

Before Tejinder Singh Dhindsa & Vivek Puri, JJ.

KULDEEP KUMAR YADAV—Petitioner

versus

**ADMINISTRATOR, HARYANA SHEHRI VIKAS
PRADHIKRANA AND ANOTHER—Respondents**

CWP No.3679 of 2021

July 20, 2021

(A) *Constitution of India, 1950 – Art. 226 – Withdrawal of Letter of Intent – Letter of Intent withdrawn even prior to petitioner having deposited 15% of bid amount – No regular letter of allotment issued in favour of petitioner – Letter of Intent as such was only prelude to formal contract/letter of allotment – No concluded contract between parties – No vested right or for that matter any enforceable right came to vest in petitioner by virtue of issuance of Letter of Intent.*

Held that, in the present case the Letter of Intent has been withdrawn even prior to the petitioner having deposited the 15% of the bid amount. No regular letter of allotment has been issued in favour of the petitioner. The Letter of Intent dated 28.09.2020 (Annexure P-2) as such was only a prelude to a formal contract/letter of allotment. There was no concluded contract between the parties. We would have no hesitation in observing that no vested right or for that matter any enforceable right came to vest in the petitioner by virtue of the issuance of Letter of Intent dated 28.09.2020 (Annexure P-2).

(Para 13)

(B) *Constitution of India, 1950 – Art. 226 – Withdrawal of Letter of Intent without reasons – If decision is taken without any reasons to support thereof or at mere ipsi dixit of authority concerned, same would be viewed as arbitrary exercise of power – Bid put forth by petitioner was much lower than reserve price determined by Committee constituted for such purpose – As per E-auction policy and terms and conditions contained reserve price was to remain confidential and was to be used for evaluating highest bid – Thus, ground disclosed for withdrawal of Letter of Intent valid and in consonance with terms and conditions of E-auction policy.*

Held that, as per the E-auction policy (Annexure P-1) and the terms and conditions contained therein the reserve price was to remain

confidential and was to be used for evaluating the highest bid. We find that the ground disclosed for withdrawal of the Letter of Intent, is a valid ground and in consonance with the terms and conditions of the E-auction policy. In spite of the bid of the petitioner being much lower than the reserve price, a Letter of Intent had been issued inadvertently and it is towards correction of such error that the impugned order has been issued. In the course of administrative action, a *bona fide* mistake is always open to be corrected.

(Para 15)

(C) Constitution of India, 1950 – Art. 226 – Withdrawal of Intent – Non-opportunity of hearing and violation of principle of natural justice – In case of disposal of public property, question whether right of person who has put in highest bid in public auction, is to be preferred over right of public in ensuring that valuable public assets were not disposed of except for fair price and in fair and transparent manner, public interest ought to prevail – Withdrawal orders assign cogent reasons – Respondent took such decision to ensure that public property is not sold off in auction below reserve price – Such decision is reflective of transparent and fair decision making process - In absence of any vested right accruing in favour of petitioner by virtue of issuance of Letter of Intent, submission as regards denial of hearing and issuance of prior show cause notice is meritless.

Held that, in a case of disposal of public property, the question whether the right of a person who has put in the highest bid in a public auction, is to be preferred over the right of the public in ensuring that valuable public assets were not disposed of except for a fair price and in a fair and transparent manner, public interest ought to prevail. The impugned orders at Annexures P-3 and P-4 assign cogent reasons for withdrawal of the Letter of Intent. The respondent has taken such decision to ensure that public property is not sold off in an auction below the reserve price. Such decision is reflective of a transparent and fair decision making process. In the absence of any vested right accruing in favour of the petitioner by virtue of issuance of the Letter of Intent, the submission as regards denial of hearing and issuance of a prior show cause notice is found to be without merit.

(Para 16)

Bhuvnesh Lakhera, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA J. (Oral)

(1) Instant writ petition is directed against the memo dated 14.10.2020 (Annexure P-3) issued by the Estate Officer, Haryana Shehri Vikas Pradhikaran, Rewari, in terms of which Letter of Intent for Booth No.41, Sector 3, Part-2 stands withdrawn. Further challenge is to the communication dated 17.11.2020 (Annexure P-4) informing the petitioner as regards the reasons for withdrawal of the Letter of Intent.

