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

+ W.P.(C) 3168/2020

RAJENDRA SINGH THROUGH HIS SPA

ABHAY KUMAR SINGH

..... Petitioner

Through: Mr. S.U. Abbas, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms. Richa Dhawan, Advocate.

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HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER
18.05.2020

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CM APPL. 11021/2020

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

CM APPL. 11022/2020

4. Exemption allowed, subject to all just exceptions.
5. The application stands disposed of.

W.P.(C) 3168/2020 & CM APPL. 11020/2020

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

“a) Issue a Writ of Mandamus or any other appropriate writ directing the Respondent to cancel the entire process of Tender Bid for Notice Inviting E-Auction dated 16.03.2020 bearing No. AC/RPCell/SDMC/2020/D-1176;

b) Award costs of petition in favour of Petitioner.”

7. The background facts are that the respondent/SDMC issued a Notice Inviting *E-Auction dated 16.03.2020 bearing No.AC/RPCell/SDMC/2020/D-1176* for allotment of six multi-level underground authorised parking sites falling under its jurisdiction on 16.03.2020. The original date for submission of tender & deposit of Earnest Money Deposit (EMD) 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 for submission of bids and deposit of EMD was 27.04.2020 up to 05:00 p.m. The petitioner also applied in response to the said tender. On 12.05.2020, the bid of the petitioner was rejected on technical grounds. According to the petitioner, he wrote four e-mails dated 27.04.2020, 29.04.2020, 08.05.2020 and 12.05.2020 to the respondent requesting the respondent to extend the date for submission of uploading of documents online, but no

correspondence was received by the petitioner from the side of the respondent, hence he preferred the present writ petition.

8. It is submitted by the counsel for the petitioner that the conduct of the respondent is malafide in as much as though the technical bids were opened on 28.04.2020, he was never communicated about the rejection of his technical bid despite 4 e-mails sent by him to the respondent. He further submits that the respondent could have communicated rejection of his technical bid earlier so that the petitioner could have availed of such right for approaching this court in good time i.e. before opening of the financial bid. He further submits that had the respondent replied to his emails and informed him about the deficiency in his documents, he could have made the deficiency good.

9. 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 requisite 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 it seems that the petitioner has not read the information posted on the said website. She further submitted that the tender documents, as submitted online by the bidder, have not been duly signed & stamped, as required as per the tender condition.

The Schedule-D (regarding information pertaining to Turnover for calculating Financial Capacity.) have been submitted for the years 2015-16, 2016-17 only (which has not been verified by Chartered Accountant) whereas as per NIT terms & conditions, the firm is required to submit turnover for the years 2016-17, 2017-18 & 2018-19, duly certified by a Chartered Accountant. She further submitted that as per the experience certificate submitted by the bidder, the bidder has not completed 2 years of experience in parking as per the experience certificate submitted by the bidder. Her further submission is that the firm has also not applied/submitted the No Dues Certificate with the tender application, therefore, in these circumstances, the petitioner was not technically eligible for participating in the e-bidding process. She further submits that the bidding process is over and it is not for the petitioner to seek interference with the same for his shortcomings and not fulfilling the tender conditions.

10. 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 and W.P.(C.) No. 3164/2020 - which has also been dismissed by us. We are informed that the said parking sites were being managed by DIMTS at cost plus basis and that the 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 expenditure due to the Covid-19 Pandemic.

11. In abovementioned cases as well, the technical bid of the petitioners had been rejected due to non-submission of certain documents. Admittedly, the petitioner did not submit and upload the requisite documents, which he

was required to submit along with the tender in question. That being the position, the rejection of the petitioner's technical bid cannot be faulted with.

12. The submission of counsel for the petitioner that the rejection was not communicated to the petitioner on 12.05.2020 is of no avail. If the technical bid was correctly rejected - as we find it was, because the petitioner did not fulfilled the tender condition within the prescribed period of time and had failed to submit the requisite documents, it is irrelevant that the rejection was communicated on 12.05.2020 and not earlier. The same was communicated before the opening of the financial bids.

13. Merely because the petitioner sent a communication dated 12.05.2020 and the said communication was received by the respondent, it does not follow that the respondent extended the time for the petitioner, or that the respondent was obliged to re-examine the technical bid of the petitioner which had already been rejected on 28.04.2020.

14. If the petitioner was not technically fit, 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 the whole exercise of bidding and would not be in public interest.

15. 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
Sumant