

\$~3.

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

+ **W.P.(C) 3164/2020**

LAKHVINDER SINGH

..... Petitioner

Through: Mr. Kirti Uppal, Senior Advocate
with Mr. Aman Bhalla, Advocate.

versus

SOUTH DEHI MUNICIPAL CORPORATION Respondent

Through: Ms. Richa Dhawan, Advocate.

CORAM

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER
18.05.2020

%

CM APPL. 11011/2020

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 11012/2020

3. Exemption allowed, subject to all just exceptions.
4. The Court Fees be filed within two weeks.
5. The application stands disposed of.

W.P.(C) 3164/2020 & CM APPL. 11010/2020

6. The petitioner has preferred the present writ petition to seek the

following reliefs:

“a. issue a writ of certiorari or any other appropriate writ thereby setting aside/quashing the disqualification letter dated 12.05.2020 issued by the Respondent

b. issue a writ of mandamus or any other appropriate writ directing the Respondent to cancel/set aside the E-Auction process held on 13.05.2020 pursuant to Notice Inviting Tender – No. AC/RP Cell/SDMC/2020/D-1176 – “E-Auction for Regular Allotment of 06 Multilevel Underground Authorised Parking Sites falling under the Jurisdiction of South Delhi Municipal Corporation” and declare the same as null and void

c. issue a writ of mandamus or any other appropriate writ directing the Respondent to fix a fresh date for E-Auction with respect to Notice Inviting Tender – No. AC/RP Cell/SDMC/2020/D-1176 – “E-Auction for Regular Allotment of 06 Multilevel Underground Authorised Parking Sites falling under the Jurisdiction of South Delhi Municipal Corporation”.

d. issue a writ of mandamus or any other appropriate writ directing the respondent to accept the physical technical bid documents submitted by the petitioner and allow the petitioner to participate in fresh E auction with respect to Notice Inviting Tender – No. AC/RP Cell/SDMC/2020/D- 1176 – “E-Auction for Regular Allotment of 06 Multilevel Underground Authorised Parking Sites falling under the Jurisdiction of South Delhi Municipal Corporation”. ”

7. The background facts are that the respondent/ SDMC issued a Notice Inviting Tender (NIT) bearing No. AC/RP Cell/SDMC/2020/D-1176 for regular allotment of six multi-level authorised parking space falling under its jurisdiction on 16.03.2020. The original date for submission of tender was between 16.03.2020 to 08.04.2020. However, the date for submission of tender and deposit of Earnest Money Deposit (EMD) was extended successively in view of the Covid-19 Pandemic. Eventually, the last date

and time for submission of bids and deposit of EMD was extended upto 27.04.2020, 05:00 p.m. The bids were to be submitted in two parts, i.e. Technical Bid and the Financial Bid. The petitioner also applied in response to the said tender. He received intimation on 12.05.2020 that his bid has been rejected on technical grounds. The said communication dated 12.05.2020 issued by the respondent reads as follows:

“Dear LAKHVINDER SINGH,

Email Alert for Disqualification from an Auction. The details are as follows:

Auction Approved by : AS01RPCL

Auction No. : AC/RPC/SDMC/2020/D-1176

Auction details/description : Kakaji Multilevel parking

Auction Sub Item : PARKING SITE SL -3

Auction Sequence No. : NA

Reason for Disqualification : TECHNICALLY NOT QUALIFIED

Location / Region : Remunerative Project Cell

*Kindly visit the website
<https://www.tenderwizard.com/SOUTHDMC> for more
details.”* (emphasis supplied)

8. On the same day, it appears that the petitioner sent out a communication to the respondent, wherein the petitioner, inter alia, stated that since his regular staff – which undertakes the task of uploading tender documents was not available due to restrictions of movement during lockdown, he had engaged services of inexperienced persons to upload the set of documents and the documents, as uploaded, were not correct documents. He also claimed that he had submitted the correct documents

with the respondent, and stated that his bid be processed. In this communication, he also sought to disclose the rates offered by him in response to the tender in respect of the six parking sites. He did not receive any response to the said communication. Consequently, the petitioner has preferred the present writ petition.

9. The submission of Mr. Uppal – learned senior counsel for the petitioner is that the conduct of the respondent is *mala fide* in as much, as, though the technical bids were opened on 28.04.2020, he was communicated rejection of his technical bid only on 12.05.2020, i.e. the day prior to opening of the financial bid on 13.05.2020. He submits that the respondents could have communicated the rejection of the technical bid earlier, so that the petitioner could have availed of his right to approach this Court in good time, i.e. before the opening of the financial bids. He further submits that subsequently the petitioner was permitted to make up the deficiency in documents, and the respondents accepted the said documents, when so submitted. In this light, the respondent should have opened the financial bid of the petitioner and considered the same.