(2) Counsel submits that petitioner had participated in an E-auction process that had been initiated by the Haryana Shehri Vikas Pradhikaran (hereinafter referred to as the respondent). Since petitioner was desirous to bid for a commercial booth, the base price of which had been fixed as Rs.19,33,528/-, five per cent of the base price i.e. Rs.96,700/- was made towards Earnest Money Deposit, apart from a service charge of Rs.1,000/- on 13.08.2020. Petitioner submitted a bid of Rs.19,53,528/-. Since petitioner was H-1, the highest bidder, he deposited another 5 % i.e. an amount of Rs.98,652/- on 17.08.2020 as per terms and conditions laid down by the respondent. On 28.09.2020 petitioner was issued a Letter of Intent pertaining to the booth in question calling upon him to deposit 15% of the bid amount within a period of 30 days from the receipt of the letter. It is urged that even prior to the 30 days period having lapsed, an amount of Rs.1,95,352.80/- was credited back in the bank account of the petitioner by the respondent. Thereafter petitioner received memo dated 14.10.2020 (Annexure P-3) withdrawing the Letter of Intent. The petitioner also received letter dated 17.11.2020 (Annexure P-4) disclosing the basis for withdrawing of the Letter of Intent i.e. the bid submitted by the petitioner being lower than the reserve price that had been decided by the Committee constituted for the purpose i.e. Rs.23,00,000/-.

(3) It is against such brief factual backdrop that the instant petition has been filed assailing Annexures P-3 and P-4.

(4) Counsel has argued that the petitioner had met all the terms and conditions as laid down by the respondent for conduct of the E-auction and in spite of there being no mis-representation on his part the Letter of Intent has been withdrawn arbitrarily. Further contended that it was open for the respondent to have cancelled the allotment and to have forfeited whole or part of the amount paid by a bidder only in the event of default or breach of the terms and conditions of the auction as well as those contained in the allotment letter. In the present case,

petitioner has not defaulted in any of the conditions stipulated by the respondent and as such the withdrawal of Letter of Intent cannot sustain. Apart from alleging arbitrariness on the part of the respondent in withdrawing the Letter of Intent it has been argued that there has been a negation of the principles of natural justice inasmuch as no notice or opportunity of hearing had been afforded to the petitioner prior to issuance of the impugned orders/letters dated 14.10.2020 and 17.11.2020 at Annexures P-3 and P-4 respectively.

(5) We have heard counsel at length and have perused the case paper-book.

(6) Pleaded case of the petitioner is that the E-auction process in which he had participated was governed by the e-auction policy issued by the respondent. Copy of the same stand appended as Annexure P-1 alongwith the petition. Certain terms and conditions of such e-auction policy would be relevant to the issue at hand and the same read as under:-

“TERMS AND CONDITIONS FOR E-AUCTION OF
RESIDENTIAL, INSTITUTIONAL AND COMMERCIAL
SITES/BUILDING

A. DEFINITIONS:-

Base Price: The base price of a property put to auction shall be the current collector rate of that area of that financial year fixed by District Collector for that particular property including the factor of FAR. Bids for e-auction shall start from the base price. However, the base price is not necessarily the reserve price of a property.

2 to 5 xxxxx xxxxx xxxxx

6. LOI:- LOI means Letter of Intent which is issued to the successful bidder on making the payment of 10% of the bid amount.

7 xxxxx xxxxx xxxxx

8. Reserve Price:- The reserve price shall be decided by the Committee constituted for the purpose. The reserve price shall remain confidential and shall be used evaluating the highest bid (for accepting or rejecting abid).

B. Eligibility and Conditions for Participation 9 and 10.

xxxxxx xxxxx xxxxx

11. The intending bidder shall be required to deposit an earnest money equivalent to 5% (Five percent) of cost at base price of each property separately (for which the bidder intends to participate in e-auction) before participating in the e-Auction. Thus, anyone intending to bid for more than one property shall be required to deposit the EMD for multiple properties he/she wishes to bid before participating in e-auction. In other words, EMD will have to be deposited separately for each property for which an intending bidder wants to participate.

12 to 14 xxxxx xxxxx xxxxx

15. 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.

16. The bidding will start from the Base Price. The reserve price shall remain confidential and shall be used for evaluating the highest bid by the competent authority.

17. In the event of default or breach or non-compliance of any of the terms and conditions as indicated above or for furnishing any wrong or incorrect information at any point of time of E-auction and afterwards, the Competent authority shall have the right to cancel the bid and forfeit whole amount of EMD deposited by the bidder.”

(7) A conjoint reading of the terms and conditions reproduced hereinabove would clarify that the base price of a property being put to an auction would be the current Collector rate of that area of the relevant financial year. The base price would not necessarily be the reserve price of the property. The reserve price is to be determined by a committee constituted for such purpose. Furthermore, reserve price was to remain confidential and was the relevant parameter for evaluating the highest bid. The bid however, was to start from the base price. The Letter of Intent was to be issued to the successful bidder on making payment of 10% of the bid amount. The respondent reserved the right to accept or reject any bid or withdraw any or all the properties from the e-auction without assigning any reason.

(8) Undoubtedly the petitioner herein was issued a Letter of

Intent dated 28.09.2020 (Annexure P-2) for the booth in question upon deposit of a total of 10% of the bid amount i.e. Rs.1,95,352.80.

