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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ O.M.P. (COMM) 303/2016  
LAKHVINDER SINGH ..... Petitioner  
Through: Mr.Arun Batta, Adv.  
versus  
DR. BABA SAHEB AMBEDKAR HOSPITAL ..... Respondent  
Through: Ms.Warisha Farasat & Ms.Jahnavi  
Sindhu, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

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**05.02.2019**

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 17.06.2015 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the "Agreement for Running Vehicle Parking Services Through Outsource Basis" dated 30.05.2012 executed between the parties.
2. The said Agreement was executed pursuant to the Notice Inviting Tender issued by the respondent on 13.03.2012. The parking space to be allotted was in front of casualty near Gate no. 1 and in front of Administrative Block near Dharamshala building in the respondent hospital premises.
3. Clause 14 of the Tender Document warned the bidders that the official vehicles of the government and the employees of the hospital having valid I-Cards / Parking Stickers will be allowed free parking.
4. Clause 19 obliged the bidders to ensure that all security measures were to be installed, including maintaining a proper record of vehicles like time, date of entry and exit, Registration number of the vehicles.

5. The Notice Inviting Tender also provided for a pre tender briefing to be held on 26.03.2012 for clarification of any doubt about the tender.
6. The petitioner being the successful bidder, a provisional offer letter dated 29.05.2012 was issued in its favour and finally an Agreement dated 30.05.2012 was executed between the parties.
7. The period of Contract was one year with effect from 24.05.2012 to 23.05.2013 at a monthly licence fee of Rs. 2,78,888/-.
8. Some of the terms of the Agreement that are relevant for adjudication of submission made by the learned counsel for the petitioner are reproduced hereinunder:-

*“8. that the official vehicles of Government and the employees of the hospital having valid I Card / Parking Sticker will be allowed free parking.*

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- 12. that the licensor shall not be responsible for the safety of the licensee or any other material or articles belonging to the licensee and also shall not be liable for any charge or injury to the property of the licensee lying at any time, on/,upon or around the said licensed parking area from any cause whatsoever. Licensee will be responsible for the safety and security of all the vehicles parked in parking area, even in case of any theft/mis-happening / damages to any vehicle parked in the parking area and also the consequences thereof. It will be the sole responsibility of the licensee for paying compensation/damage, if any claim arises. The licensee will also be liable to pay damages/compensation if any claim arises, from the commuters / users of the parking. In any case Dr. B.S.A. Hospital in no way shall be answerable or liable in any manner in this regard.*
- 13. that all security measures like frisking of vehicles, checking of vehicles underneath with inverted mirrors &*

*its boots with the help of hand handled metal detectors for each & every time the vehicle enters the parking area, will be the sole responsibility of the licensee. Proper record of vehicles like time, date of entry & exit, Registration number of vehicle has to be maintained by the licensee. All the directions issued by the MS regarding security concerns shall be strictly complied with by the Licensee Register with record of vehicles like time, date of entry & exit with registration number are to be maintained by the contractor and kept in safe custody for any further reference.*

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26. *that the licensee shall demarcate the free parking space for the staff of Dr.B.S.A. Hospital in consultation with the M.S or the person authorized by him. The space shall be close to the entrance of the parking area as far as as technically feasible.”*

9. The petitioner claiming that most of the parking space was being taken over by the persons claiming themselves to be the employees of the respondent, made representations dated 11.07.2012, 19.07.2012, 18.08.2012, 29.08.2012 and 17.09.2012 to the respondent, *inter alia* requesting the respondent for supplying a list of persons / employees to whom Parking Stickers had been issued by the respondent.

10. The respondent by its letter dated 20.09.2012 forwarded a list of its employees to whom Parking Stickers had been issued. It may be noted that in the said list there were certain entries that were left blank. The petitioner claims that there were a total of 517 stickers that were claimed to have been issued in the said list, out of which, 211 were cars, 129 two-wheelers and the remaining were missing entries.

11. The petitioner further asserts that apart from the employees having Parking Stickers, the petitioner was obliged to give free parking to the employees of the respondent having valid I Cards. However, no details of such employees were ever provided to the petitioner, because of which, on a daily basis there used to be chaos in the parking area and almost 90% of the Administrative Block and 30-35% on the casualty was taken over by free parking. The petitioner, therefore, raised a claim before the Arbitrator for the damages suffered by the petitioner on this issue.

12. The learned counsel for the petitioner has painstakingly taken me through number of questions that the Arbitrator had put to the parties and his comments on each of the answers. He submits that the Arbitrator has clearly failed to appreciate that it was the obligation of the respondent to fully disclose the details of the employees to whom Parking Stickers had been issued or who were carrying valid I-Cards at the time of the issuance of the Tender. The respondent having failed to disclose such material details, could not have benefited out of the tender.

13. The learned counsel for the petitioner further submits that the petitioner had inspected the parking area and even while he was operating the same, many of the vehicles did not have the Parking Stickers and people only claimed themselves to be employees of the respondent hospital, thereby, leaving the petitioner with little remedy to scrutinize such claim. He further submits that whenever the petitioner tried to stop the vehicles or tow-away the same, the officers of the respondent hospital used to pressurize the petitioner to allow such parking for free.

14. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. The Tender Document itself,

stipulates for the petitioner to allow free parking only to employees of the respondent hospital carrying valid I-Cards / Parking Stickers. The petitioner made no endeavour at the tender stage to obtain particulars of the number of vehicles that are expected to avail this benefit. Even at the time of execution of the Agreement, the petitioner made no such endeavour. It is not the case of the petitioner that the parking space allowed to the petitioner under the Contract has been reduced or was not the same as was offered in the tender. The petitioner having not submitted its bid with due diligence cannot turn around and make a complain of the same. Even otherwise, the Arbitrator has duly discussed the evidence led by the parties in form of the answers to the questionnaire submitted to him and thereafter reached a conclusion that there is no proof of such loss having been caused to the petitioner for the reason of provision of free parking.

15. As far as the grievance regarding unauthorized people parking their vehicles, Clause 13 of the Tender Document as well the Contract Agreement obliges the petitioner to take all measures for security, including making a register of the time, date of entry and exit, Registration Number of the vehicles, etc. The petitioner has not produced any such material before the Arbitrator. In absence of any evidence led in this regard and even otherwise the petitioner having bid for the Agreement with open eyes, the petitioner was not entitled to maintain such a claim.

16. Reliance of the counsel for the petitioner on the Judgment of the Supreme Court in *Manju Gupta & Anr. v. Delhi Development Authority*, 103 (2003) DLT 776 can also not be accepted. In the said case the auction notice had indicated the area of the site of the stall to be ad measuring 9.88 sq mtrs. Later the basement area was sought to be included to justify the

same. The Court held that mere providing that the auction was being conducted on “as is where is basis”, does not extend to include even large discrepancies in the area.

17. In the present case, as noted above, the respondent made no representation on the number of cars that would be availing the facility of free parking, therefore, it was for the petitioner to make its own enquiry and assessment before submitting his bid or entering into the Agreement. Having not done so, the claim of the petitioner has been rightly rejected.

18. The petitioner is accordingly dismissed, with no order as to cost.

**NAVIN CHAWLA, J**

**FEBRUARY 05, 2019/rv**