10. Mr. Uppal seeks to place reliance on an order passed in the case of the same petitioner, namely, W.P.(C.) 12351/2019 decided on 28.11.2019. This Court held that the deficiency in the petitioner's bid in that particular case, namely non-submission of the signed copy of the site plan of the parking area, was not sufficient to reject the technical bid of the petitioner since he had submitted a sworn affidavit that he had inspected the site at the time of making of his bid. He submits that similar is the position in the present case as well. Mr. Uppal has also submitted that in case he is allowed to

participate in the tender process, he is willing to make good the loss that the respondent may suffer on account of delay in the award of the tender.

11. On the other hand, Ms. Richa Dhawan – learned counsel for the SDMC, who appears on advance notice, firstly points out that offer letters have already been issued to the successful bidders, and three months advance payments have been received from the successful bidders. She further submits that, admittedly, the petitioner had not uploaded the correct documents and, therefore, the respondent was justified in rejecting the technical bid of the petitioner. She further points out that in its communication dated 12.05.2020, the respondent had informed the petitioner with regard to the rejection of his technical bid, and had also mentioned the website where he could visit and look at the further details about the reasons for rejection. She submits that the petitioner has not placed on record the specific reasons for rejection of his technical bid.

12. She further submits that once the bidding process is over, it is not open to the petitioner to seek to interfere with the same by offering higher rates. She also submits that the present case is different from the case of the petitioner in W.P.(C.) No.12351/2019 – relied upon by Mr. Uppal.

13. In relation to the same tender process, we had occasion to deal with W.P.(C.) No. 3108/2020 – which was dismissed on 12.05.2020. We were informed in those proceedings that presently the said parking sites were being managed by DIMTS on cost plus basis, and that contract was coming to end on 31.05.2020. The respondent/ SDMC was having to incur huge expenditure under the said contract with DIMTS, and the SDMC could ill-afford to continue with the said arrangement, particularly when it is faced

with huge expenditure due to the Covid-19 Pandemic. In that case as well, the technical bid of the petitioner had been rejected due to non-submission of certain documents.

14. Admittedly, the petitioner did not submit and upload the requisite documents, which he was required to, along with his bid in response to the tender in question. It is pointed out that the petitioner submitted stale documents which had been submitted in relation to an earlier tender process dated 20.02.2020. That being the position, the rejection of the petitioner's technical bid cannot be faulted with.

15. The submission of Mr. Uppal that the said rejection was communicated only on 12.05.2020, is neither here nor there. If the technical bid was correctly rejected – as we find it was, it makes no difference whether the said rejection was communicated to the petitioner soon after 28.04.2020, or on 12.05.2020. What is relevant is that the rejection was communicated before the opening of the Financial Bids.

16. The claim made by the petitioner that he was permitted to re-submit the correct documents even after 28.04.2020, cannot be accepted. There is no communication placed on record – as issued by the SDMC, permitting the petitioner to re-submit the documents. Merely because the petitioner may have voluntarily submitted some documents after 28.04.2020, or sent the communication dated 12.05.2020 which was received by the respondent, it does not follow that the respondents extended the time for the petitioner, or generally, for acceptance of documents, or that the respondent was obliged to re-examine the technical bid of the petitioner – which had already been rejected on 28.04.2020.

17. Reliance placed by Mr. Uppal on the order passed in W.P.(C.) No. 12351/2019 dated 28.11.2019 is not apposite in the facts of the present case. That was the case where the petitioner had not submitted the signed copy of the site plan, but he had sworn the affidavit which served the same purpose, namely, to certify that he had visited the site and examined the same before submitting his bid. That was necessary to ensure that the bidder does not renege from its offer subsequently, on the ground that he had not seen the site. It is in those circumstances that the petitioner's bid was directed to be examined, despite his not submitting the signed copy of the site plan. The same cannot be said of the lapse of the petitioner in the present case. Admittedly, the relevant and correct documents were not submitted but old and stale documents, which had been submitted along with bid in respect of tender dated 20.02.2020, were submitted. We, therefore, reject the reliance placed by the petitioner on the order dated 28.11.2019 passed in W.P.(C.) No. 12351/2019.

18. Merely because the petitioners may have offered higher rates is no reason to recall the tender process. If the petitioner was not found to be technically qualified, his financial bid could not have been looked into at all. The competition is between only those bidders, who are found to be technically qualified. Such like submissions – if accepted, would hit at the very foundation of the bidding process, and would make them susceptible every now and then. The same would erode the sanctity of the bidding process itself, and make it uncertain for the bidders to participate in any bidding process. This would seriously undermine public interest.

19. We, therefore, do not find any merit in this petition and reject the

same leaving the parties to bear their own costs.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 18, 2020

B.S. Rohella