(9) The first issue that now arises for consideration before us is as to what rights would possibly flow in favour of the petitioner upon the issuance of such Letter of Intent.

(10) Execution of valid contracts is a prerequisite to creation of any legally binding rights and obligations between the parties. Before entering into a definitive contract, parties often enter into a Letter of Intent so as to agree and specify upfront the key terms and conditions of the proposed contract. It is well settled that an agreement to “**Enter into agreement**” is neither enforceable nor does it confer any rights upon the parties. It is equally well settled that a Letter of Intent normally indicates a party's intention to enter into a contract with the other party in future. A reference in this regard may be made to the decision of the Apex Court in *Dresser Rand S.A. versus Bindal Agro Chem Ltd.*¹.

(11) Perusal of the Letter of Intent dated 28.09.2020 (Annexure P- 2) issued to the petitioner for the booth in question would clearly reveal that same was not a letter of allotment. In Clause 2 of the Letter of Intent it was recited as follows:-

“Your bid for site/plot/building No.41, Sector 3, Urban Estate Rewari has been considered and the (commercial) site/plot/building as detailed below **is intended to be offered to you for allotment on free hold basis on completion of following terms and conditions** within a prescribed time limits failing which this offer shall stand cancelled without any notice and earnest money deposited by you shall be forfeited to the Pradhikaran and you will have no claim for allotment of site/plot/building or damages or interest. The details of site/plot/building are as under.”

(12) It was further stated that the sum of Rs.1,95,352.80/- deposited towards 10% of the bid amount would be adjusted against the price of the site in question. Another 15% of the quoted bid amount was to be deposited in order to make good 25% price of the booth site within a period of 30 days from the date of dispatch of the Letter of Intent. Thereafter remaining 75% amount was to be paid in lump sum without interest within a period of 120 days from the date of dispatch of Letter

¹ AIR (2006) SC 871

of Intent. Condition No.5 in the Letter of Intent was clear and unambiguous that the regular letter of allotment is to be issued to the successful bidder only after 100% payment of the bid amount is made. Condition No.6 crystallized matters further and it was laid down that the property in question shall continue to belong to the respondent until the entire bid money together with interest and any other outstanding dues on account of the sale of that property are fully paid and deed of conveyance in favour of the successful bidder/allotted is executed.

(13) In the present case the Letter of Intent has been withdrawn even prior to the petitioner having deposited the 15% of the bid amount. No regular letter of allotment has been issued in favour of the petitioner. The Letter of Intent dated 28.09.2020 (Annexure P-2) as such was only a prelude to a formal contract/letter of allotment. There was no concluded contract between the parties. We would have no hesitation in observing that no vested right or for that matter any enforceable right came to vest in the petitioner by virtue of the issuance of Letter of Intent dated 28.09.2020 (Annexure P-2).

(14) Needless for us to observe that if a decision is taken without any reasons to support thereof or at the mere *ipsi dixit* of the authority concerned the same would be viewed as an arbitrary exercise of power.

(15) However, in the present case the impugned orders at Annexures P-3 and P-4 contained the reasons/basis for withdrawal of the Letter of Intent. The basis disclosed is that the bid put forth by the petitioner was much lower than the reserve price determined by the Committee constituted for such purpose. As per the E-auction policy (Annexure P-1) and the terms and conditions contained therein the reserve price was to remain confidential and was to be used for evaluating the highest bid. We find that the ground disclosed for withdrawal of the Letter of Intent, is a valid ground and in consonance with the terms and conditions of the E-auction policy. In spite of the bid of the petitioner being much lower than the reserve price, a Letter of Intent had been issued inadvertently and it is towards correction of such error that the impugned order has been issued. In the course of administrative action, a *bona fide* mistake is always open to be corrected.

(16) The submission advanced by counsel as regards opportunity of hearing having not been granted and violation of the principles of natural justice, the same, is not well founded. In a case of disposal of public property, the question whether the right of a person who has put in the highest bid in a public auction, is to be preferred

over the right of the public in ensuring that valuable public assets were not disposed of except for a fair price and in a fair and transparent manner, public interest ought to prevail. The impugned orders at Annexures P-3 and P-4 assign cogent reasons for withdrawal of the Letter of Intent. The respondent has taken such decision to ensure that public property is not sold off in an auction below the reserve price. Such decision is reflective of a transparent and fair decision making process. In the absence of any vested right accruing in favour of the petitioner by virtue of issuance of the Letter of Intent, the submission as regards denial of hearing and issuance of a prior show cause notice is found to be without merit.

(17) In view of the reasons recorded hereinabove, we do not find any basis that would warrant interference.

(18) Writ petition dismissed.

Ritambra Rishi