

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**C. P No. D – 1223 of 2021**

**Before:-**

Mr. Justice Muhammad Junaid  
Ghaffar

Mr. Justice Zulfiqar Ali Sangi

**Date of hearing: 18-11-2021**

**Date of decision: 18-11-2021**

Mr. Jamshed Ahmed Faiz, Advocate for the Petitioner  
Mr. Ali Raza Baloch, Assistant Advocate General a/w Ziadullah  
Leghari, Divisional Forest Officer, Ghotki

**ORDER**

**Muhammad Junaid Ghaffar, J**:- Through this Petition, the Petitioner has sought the following relief:-

- (a) To declare that act of the cancelling the contract of fishing by the respondent is without lawful authority and of no legal effect and may be declared as such when the contract is awarded to the petitioner.
- (b) To direct the respondent to formality of execute agreement pursuant to deposit of amount in the sum of Rs.1058000/- through challan and restrain the respondents from coercive action against the petitioner qua the fishing in the (fish pond) Dandh and provide every protection to the petitioner.
- (c) Any other relief fit in the circumstances.”

2. Learned Counsel for the Petitioner submits that after an advertisement by Inland Forest Department at Hyderabad for open auction, the Petitioner offered highest bid for fishing contract Lot No.32 2021-22 of Sundrani Forest (Dhandh) of Afforestation Range Ghotki which was accepted, and even challan was issued and payment was made; however, thereafter instead of signing of agreement a cancellation order has been issued and further attempt was made to conduct re-auction; hence this Petition. According to him, after the bid was accepted and bid amount was paid, no cancellation proceedings can be initiated. He has prayed for grant of reliefs sought in this Petition.

3. On the other hand, learned Assistant Advocate General has opposed this Petition and submits that immediately on 27-07-2021 higher offer was received, therefore, the Respondents were justified in cancelling

the award letter in favour of the Petitioner, whereas, fresh proceedings for auction are now fixed on 1.12.2021 in which the Petitioner can participate. He has also referred to various conditions of sale and submits that award of contract can be cancelled by the competent authority; hence Petition is liable to be dismissed.

4. We have heard the learned counsel for the petitioner and learned AAG and perused the record.

5. Insofar as the facts to the effect that pursuant to advertisement / notice for auction, the petitioner's highest bid was accepted and even payment of the bid amount was made is concerned, the same does not appear to be in dispute. However, notwithstanding the acceptance of the bid and award of the contract through letter dated 23.7.2021, including payment of the bid amount, instead of signing of agreement, the award of contract has been cancelled through letter dated 27-07-2021, relevant portion thereof reads as under; -

"To

The Divisional Forest Officer  
Afforestation Division Sukkur

Subject:- **SALE OF FISHERY CONTRACT FOR THE YEAR 2021-22**

The sanction of Fishery contract Lot # 32 of 2021-22 Sundrani Forest, of Afforestation Range Ghotki for the year 2021-22 (ending 30-06-2022) issued in favour of Mr. Ghulam Mustafa Mirbahar, Fishery Contractor who offered a bid of Rs.1,058,000/- (Rupees One Million Fifty Eight Thousand) only is hereby cancelled/withdrawn on the grounds that some other intending bidders are offering higher bid for the sale of Fishery contract of Sundrani Forest, in competitive environment through open auction.

You are directed to inform the fishery contractor accordingly and put freshly the Lot # 32 of 2021-22 in open bidding in next date of auction, so that the Government may fetch maximum revenue in open competition."

6. Perusal of the aforesaid letter reflects that the only ground which has been invoked for cancellation of the award of the contract is that a higher bid has been offered by someone else; however, this apparently is not a justifiable cause for taking such an action. If it had been the case that the highest offer of the petitioner was still not accepted; nor the bid amount was received; then perhaps such an action could have been taken

and then no right could have accrued to the Petitioner. However, once the bid has been accepted; not only this, the bid amount has even been deposited in the account of Respondents, then signing of agreement is only a ministerial and administrative job as even without signing of a formal agreement a contract has been entered in to by the parties. There is an offer as well as an acceptance after which an award has been made. Only for the reason that some other person(s) have shown intention to give higher bids, is within itself is not a valid ground for cancellation of the contract already awarded to the highest bidder / Petitioner. It is also an admitted position that for the past many years the said petitioner is in possession of the premises in question as in the past as well he had been awarded the contract being the highest bidder. Learned AAG has also made an attempt to rely upon sale conditions No.3(c)<sup>1</sup> and 13<sup>2</sup>; however, on perusal of the same they do not support the case of the Respondents, inasmuch as, even in both these conditions there is no authority provided for cancellation of a contract already awarded to a successful bidder from whom even bid money has been accepted. It could only be done at the stage prior to acceptance of the bid and not after that. It is well settled that a bid made at an auction is in the nature of an offer which does not mature into a contract till its acceptance. The auctioneer acts as an agent of the seller to accept the bid, a concluded contract comes into being the moment the bid is accepted either by a word of mouth or in any customary method like fall of hammer at public auction<sup>3</sup>.

7. In view of hereinabove facts and circumstances of the case, the Petitioner has made-out a case, and therefore by means of a short order in the earlier part of the day, we had allowed this Petition by setting aside the impugned cancellation letter dated 27.7.2021 with directions to execute agreement pursuant to offer letter dated 23.7.2021, and these are the reasons thereof.

**Judge**

**Judge**

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<sup>1</sup> Execute an agreement in the prescribed form within 15 days of the contract.

<sup>2</sup> Conservator of Forest, Afforestation Circle Sukkur and Divisional Forest Officer Sukkur Afforestation Division reserves the right to accept or reject bid or bids without assigning any reasons or reason for doing so.

<sup>3</sup> *Muhammad Attique v Jami Limited (PLD 2010 SC 993)*

ARBROHI