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

Date of Decision :- 19.12.2018

+ **W.P.(C) 5472/2017 & CM APPL. 22990/2017**

SHRI PRASHANT SHARMA Petitioner
Through Mr.Sukumar Susmobman, with
Mr.Sachin Gupta, Ms.Neeta Bahl, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION
AND ANR Respondents
Through Ms.Mini Pushkarna, S.C. with
Mr.Swagat Bhuyan, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India seeking *inter alia* quashing of an order dated 26.04.2017 vide which, on account of non-deposit of the requisite fee/relevant documents within seven days as per the terms and conditions of the Tender and License Agreement, not only was his LOI cancelled but even the earnest money of Rs.1,34,000/- deposited by him was forfeited. The petitioner also impugns an order dated 25.05.2017 passed by the respondents rejecting his representation dated 27.04.2017, whereby the petitioner had requested the respondent to recall its aforesaid decision dated 26.04.2017.

2. Learned counsel for the petitioner submits that, on 18.01.2017, the petitioner had participated in an e-auction held by the respondent for allotment of the parking site situated at Hindu Rao Hospital. However, despite being declared as the highest successful bidder, he did not receive any Letter of Intent (LOI) and instead, as per the information displayed on the respondents' website on 24.01.2017, his bid stood rejected. He submits that the petitioner repeatedly approached the office of the respondent and it was only on his personal visit to the respondents' office on 03.03.2017 that he learnt about the issuance of a LOI in his favour. The petitioner instead of depositing the amount in terms of the Tender and License Agreement, submitted a representation dated 09.03.2017 to the respondents seeking extension of time to deposit the three months' Licence Fees as security in accordance with the terms and conditions of the tender.

3. The petitioner did not pay the aforesaid security deposit within the stipulated period of one week even from 03.03.2017, the date on which he as per his own admission learnt about the LOI issued in his favour. He, however, deposited the requisite amount by way of a Fixed Deposit of Rs.8,16,000/- only on 21.03.2017, but the respondents cancelled his LOI by passing the impugned order dated 26.04.2017, on the ground that he had failed to abide by the terms and conditions of the Tender and License Agreement. The petitioner thereafter made a representation dated 27.04.2017 seeking acceptance of his LOI and allotment of the parking site to him, but the same was rejected on 25.05.2017. Learned counsel for the petitioner contends that once the petitioner had deposited the requisite amount on

21.03.2017 and the said amount was accepted, the respondent could not have subsequently on 26.04.2017 cancelled his LOI on the ground that he had failed to abide by the terms and conditions of the Tender and License Agreement.

4. On the other hand, Ms. Mini Pushkarna, learned Standing Counsel for the respondents while opposing the petition states that the petitioner having admittedly not deposited the requisite amount within one week, as required under the Tender and License Agreement, the respondents cannot be faulted for forfeiting the earnest money of Rs.1,34,000/- deposited by him and for not awarding the tender to him. She submits that the respondents, who have to award a large number of similar tenders on a regular basis, have been applying a uniform policy and in every case where there is a default in compliance with the tender conditions, the LOIs have been cancelled and the earnest money has been forfeited. Accordingly, the earnest money amounting to Rs.1,34,000/- deposited by the petitioner was rightly forfeited, and the amount of Rs.8,16,000/- subsequently deposited by the petitioner on 21.03.2017 by way of a Fixed Deposit, has already been duly returned to him. She, therefore, prays that the petition be dismissed.

5. I have heard the learned counsel for the parties and perused the record. However, before dealing with the rival contentions of the parties, it may be useful to refer to paragraphs 4(a) and (b) the Tender and License Agreement, which are reproduced hereinbelow for the sake of ready reference:-

“4. Earnest Money/Security Deposit/Bank Guarantee/Monthly License Fee:

(a) There shall be a minimum monthly reserve license fee fixed for each parking site which shall not be less than Rs.10,000/- in any case. There will be separate minimum reserve price for each of the parking site as per their size/economic potential etc. and same will be mentioned against the site in the Notice Inviting Tender/Bid. The tenderer shall have to deposit an amount equal to one month Minimum Reserve Monthly License Fee (RMLF) for the site as Earnest Money Deposit (EMD), by way of Bank Draft/RTGS/Net banking/NEFT along with tender form/registration. The Security Deposit to be paid by the successful bidder shall be the three Months quoted MLF. EMD amount already deposited will be adjusted in Security Deposit. **This Security Deposit should be remitted in the form of Demand Draft within one week from the issuance of Letter of Intent (LOI)** in favour of Commissioner, North DMC, payable at New Delhi and **non remittance of Demand draft against Security Deposit will be liable to cancel the offer.** This will be kept as Security Deposit in case of H1 and not adjustable towards MLF which will be refunded to him after successful completion of contract agreement period, without any interest on it. Bids submitted without the earnest money will be rejected summarily. The EMD will be forfeited in case the tenderer/bidder does not accept the offer of allotment from the NORTH DMC/RP Cell within 07 days (Seven days) of issue of Letter of Intent (LOI). Apart from Security Deposit, the successful bidder shall pay one month Advance Monthly License Fee and subsequently, he will start paying Advance Monthly License Fee by 10th day of preceding month.

