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

% *Date of Judgment: 05th February, 2018*

+ W.P.(C) 10637/2016

INDERBIR SINGH Petitioner

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

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mini Pushkarna, Standing Counsel for
NDMC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India. By this petition, petitioner seeks following reliefs :

- (i) issue an appropriate writ, order or direction to the respondent to immediately issue LOIs/Offer letters to the petitioner in respect of parking sites at (i) Karampura Commercial Complex, (ii) in front of Milan Cinema and MCD Shops, (iii) Covered Drain, Ramesh Nagar and (iv) Parking site near Manglam Plaza, Rohini, Plot No.7 (Vardhaman Plaza) being at serial Nos.7, 8, 9 and 17 of NIT Parking List issued by the respondent for

allotment of parking sites for which the petitioner stood the highest bidder.

- (ii) issue an appropriate writ, order or direction to the respondent not to cancel and /or re-auction the parking sites at (i) Karampura Commercial Complex, (ii) in front of Milan Cinema and MCD Shops, (iii) Covered Drain, Ramesh Nagar and (iv) Parking site near Manglam Plaza, Rohini, Plot No.7 (Vardhaman Plaza) for which the petitioner has been declared as the highest bidder by the respondent.
 - (iii) Award costs in favour of the petitioner and against the respondent.
2. On 02.09.2016 the respondent invited e-tenders from parking contractors/firms/companies/individuals for e-allotment for e-auction to allot various parking site on payment of advance monthly licence fee basis. On 13.10.2016, the petitioner made an offer with respect to four sites at different monthly licence fee of Rs.1,72,600/- in respect of parking site at Karkardooma Commercial complex; Rs.22,000/- per month in front of Milan Cinema and MCD shops; Rs.3,54,300/- per month in respect of parking site at covered drain, Ramesh Nagar and Rs.10,00300/- per month in respect of parking site near Manglam Plaza, Rohini and the petitioner was declared the highest bidder.
3. Vide communication dated 17.10.2016, the petitioner was directed to produce updated bank statement/passbook upto 07.10.2016 latest by 18.10.2016 by 3.00pm positively.

4. It is the case of the petitioner that he appeared on 18.10.2016 and produced the relevant documents and was assured that an allotment letter would be issued to him. However, since the allotment letter was not issued, he addressed letters dated 19.10.2016 and 03.11.2016 and requested the respondent to issue the allotment letter or refund the earnest money. Having received no reply to the letters, the petitioner approached this Court by filing the present writ petition.
5. Notice was issued in the matter and on the next date of hearing, interim protection was granted to the petitioner which was subsequently vacated as the counsel for the petitioner was not present (Mr. Wali submits that he was indisposed).
6. Counter affidavit has been filed. As per the counter affidavit, on being suspicious that the petitioner was a Benami tenderer, he was called upon to furnish his bank statement. Upon examining the bank statement on 18.10.2016, the petitioner was confronted with the extremely low balance in the bank accounts. The petitioner admitted that the bids made by him were Benami. The petitioner made an endorsement on one of the Summary of Account, *"I undertake that the bids submitted by me on 13.10.2016 are Benami and as per TNC, I am not eligible, I hereby withdraw my bids"*.
7. Counsel for the respondents contends that as the petitioner had admitted that the bids submitted by him were Benami and accordingly the earnest money is liable to be forfeited. Reliance is placed on clause 2 B (ii) (b) of the terms and condition of the tender and licence agreement.

8. Learned counsel for the petitioner submits that he has not received any communication informing him that the earnest money has been forfeited in fact no reply has been received pursuant to any of his communications. He further submits that as per the counter affidavit, there is no reference of the earnest money being forfeited nor copy of such reply has been annexed with the counter affidavit.
9. At this stage, counsel for the respondents on instructions submits that in fact a cancellation letter has been issued and in case the petitioner has not received the same another copy shall be furnished to him through counsel within three days.
10. We have heard the learned counsel for the parties. Although, we find it rather strange that the respondent has not bothered to reply to communications dated 19.10.2016 and 03.11.2016 addressed by the petitioner to them. We find it equally strange that the tender was floated in the year 2016 and till year 2018, neither the MCD has chosen to respond to the letters of a citizen nor issued any communication to the petitioner informing him that earnest money has been forfeited.
11. Learned counsel for the respondent has relied upon para 2 B (ii) (b) of the terms and conditions of the tender and licence agreement for allotment of North Delhi Municipal Corporation Authorised Parking sites on monthly licence fee basis, which reads as under:

“No Benami tender has been submitted by him/them in the name of his/their dependent family members, employees, officials, servants or associated person, firm, company and in case it is found at any subsequent stage that any such

Benami tender has been submitted or contract is allotted on the basis of such Benami tender, the tender/agreement shall be liable to be rescinded, the contractor blacklisted and the security forfeited”.

12. At this stage, counsel for the petitioner submits that since his earnest money has been forfeited, the petitioner does not press this petition but would assail the said decision raising all grounds including the grounds urged in this writ petition. Accordingly, let a copy of the cancellation letter be furnished to the petitioner within three days through.
13. It would be open for the petitioner if so advised to assail the said letter in accordance with law raising all grounds available to him including the grounds urged in this writ petition.
14. This petition is dismissed as not pressed in above terms.

CM No.41703/2016

In view of the order passed in this writ petition, the present application is rendered infructuous.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 05, 2018

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