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

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Judgment delivered on: 10.11.2017

+ WP(C) 9984/2017

SUNIL KUMAR AND ORS.

..... Petitioners

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Rakesh Tikku, Sr. Advocate with
Mr. Jai Sahai Endlaw and Mr.
Sandeep Kumar, Advocates.

For the Respondent : Ms. Mini Pushkarna, Standing Counsel NDMC
with Ms. Vasundhara Nayyar and Ms.
Anushruti, Advocates and Mr. Ashwini Mathur,
JLO, RP Cell, NDMC.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE C. HARI SHANKAR

S. RAVINDRA BHAT, J. (OPEN COURT)

CM No.40720/2017 (for exemption)

Exemption is allowed subject to all just exceptions.

WP(C) 9984/2017 & CM No.40719/2017 (for interim relief)

1. The petitioners are aggrieved by cancellation of the bids issued on 24.08.2017 for allotment of 59 parking sites by North Delhi Municipal Corporation. The rejection of 32 bidders (out of 38) was the subject matter of an earlier writ petition being (*Shobit Sharma vs.*

North Delhi Municipal Corporation) (WP(C) 9421/2017), decided on 27.10.2017 (hereinafter referred to as '*Shobit Sharma*').

2. During the course of hearing, in *Shobit Sharma*, the Court had recorded the submission of the Corporation that the entire NIT was cancelled on 24.08.2017, which would lead to fresh tender for the 59 parking sites.

3. Mr. Rakesh Tiku, learned senior counsel for the petitioners urges that the cancellation of the bids, given that they were scrutinized and the present petitioners found to be H-1, is unreasonable and arbitrary. It is also urged, as a matter of record, that this Court was satisfied in *Shobit Sharma (supra)* that the reasons had to be communicated to the other 31 bidders, whose tenders were not accepted. Learned senior counsel contended that if, as a matter of fact, the reasons for not accepting such bids are a matter of record, there is no rationale for the subsequent cancellation, at least, under these circumstances, since the petitioners were adjudged to be H-1 and, therefore, had every reasonable expectation of the award of the contract. Learned senior counsel for the petitioners relied upon a judgment in the case of *State of Punjab and Ors. vs. Banddeep Singh & Ors.*: (2016) 1 SCC 724, to say that such cancellation can also be the subject matter of this writ petition and, if found arbitrary, be interfered with.

4. The NDMC was represented on advance notice. Learned counsel has produced the relevant file containing the reasons for

cancellation of the entire tender. The relevant noting first took into account the fact that only 7 bidders were found eligible and had participated in the auction held on 18.10.2017. After listing the said 59 parking sites and the relative amounts offered by H-1 tenderer, the NDMC noticed the following:-

- (i) though the 59 parking sites were included in the auction, only one single bid was received in respect of as many as 21 sites;
- (ii) no bid was received in respect of 27 sites;
- (iii) there was only a margin increase in the bids *vis-a-vis* MRP of 32 sites to the tune of 1.07 lakhs.
- (iv) For the sites where two or three bidders had participated (i.e. 12 sites), the difference between the total bids *vis-a-vis* MRP was Rs.60,000/-.

5. Further facts are as follows:-

“The e-auction of NIT No.ADC/RP Cell/NDMC/2017/D-642 dt:24/08/2017 for allotment of 59 parking sites North DMC was held on 18.10.2017. Only 7 bidders participated in said e-auction (out of 38) as the screening committee constituted to securitize the documents, recommended 7 bidders as per tender conditions who bided for only 32 sites (out of 59). Out of 32 bided sites 21 sites were bided by single bidder and 8 sites bided by only two bidders and 3 sites bided by 3 bidders for each site. The details of Parking sites with MRP (in Rs.), H-1 amount, number of bidders participating and name of the H-1 bidder are mentioned in the table at page No.25/N and 26/N.

It is clear from the abovesaid table, the difference between MRP and H-I amount of the bids are marginal/insignificant. Whereas, the previous tenders e-auctions held on 13/10/2016, 01/12/2016 and 18/01/2017, (details shown in the table at page No.26/N), the difference between MRP and H-I bidding amounts were considerable and huge. It is also fact that there has been very poor response in the present tender that out of 32 bidders, 21 sites were bid by single bidders and 8 sites bid by two bidders and 3 sites bid by 3 bidders for each site. It is also relevant to mention here that if the present parking sites are allotted for four years (2+2) and five years (3+2) at this marginal price increase in MRP at 32 sites to 7 bidders, there will be considerable revenue loss as comparison to the previous auctions as explained above. As per the Terms & Conditions of the present tenders, the clause 7(a) and 7(c) are very clear on acceptance/cancellation of the tender/bids. The Clause 7(a) and 7(c) of the Terms & Conditions of the Parking are as under:-

- (a) The officer delegated to allow the tenderers/bidders to participate in tender/e-auction may cancel the tender/bid without assigning any reason. The validity of the offer after acceptance and deposit of requisite amount i.e, Security Deposit and one month advance MLF, shall be 90 days and the same cannot be withdrawn by the tenderer/bidder before the expiry of validity period.*
- (b) “The offer/bid made by the tenderer shall be subject to acceptance by the Competent Authority, North DMC or any other officer authorized/delegated by him. Earnest money in respect of unsuccessful tenderer will be refunded/returned without any interest, unless the same is forfeited for some other reasons.”*

In view of the above mentioned facts/figures, as proposed at page 27/N and same is vetted by Law Department at page 28/N,

it is proposed that LoI may not be issued in the present tendering process and tender/e-auction may be cancelled in the interest of the Corporation.

Addl. Commissioner (Engg./Parking)

Commissioner”

6. The proposal, as is evident from the subsequent events, was gone into and the bid was cancelled.

7. The petitioners' reliance on *Punjab State vs. Bandeep Singh & Ors.*, in the opinion of the Court, is not substantial. There the bidders' tenders were accepted; they were even permitted to deposit the earnest money together with 25% of the auction bids. The allegation with respect to the cartelization, which apparently formed the basis for cancellation, as a matter of record, was not substantiated. The Court noticed the state of the record and upheld the order of the High Court in those circumstances.

8. In the present case, this Court is of the opinion that the rationale, which persuaded the respondents to block 32 tenders of other bidders, is something which cannot be gone into at this stage. In fact, the present petitioners have benefited from it and have even urged that being H-1, on that count, their bids ought to be accepted.

9. In these circumstances, the first argument that there was no rationale for exclusion of 32 tenders and that, as a consequence, their

bids ought to be accepted, is irrational besides being plainly contradictory. As far as the question of any right or expectation is concerned, undoubtedly, the H-1 bidder, in these circumstances, can expect to be ordinarily awarded the contract. At the same time, the concerned public agency would be acting well within its right if there are valid or legitimate reasons to cancel the bid or not accept the highest bidder. It is a matter of settled jurisprudence that the public agency is not invariably bound to accept the highest (or lowest) bid, as the case may be, if there are good or valid reasons for that course of action. In the present case, the rationale adduced in the file by the Corporation is persuasive and legitimate, in our opinion.

10. In the circumstances, it cannot be held that – as the petitioners are persuading this Court to hold – that the cancellation of the entire tender was arbitrary.

11. For the foregoing reasons, the writ petition has to fail and is dismissed.

S. RAVINDRA BHAT
(JUDGE)

C. HARI SHANKAR
(JUDGE)

November 10, 2017/st