

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.08.2009

+ W.P.(C) 10948/2009

PRAVEEN BANSAL

..... Petitioner

versus

MCD

..... Respondent

Advocates who appeared in this case:-

For the Petitioner	: Ms. Anusuya Salwan, Advocate
For the Respondent	: Mr. Rahul Srivastava for Ms. Suparna Srivastava, Advocate

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

BADAR DURREZ AHMED, J (oral)

1. With the consent of the parties, we are taking up this petition for disposal.
2. This petition involves the consideration of the Notice for Auction dated 20.01.2009, issued by the Municipal Corporation of Delhi. Various

items were the subject matter of the said auction. We are only concerned with item no.4, which pertains to the contract for display of advertisements (illuminated or non-illuminated), through kiosks of the size 50” X 30”, on street light poles existing on the roads maintained by the MCD in respect of Shahdara (South) Zone. The period of the contract was two years. The minimum reserve price per month was kept at Rs. 3,33,588/- and the earnest money per tender was kept at Rs.2,00,000/-. Condition no. 5 of the said Notice for Auction was as under:-

“Only those highest bidders will be eligible for being declared as successful highest bidders for the contract(s) for which they quote the highest rates, who have cleared all past dues against their previous contracts, if any allotted to them by the Department. In case previous dues are not cleared by such highest bidder, the particular contract(s) shall be offered to the second highest bidder.”

A plain reading of the said condition no.5 makes it clear, that in case the highest bidder has not cleared the previous dues of the MCD, then the contract would be offered to the second highest bidder.

3. Insofar as the said item no.4 is concerned, the highest bidder was M/s Adwel Advertising at Rs. 4,70,000/- per month and the petitioner was the second highest bidder at Rs. 4,66,000/- per month. According to the petitioner, the highest bidder, M/s Adwel Advertising, had not cleared its

dues of the MCD. In order to substantiate this claim, the petitioner filed a copy of a letter dated 28.04.2009, which he received from the Municipal Corporation of Delhi in response to an application under the Right to Information, Act 2005. In paragraph 1 of the said letter, it is clearly indicated by the MCD, that a sum of Rs. 12,72,06,043/- (besides penalty) was due from M/s Adwel Advertising.

4. Thus, according to the petitioner, in view of condition no.5 of the auction notice, the tender ought to have been awarded to the second highest bidder i.e. the petitioner in this case. Unfortunately, this is not what the MCD has done. Instead of awarding the tender to the petitioner, the Municipal Corporation of Delhi has cancelled that auction and invited fresh tenders by virtue of the Notice Inviting Tender dated 21.07.2009. Serial no.2 of the said Notice Inviting Tender is for the very same item which finds mention at item no.4 of the auction notice dated 20.01.2009, to which the petitioner had responded and in respect of which the petitioner was the second highest bidder.

5. We have heard the counsel for the parties and it is absolutely clear that the condition of the auction notice dated 20.1.2009, was that in case the highest bidder for any item had not cleared its dues, then the next highest bidder would be awarded the contract. In this case, it is an admitted position

that M/s Adwel Advertising had not cleared its dues and, therefore, could not be considered for the award of the contract. The result in terms of condition no.5 of the auction notice dated 21.07.2009, would clearly be that the petitioner being the second highest bidder would be eligible for the award of the contract, provided it has cleared all its dues. Therefore, we set aside the Notice Inviting Tender dated 21.07.2009, only insofar as it relates to serial no.2. We direct that the Municipal Corporation of Delhi shall comply with condition no.5 of the auction notice dated 21.07.2009 and award the tender to the second highest bidder namely the petitioner, provided the petitioner has cleared all its dues.

The writ petition is allowed. No costs. Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

AUGUST 19, 2009
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