(b) A Bank Guarantee or Fixed Deposit in the name of the Commissioner, North DMC by a Scheduled/Nationalized Bank of the amount equivalent to the 3 (Three) times of the quoted Monthly License Fee (MLF) valid for the entire period of the license agreement plus six months thereafter has to be made within 7 days of issue of offer letter.”

6. A perusal of paragraphs 4(a) and (b) of the Tender and License Agreement clearly shows that as a pre-condition for the acceptance of a bidder's LOI by the respondent, it is imperative for the concerned bidder to pay a security deposit equivalent to three months' Licence

Fees, pay one month's advance License Fee and produce a Bank Guarantee or Fixed Deposit equivalent to three months' License Fee, within one week from the date of the issuance of a LOI in his/her favour. Furthermore, the failure to make the requisite security deposit renders the offer liable to be cancelled at the cost of forfeiting the earnest money already deposited by the bidder. Thus, it is clear that the question of whether or not the petitioner's offer has been wrongly cancelled and his earnest money wrongly forfeited, depends solely on whether he has duly complied with the Tender and License Agreement and made the requisite payments in terms of paragraphs 4(a) and (b) thereof.

7. The record shows that in the present case, even though as per the LOI and the Tender and License Agreement, the security amount and Bank Guarantee/Fixed Deposit had to be deposited within one week from the date of issuance of the LOI on 23.02.2017, the petitioner admittedly deposited only the Fixed Deposit and that too on 21.03.2017 after a delay of almost three weeks. The non-deposit of the security amount apart, the Fixed Deposit submitted by the petitioner on 21.03.2017 was after a delay of 10 days even from 03.03.2017, the date on which the petitioner as per his own admission learnt about the LOI issued in his favour. It is, thus, evident that the petitioner has failed to abide by the terms and conditions of the Tender and License Agreement and, therefore, the action of the respondent in forfeiting his earnest money or cancelling LOI initially awarded to him cannot be said to be arbitrary or illegal in any manner.

8. In my opinion, once the respondent has duly notified its policy

for the allocation of parking sites, it is incumbent on it to adhere to the same without discriminating between the applicants and anyone who fails to abide the terms of said policy, has to be judged by the same yardstick. In cancelling the petitioner's offer and forfeiting his earnest money, the respondent has acted squarely within the terms of the Tender and License Agreement and, thus, cannot be faulted for not making any digressions from its policy, when it is solely the petitioner who is at fault for not submitting the Fixed Deposit in a timely manner and for further not making the security deposit at all. In fact, the petitioner who has been regularly applying to the respondent for the allocation of parking sites is well-aware of its policy, and cannot now contend that even if he had made some deposits belatedly, his LOI should not have been cancelled by the respondent.

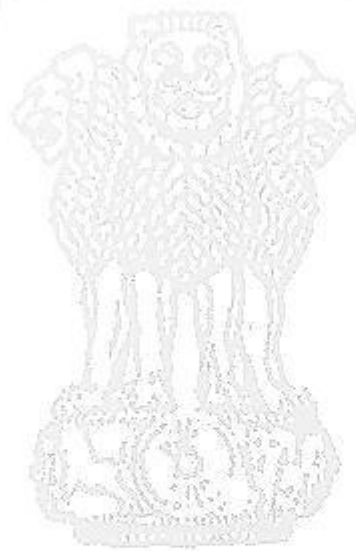
9. Even otherwise, there is nothing to show that the Fixed Deposit submitted by the petitioner was ever accepted by the respondent, so as to waive the express requirements of the Tender and License Agreement. In fact, the Fixed Deposit submitted by the petitioner, which had a maturity date of 10.09.2021, was never encashed by the respondent and was duly returned to him. Furthermore, the respondent's consistent stand before this Court has been that the petitioner having defaulted in making timely payments of the Fixed Deposit and Security Deposit, he is not entitled to the allocation of a parking site. In these circumstances, the petitioner's only contention before this Court that the respondent cannot cancel his LOI and forfeit his earnest money after accepting the Fixed Deposit submitted by him belatedly, is wholly untenable.

10. For the aforementioned reasons, the petition being meritless is dismissed alongwith pending application with no order as to costs.

(REKHA PALLI)
JUDGE

DECEMBER 19, 2018

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