

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 28th July, 2015
Judgment delivered on: 11th August, 2015

+ **WP(C) No. 3346/2014**

M/S. NEO URBAN

.... PETITIONER

VERSUS

NEW DELHI MUNICIPAL COUNCIL & ANR RESPONDENTS

Advocates who appeared in this case:

For the Petitioners : Mr Rajesh Gupta, Advocate
For the Respondents : Ms Biji Rajesh with Mr Rajeev Yadav and
Mr Anshuman Bahadur, Advocates.

Mr Pradeep K. Bakshi with Mr Ritvik,
Advocates for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The present writ petition has been filed by the petitioner seeking quashing of the office order dated 11.12.2013 whereby the respondent no. 1 has cancelled the tender for car parking lots surrounding Connaught Place

(Group – II) and parking lots at South-West (Group–III). The petitioner has also sought a writ of mandamus, as a consequence of the petitioner's emerging as the highest bidder, directing the respondent-NDMC to award the tenders for car parking lot to the petitioner and to restrain the respondent-NDMC from awarding the tender to any other person or to respondent no. 2.

2. The case of the petitioner is that the respondent no. 1 had invited tenders for the above parking lots. The last date for submission of the tenders and opening of the technical bids was 29.10.2013. On 06.11.2013, the technical bids were scrutinized and the petitioner was found successful. However, on 28.11.2013, the petitioner's bid was rejected and the final evaluation was fixed for 29.11.2013. On 29.11.2013, the petitioner filed a petition being WP(C) No. 7546/2013 for quashing the decision rejecting the petitioner's bid. Vide order dated 06.12.2013, the writ petition was allowed and the respondent-NDMC was directed to open the petitioner's bid and to evaluate the bid of the petitioner. It is contended that the petitioner was informed on 28.01.2014 that on account of administrative reasons, the tender had been cancelled. As per the petitioner, the petitioner was the highest bidder and the tender had been cancelled to deprive the petitioner of the said tender.

3. As per the petitioner, Delhi Integrated Multi Modern Transit System (DIMTS) the respondent no. 2 has been introduced and is being allotted the

said contract without following the tender process. The petitioner has contended that the petitioner being the highest bidder is entitled to the award of the tender and the respondent no. 1 could not have, without any rhyme or reason, cancelled the tender. It is also contended that the move to award the said tender to respondent No. 2 is arbitrary and without any legal basis and is to deny the petitioner the benefit of the order of this Court allowing the earlier petition filed by the petitioner.

4. The respondent-NDMC has filed its counter affidavit and has contended that the petitioner has no legally enforceable or vested right to the award of tender. It is contended that the NDMC with a view to improving the parking facilities for the general public has come up with a policy governing allotment of parking sites/parking lots in the NDMC area. The policy has been introduced in larger public interest and in view of the multifarious shortcomings and dismal situation prevailing in the allotment of sites to private contractors. As per the NDMC, their past experience has shown that the contractors operating in most of the parking sites in the NDMC area were invariably squeezing as many cars as possible in the parking lots even though that meant encroachment on the adjacent public spaces/land in order to maximize profits at public costs. The contractors were mostly employing conventional methods of parking by purely manual operation which did not ensure safety for women, senior citizens and disabled persons or the vehicles and the contractors were invariably avoiding

payment of licence fee on some pretext or the other thereby resulting in huge arrears of licence fee causing revenue loss besides entangling NDMC in multifarious litigations by means of raising frivolous and baseless disputes. Complaints qua over-charging were received and there was no system of ascertaining the revenue generated by the parking sites. It is contended that a few handful of contractors had virtually monopolized the parking operations thereby throwing the NDMC at the mercy of the contractors with very little, say in operations after the sites were allotted. This resulted in formation of a cartel at the time of bidding thereby affecting fair and free competition. The system existing was found fraught with many shortcomings and a strong need was felt to overhaul the parking operations in the NDMC area. Keeping in view past experience, NDMC decided to modernize the parking operations by employing organizations/companies with credibility on revenue sharing basis through public-private partnership so as to eliminate malpractices.

