**(2012) 07 P&H CK 0261**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 3236 of 2012

Suresh Goyal APPELLANT

Vs

Chandigarh Administration and Others RESPONDENT

**Date of Decision :** 16-07-2012

**Acts Referred:**

**Citation :** (2012) 4 PLR 588

**Hon'ble Judges :** G.S. Sandhawalia, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Advocate :** Arun Bansal, for the Appellant; Samriti Dhir, Advocate, for Mr. Sanjay Kaushal, Senior Standing Counsel, for U.T. Administration, for the Respondent

## Judgement

G.S. Sandhawalia, J.

1 The present writ petition has been filed for quashing of the order dated 10.02.2012 (Annexure P-9) whereby the letter of intent for chemist shop No. 4, Block-D, Government Medical College, Sector 32, Chandigarh was cancelled and the earnest money amounting to Rs. 5,50,000/-was forfeited. The additional prayer made in the writ petition is also for revocation of the order of cancellation of letter of intent and allow the petitioner to complete the formalities to operate from the said shop and in the alternative, writ of mandamus directing the respondents to refund the earnest money. The motion Bench, while issuing notice of motion, restricted the relief for the refund of the earnest money of the petitioner or his consideration in the fresh tender. The case of the petitioner is that an advertisement was issued in the newspaper in October, 2011 inviting sealed tenders for licensing out chemist shop No. 4, Block-D, Government Medical College, Sector 32, Chandigarh and tenders were to be submitted on or before 04.11.2011 by 1 p.m. and were to be opened at 3.30 p.m. The petitioner, being fully eligible, had applied along with all requisite documents including the earnest money deposit of Rs. 5,50,000/- by way of fixed deposit receipt for the tender which comprised of two parts, the technical bid and the price bid. The

tenders were opened on 04.11.2011 and there were only 6 tenders for the said shop and only the bid of 2 tenderers were found to be in order. The respondents, instead of opening the price bid out of the result of the technical bid, declared that the ineligible tenderers would also be called for completing certain shortcomings. It was further alleged that the tenderers who were not eligible were called to complete the short-comings and letters dated 17.11.2011 were issued to them wherein affidavit regarding non-blacklisting and copy of service tax number was asked from those applicants. The said applicants also challenged, by way of CWP No. 22547 of 2011, the rejection of their bids on the ground that the pre-condition of service tax number was not of the tenderers but of the Administrator which was the service provider.

2. During the pendency of the abovesaid writ petition, the respondents had opened the price bid and the petitioner was the highest bidder offering lease money @ Rs. 16,31,111/-per month. The writ petition was disposed of on 20.11.2011 with the direction that there was no obligation for the chemist to be registered with the service tax authority and the Committee was right in proposing to have service tax registration after the finalisation of the bids from the successful bidder and a direction was issued that since the non-leasing of the shops was causing great inconvenience to the public, the financial bid of the petitioners therein should be opened and processed in accordance with law. The petitioner had also been represented in the said writ petition by his counsel. The price bids for shop No. 1 were accordingly opened on 20.11.2011 along with price bids of shop No. 4. However, the proceedings were not finalized, though the bidders for shop No. 1 were issued letter of intent by sending special messenger at Samalkha and therefore, the petitioner asked for refund of earnest money on 13.01.2012 which was received by the respondents on 14.01.2012. In spite of the said request, the respondents did not issue the letter of intent to him and instead, cancelled his letter of intent in view of his letter dated 13.01.2012 and forfeited the earnest money. The petitioner, thereafter, on 14.02.2012, represented that he had been visiting the office everyday for issuance of letter of intent and the same had not been issued and instead of issuing the same, it had been cancelled. He, accordingly, prayed for reviving the letter of intent and to complete the necessary formalities or in the alternative, for refund of the earnest money. The petitioner also placed reliance upon his medical condition that he was suffering from strain and taking treatment and has approached this Court against the arbitrary and illegal action of the respondents whereby it again sought to re-tender the said shop and invite tenders for 22.02.2012.

3. The action of the respondents was sought to be justified by filing short reply taking the plea that the letter of intent was issued on 14.01.2012 and the petitioner was informed telephonically at 11 a.m. to collect the letter of intent personally and the petitioner, instead of receiving the letter of intent, had sent e.mail at 1.02 p.m. that he wanted the refund of his earnest money. It was, accordingly, averred that the letter dated 14.01.2012 whereby the letter of intent had been issued had been given to the Postman on 18.01.2012 and was received

 

back with the remarks that the door was locked and the letter was again sent for delivery on 19.01.2012 and was received back with the same remarks. The letter had remained with the postal authorities till 24.01.2012 and was sent on 24.01.2012 and was received back by the authorities undelivered. Accordingly, it was pleaded that as per Clause 5 of the terms and conditions of the tender documents and Clause 8 of the general instructions to the tender had been violated and the respondents had to float fresh tender for 27.02.2012 and the letter of intent was, therefore, offered to S.P. Medicos who was the highest bidder.

