-4-1999 was a farce and no bidder deposited the money at the time of the auction and that the petitioner was arbitrarily prevented from participating in it. Learned counsel for the respondents, on the other hand, contended that repeated announcements had been made on public address system calling upon the bidders to deposit the earnest money and that the auction was delayed by about fifteen minutes to enable the participants to deposit that amount but only five persons deposited the amount who alone were allowed to participate. During the course of arguments, we were informed that under the instructions of the State Government the entire auction proceedings were video-taped and a request was made that the Court should view that tape to verify if the allegations as made by the petitioner were correct. In pursuance to our directions issued on 3-6-1999 the parties made arrangements for the Court to view the video film and we have seen the same and find that the auction was fairly, properly and transparently conducted in the presence of the senior officers of the corporation including its Commissioner, Mayor and Joint Commissioner. Before the commencement of the auction an officer deputed for the purpose read out the terms and conditions of the auction and repeatedly announced that those who wanted to participate in it should deposit the earnest money of Rs. 15 lacs. Admittedly, the petitioner was present at the time of the auction but he did not deposit the earnest money. Not only this, all those who were present at the time of the auction had raised a number of objections which were replied to by the officers of the Corporation but

no one including the petitioner objected that they were not being allowed to deposit the earnest money. Such an objection could not indeed be raised because several announcements were being made for the deposit of the earnest money by those who wanted to bid in the auction. After the conclusion of the auction the participants other than respondent No. 3 whose bid has been accepted were told to take their earnest money back. We have, therefore, no hesitation in holding that the petitioner did not deposit the earnest money and it is for this reason he did not participate in the auction for which he has himself to blame. Again, there is nothing on the record to show that respondent No. 3 did not deposit the earnest money before the commencement of the auction as alleged by the petitioner. The Mayor of the corporation, on the other hand, has filed the written statement stating that five parties including respondent No. 3 had deposited the earnest money before the commencement of the auction though the receipts were issued subsequently. We are, therefore, satisfied that this respondent had deposited the earnest money and fulfilled the conditions precedent for participating in the auction. No fault can thus be found with the action of the respondents in this regard. In view of our finding that the petitioner did not deposit the earnest money, he has no locus standi to challenge the auction and the contract awarded to respondent No. 3. The petition deserves to be dismissed on this ground alone.

4. The next argument of the learned counsel for the petitioner is that the bid of respondent No. 3 has been accepted at a price lower than the reserve price and, therefore, the contract awarded to it is liable to be quashed particularly when the petitioner is willing to offer Rs. 48 crores and One lac for the same. We are unable to accept this contention either. Before the commencement of the auction, the participants objected that the reserve price fixed was very high but they were told that in terms of the guidelines issued by the State Government the highest bid if more than the reserve price would be accepted on the spot and in case the highest bid was less than the reserve price the case will be submitted to the competent authority for decision. The bids were hotly contested amongst the five participants and as many as 87 bids were given. The highest bid was of Rs. 46.09 crores given by respondent No. 3. Since this bid was less than the reserve price of Rs. 48 crores the same was not accepted at the spot and the matter was referred to the Principal Secretary, Local Government, Punjab, Chandigarh and the last bidder (respondent No. 3) was asked to wait for the decision of the Government by 22-4-1999 upto 3 p.m. It may be mentioned that in the previous auction which took place on 30-3-1999 the highest bid was Rs. 39.10 crores which was cancelled at the spot being very low. The corporation while recommending to the State Government the acceptance of the highest bid of respondent No. 3 stated that in the year 1998-99 the corporation could collect a sum of Rs. 28.45 crores only as collection from octroi and in the budget of 1999-2000 a sum of Rs. 40 crores is anticipated. It was further mentioned that it would be an uphill task to achieve this target because collection from octroi for the period from 1-4-1999 to 20-4-1999 is only Rs. 1.90 crore and if this pace

continues the corporation would collect octroi around Rs. 35 crores only. In the light of these facts, it was suggested that it would be in the interest of the corporation to accept the highest bid. A fax message was sent to the State Government. On receipt of the message the matter was discussed between the Minister for Local Government and the Principal Secretary and it was decided to accord approval to the highest bid of Rs. 46.09 crores given by respondent No. 3. The corporation was informed through a fax message in this regard. Reference here may also be made to the following guidelines issued by the State Government:

"If the highest bid is more than the reserve price, it shall be accepted there and then. In the case of the highest bid being less than the reserve price, the case will be submitted to the competent authority with the full record of the auction for decision."

5. Since the highest bid was less than the reserve price the matter was referred to the State Government who decided to accord approved as discussed earlier. In this view of the matter, we find nothing wrong with the action of the respondents in accepting the highest bid of respondent No. 3. It is true that the petitioner has for the first time offered before us a sum of Rs. 48 crores and one lac but it is after the event and, therefore, such offers cannot be taken note of. If such offers were to be accepted, the auction held by public authorities would never become final which would not be in public interest. Moreover, the Court should be wary of persons like the petitioner who was neither eligible nor participated in the auction and offers made by such persons and that too before this Court are of no significance.

6. In the result, there is no merit in the writ petition and the same stands dismissed with costs. The petitioner will be entitled to withdraw the sum of Rs. 15 lacs deposited by him in this Court.