5. The counter records that it has been decided that parking operations should have modern facilities such as:-

- i. CCTV Cameras/ installing electronic surveillance devices for women and vehicular safety;*
- ii. Boom barriers at entry and exit terminals;*
- iii. Vacancy display boards;*
- iv. Handheld terminals with GPRS & contactless smart card reader/writer for issuing tickets;*

- v. *Centralized database to collect all parking information including revenue generation with advance dissemination of Parking availability etc so as to ensure transparency and arrest congestion in parking*
- vi. *Employment of parking attendants with proper uniform and payment of minimum wages to prevent exploitation*
- vii. *Staff with uniform and proper training in NDMC Area*
- viii. *Information of availability of parking spaces in parking lots through mobile app, variable message signs website etc.*

6. It is contended that the policy to allot parking lots in the NDMC area with modern facilities has been taken in public interest with emphasis on women safety, convenience for disabled and senior citizens, safety of vehicles, accountability, transparency and participation in revenue generation besides having a regime of orderly and systematic parking that is user and safety friendly. It is contended that an expenditure of about Rs. 10 crores was required for modernization of the parking. The NDMC has engaged DIMTS for operation and management of parking lots where DIMTS would share 70% to 80% of parking revenue with NDMC after meeting the threshold of capital and operational expenditure. The contract with DIMTS (PPP) has been structured in a manner where DIMTS will be investing the money to modernize the parking facility and the NDMC shall have a share of 70 to 80 per cent in revenue sharing. DIMTS, respondent No.2, is stated to be a joint venture company with equal equity participation of the Government of NCT of Delhi and DFC foundation, a non-profit

company of IDFC Limited. The Chief Secretary is the Chairman of the company and Directors are Secretary (Finance) etc. It is also contended that post selection of DIMTS, the NDMC till June, 2014 has handed over 94 parking sites to DIMTS and only 4 parking sites remained to be handed over. DIMTS has already modernized some of the parking lots and work of modernization is in progress. DIMTS has introduced an IT based parking solution instead of the manual ticketing system and for the roadside parking handheld machines are being operated and all barriers and CCTV cameras are being installed at the various parking lots and modern techniques and facilities have been provided and are being provided to operate and manage the parking systems.

7. We have heard counsel for the parties. Clause 13 of Memorandum of Information for Allotment of Parking lot in NDMC reads as under:-

“13. NDMC reserves the right to allot/cancel the Tenders invited for the allotment of any/all parking lots as it may consider fit and proper and to reject any/all the tenders/application without assigning any reason”.

8. Clause 13 of the NIT makes it clear that the NDMC has reserved the right to allot/cancel the tenders invited for allotment of any/all parking lots as it may deem fit and to reject any or all tenders without assigning any reason. It is a settled proposition of law that no bidder has a vested right to

be allotted a particular contract. Even the highest bidder successful in the bid may not be awarded the contract for valid reasons.

9. In the present case, NDMC has formulated a policy governing allotment of parking sites/parking lots. The policy has been introduced in larger public interest and to overcome the shortcomings and the dismal situation prevailing in respect of the parking lots. Various reasons as enumerated herein above have been provided by NDMC for coming out with the policy. The policy has been introduced in greater public interest for modernizing and eliminating malpractices in the parking areas. The parking lots are sought to be made modern with modern facilities and for ensuring safety and convenience of women, senior citizens, disabled persons and their vehicles.

10. The policy has been introduced to cut down on loss suffered by NDMC on account of litigation with various contractors and to also eliminate the possibility of overcharging by the contractors. Parking lots are sought to be made modern with greater convenience for the public. It is not a case where the NDMC is adopting a pick and choose method and has cancelled the tender only of the subject parking lots. As per the counter affidavit, the NDMC has formulated a policy for all the parking lots/sites in the NDMC area. As per the NDMC, 94 parking sites have already been handed over to DIMTS and only 4 parking sites remained to be handed over.

11. We find that the policy which has been formulated has been made applicable across the board for all parking lots/sites of NDMC area. The policy has been introduced keeping the convenience and safety of the public in mind. We do not find that the policy had been adopted only for the purposes of defeating the rights/claims of the petitioner. The policy has been introduced in larger public interest. The NDMC has changed the parking policy and has sought to upgrade and modernize the parking lots. Since the petitioner does not have a vested right for allotment of a parking lot even though the petitioner may be the highest bidder. On account of change of the policy we find no reason to interfere with the decision taken by the respondent in not awarding the contract and in cancelling the tender and thereby allotting the sites to DIMTS, a joint venture company of the Delhi Government for the purposes of introducing modern and better facilities of parking. The respondent in our view appears to have acted fairly and in public interest.

12. We find no merit in the petition. Accordingly, the writ petition is dismissed with no orders as to costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

August 11, 2015
Rs/sk