4. The file of the official respondents was called for to find out the reason for delay in issuing the letter of intent in favour of the petitioner. From the records, it transpires that the price bid of the 3 firms who had technically qualified were opened on 05.12.2011 and the petitioner had offered a monthly licence fee of Rs. 16,31,111/-which was the highest bidder but permission was sought only to allocate the shop on 22.12.2011. However, the said letter of intent was not issued and thereafter, the price bids of all the 6 tenderers were opened in pursuance of the direction of this Court and one Girish Lalit had offered the bid for a sum of Rs. 22,53,000/-for two shops No. 1 & 4 jointly. Thereafter, on 03.01.2012, it was noted that the highest bid for shop No. 1, Block D, Sector 32, Chandigarh had been issued vide letter dated 29.12.2011 to M/s Shiv Medical Store, Samalkha and he had received the letter on 30.12.2011 and a proposal was made to issue the letter of intent to M/s Goyal Medicos, the petitioner-firm. But the official respondents kept the letter of intent in their custody which was only issued on 14.01.2012 to the petitioner and they eventually received his withdrawal letter dated 13.01.2012 on 16.01.2012 and e.mail at 1.02 p.m. on 14.01.2012. A perusal of the record further shows that the respondents made efforts for telephonically informing the petitioner between 11 to 11.30 a.m. on 14.01.2012 that he should collect the letter of intent to avoid further delay. The letter of intent was then sent by registered post on 14.01.2012, which according to the petitioner, was not received by him but was received back by the respondents undelivered.

5. Thus, from the perusal of the record and the averments, it would be clear that the petitioner was not at fault. His case had been processed and he was the highest bidder having bid for a sum of Rs. 16,31,111/-. It is also apparent from the record that the averments of the petitioner that another chemist who had applied for shop No. 1 had received the letter of intent on 29.12.2011 but the petitioner was not issued letter of intent even though there is a noting dated 03.01.2012 that the letter should be issued to him. In the aforesaid facts and circumstances, the petitioner was justified in asking for the refund as the respondents were calling ineligible candidates and not opening the price bid. Even after the opening of the price bid, the letter of intent was not immediately issued. Instead of processing his request for refund, the letter of forfeiture was issued on 10.02.2012 which is the subject matter of challenge. The petitioner again approached respondent on 13.02.2012 for the revival of the letter of intent to complete the necessary formalities but no action was taken and a fresh tender

was floated and shop in question has been leased out to S.P. Medicos for a sum of Rs. 19,12,000/-per month. Undisputedly, the respondents have not suffered any loss as the shop had been leased out at a higher rate, i.e., for a sum of Rs. 19,12,000/-per month against the offer of Rs. 16,31,111/-per month by the petitioner. There was inaction on the part of the respondents regarding the issuance of the letter of intent and before the letter could be delivered, the petitioner had opted to withdraw his offer. Under such circumstance, the petitioner could not be penalised by forfeiting his earnest money.

6. Further, as per Clause 8 of general instructions, the tenderers had never been asked to keep their bid valid from the date of opening of the price bid. Clause 8 reads thus:

8. That Tenderer should keep his/her offer valid for acceptance for a period of six month from the date of opening the Price Bid. In case, the Tenderer is unable to keep his/her offer open for the above said period, his/her tender shall be treated as invalid.

Unless the offer was kept valid for acceptance for a period of six months from the date of opening of price bid, the tender was to be treated as invalid. In the event of failure on the part of the petitioner to adhere to Clause 8 as and when asked for, the earnest money could be forfeited but in the facts and circumstances, that has not been done.

7. Furthermore, the forfeiture clause is Clause 21 which reads as under:

21. In case of violation of any of terms and conditions as mentioned above, Earnest Money of the tenderer(s) shall be forfeited in full by the Director Principal.

8. This clause could not be invoked for the inaction of the respondents and could only be invoked if the tenderer had violated some other conditions regarding sub-letting and not complying with the other conditions of the terms of the tender. The respondents in case of similarly situated bidders for shop No. 1 had sent a special messenger on 29.12.2011 and got the same accepted on 30.12.2011, but in the case of the petitioner whose bid was highest on the date it was opened, i.e., on 05.12.2011 and inspite of recommendation made on 04.01.2012, no decision was taken as noticed above till 13.01.2012 and letter of intent was issued only on 14.01.2011.

9. Thus, for their own inaction, the respondents cannot act to the prejudice of the petitioner. The action of the respondents in forfeiting the earnest money of Rs. 5,50,000/-is not sustainable and is liable to be quashed and a writ of mandamus is liable to be issued directing the respondents to refund the sum of Rs. 5,50,000/-along with the interest that has accrued on the fixed deposit receipt to the petitioner in the facts and circumstances of the case. We order accordingly. The said amount be refunded within a period of one month from the receipt of a certified copy of this judgment. Writ petition stands disposed of with

the above directions. Records of the case be handed back to the official respondents.

 