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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 16.04.2010

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W.P.(C) 2511/2010

PRADEEP VERMA

..... Petitioner

Through : Mr. B.L. Wali, Adv.

versus

DDA

..... Respondent

Through : Ms. Sangeeta Chandra, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Brief facts of the case, which have led to the filing of the present petition, are that on 19.7.2010 the respondent invited sealed tenders for allotment of 31 parking sites at various locations in the city, besides kiosks, toilet blocks, etc. List of parking sites indicated the reserve licence fee against each parking site. The petitioner is stated to have participated in the tendering process and was declared successful and consequent thereto an allotment letter was issued to the petitioner on 6.10.2009. The petitioner is stated to have deposited the necessary amounts with the respondent.
2. Grievance of the petitioner is that the complete area, required for parking 152 cars, has neither been disclosed in the tender documents nor handed over to the petitioner.
3. Learned counsel for the petitioner has drawn the attention of the Court to the list of parking sites for the year 2006 wherein at item no.22, pertaining to the same parking site, the capacity was mentioned as 152. Counsel for the petitioner submits that, in

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Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared
the digital data is as per the physical
file and no page is missing.

W.P.(C) No.2511-2010

Page 1 of 5

response to an application made by the petitioner under Right to Information Act, petitioner has been informed that the present parking site, in question, has been tendered for a capacity of 152 cars and on this basis the reserve price was fixed.

4. Ms. Sangeeta Chandra, Advocate, enters appearance on behalf of the respondent DDA and submits that the present petition would not be maintainable as it raises disputed questions of fact besides the terms of the tenders, which have been duly signed by the petitioner cannot be a subject matter in the present proceedings. Counsel for the respondent DDA has drawn the attention of the court to the communication dated 18.8.2009, a copy of which has been filed at page 22 of the paper book, which bears the signatures of the tenderer, according to which, the tenderer had agreed to the terms of the tender and also that the petitioner had inspected the site. Relevant portion of the communication dated 18.8.2009 reads as under:

“I/We the undersigned being the tenderer as mentioned above, hereby apply to the DDA for allotment of the Parking Site described above in accordance with the terms and conditions of the allotment by tender and under DDA. I/we have read and understood terms & conditions of tender and hereby unequivocally accept the same. I/we shall pay the licence fee and furnish the required documents in the form prescribed in accordance with terms and conditions of tender. I/we have inspected the Parking Site for which tender is being submitted.

I/we shall peacefully vacate the Parking Site as and when called upon by DDA to do so without demur.

Signature of Tenderer
or on behalf of the applicant/tenderer

Dated 18.8.2009
Place Delhi”

5. Counsel for the DDA submits that once the petitioner had inspected the parking site and thereafter participated in the tender, it is not open for him at this stage to ask for variation in the terms of the tender. Counsel for the respondent DDA next submits that for the year 2006, the DDA had mentioned in the list of parking sites, the capacity of the parking site, in question, however, in the present tender this column was deleted. Counsel further submits that the petitioner has participated in the tender

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with open eyes and upon inspecting the parking site. Counsel also submits that relying on the reply to the Right to Information query is misconceived as the same pertains to the tender of the year 2006 and does not pertain to the present tender. Reply to the query raised by the petitioner under the Right to Information dated 3.9.2009 reads as under:

“ DELHI DEVELOPMENT AUTHORITY
LICENCE PROPERTY CELL

No.F1(Misc)RTI/LPC/09/432

Dated:- 3.9.09

From:- Dy. Director (LPC)

To

Sh. Pradeep Verma
54, Triveni Apartments
A-6, Paschim Vihar,
Delhi.

Subj: Information required under RTI Act-2005.

Please refer to your ID No.3653 dt. 10.08.09 and cash receipt No.485745 dt 28.08.09 on the above mentioned subject. In this regard, the parawise reply are as under:-

- | | |
|--------|--|
| 1 to 2 | Copy of Measurement done by JE(JE) on 11.12.2006 and RPD 7, on 23.09.06 is enclosed. |
| 3 | Reserve prize of the parking site as per tender 27.06.06 is Rs.1,30,076/-. |
| 4 | As per the tender opened on 27.06.06 the capacity of site is 152 number of cars on which basis the reserve prize was divided alongwith the area. |

(K.C. Surender)
Dy. Director (LPC)
DDA”

6. Learned counsel for the petitioner, however, relies upon the office notings of the file, according to which, the capacity of the vehicles was not changed between the year 2006 to 2009.
7. I have heard learned counsel for the parties and also perused the various annexures filed along with the writ petition. In this case, pursuant to an advertisement appearing in the newspaper, inviting sealed tender for allotment of 31 parking sites at various locations in the city, the petitioner participated in the tendering process, he was declared successful and thereafter an allotment

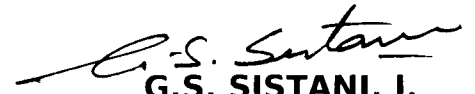


letter was issued to him. Grievance of the petitioner is that the respondent has failed to hand over the complete area for parking 152 cars. Admittedly, the tender document is silent with regard to the capacity of parking. No doubt for the year 2006, for the same parking site, the DDA had indicated the capacity of 152 cars, however, in the list of authorized parking sites for the year 2009 the capacity for the number of cars has not been mentioned. The communication dated 18.8.2009, which has duly been signed by the petitioner, which has reproduced above, clearly shows that he had accepted the terms and conditions of the tender and he had inspected the site, for which the tender was being submitted. At this stage, for the petitioner to raise a dispute that the tender document did not mention the capacity of cars cannot be permitted. Even otherwise, a writ is not a remedy for adjudicating such disputes, especially, when an alternate and equally efficacious remedy is open to the petitioner. Further, it is well settled that a writ in the nature of mandamus would not be maintainable for enforcing the terms and conditions of a contract more so when the issue does not involve any public element neither malafides nor ulterior motives have been attributed to the actions of the DDA. I find that in the list of parking sites for the year 2009 capacity has not been mentioned in the list and the petitioner decided to participate in the tender. In view of this, the Court cannot re-write the terms of contract entered into between the parties. Accordingly, I find no merit in the present petition, the same is dismissed.

8. Counsel for the petitioner, at this stage, submits that a direction be issued to the DDA to refund the money deposited by the petitioner. It will be open to the petitioner to approach the DDA for refund of the amount deposited with the DDA. The DDA will consider the request of the petitioner in the light of the terms and conditions of the tender and refund the amount, if any, as expeditiously as possible.

CM NO.5040/2010 (STAY)

9. Dismissed, in view of the orders passed in the writ petition.


G.S. SISTANI, J.

April 16, 2010
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