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

Date of Decision : 29.01.2020

+ **W.P.(C) 3415/2015**

M/S SUNIL YADAV

..... Petitioner

Through: Mr.Gaurav Bharadwaj &
Ms.Sushmita Tanwar, Advs.

versus

THE DIRECTORATE OF FILMS FESTIVALS & ANR

..... Respondents

Through: Mr.Kavindra Gill, Adv. with
Mr.Ganesh, DFF.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the Letters Dated 16.09.2013 and 21.04.2014 issued by the respondent no. 1.
2. By the letter dated 16.09.2013, the respondent no. 1 had called upon the petitioner to extend the validity of the Earnest Money Deposit (EMD) made by the petitioner pursuant to the Tender Document dated 10.01.2013 inviting tender for hiring of Caterers/Canteen at Siri Fort Auditorium Complex, failing which it had been decided that the petitioner will not participate in any tender invited by the respondent no. 1 in future.
3. By the subsequent communication dated 21.04.2014, the respondent no. 1 informed the petitioner that as it has not revalidated

the EMD and the documents submitted by the petitioner have been found to be fake, it has been decided to forfeit the EMD and not allow the petitioner to participate in any tender invited by the respondent no. 1 in future.

4. As far as the question of validation of the EMD is concerned, the learned counsel for the petitioner submits that in terms of the Tender Document, the validity of the bid was to be minimum of 90 days. The bid was submitted by the petitioner on 28.01.2013 and therefore, expired on 27.04.2013. The petitioner by its letter dated 03.05.2013 informed the respondent no. 1 that it was no longer interested in the said tender and therefore, requested the respondent no. 1 to return the EMD. The respondent no. 1, however, by the Impugned Communication dated 16.09.2013 called upon the petitioner to extend the validity of the EMD failing which, the same shall be forfeited and the petitioner be debarred from participating in future tenders of the respondent no. 1. The learned counsel for the petitioner submits that the respondent no. 1 cannot force the petitioner to extend the validity period of its bid/EMD.

5. On the other hand, the learned counsel for the respondent no. 1 submits that extension of the EMD was sought as the documents submitted by the petitioner and the other bidders had been sent for validation from the concerned issuing department. As this process was taking time, the petitioner and the other bidders were requested to extend the validity of the bid. Two other bidders duly extended the validity, while the petitioner refused to do so. He submits that it was

on this ground that the Committee of respondent no. 1 decided to forfeit the EMD as also debar the petitioner from future tenders.

6. I have considered the submissions made by the learned counsels for the parties. Admittedly, there is no provision in the Tender Document which would allow the respondent no. 1 to force the petitioner to extend the validity of its bid. A bid being in the nature of an offer, the same can be withdrawn by the bidder in terms of the Tender Document. The validity of the bid being only 90 days, the petitioner was entitled to withdraw the same after the expiry of 90 days and before its acceptance by the respondent no. 1. Therefore, no fault can be found with the petitioner for not extending the bid validity/EMD beyond the period of 90 days of its submission and on this ground, the forfeiture of the EMD and the order debarring the petitioner from future tenders of respondent no. 1, cannot be sustained.

7. However, the Impugned Order dated 21.04.2014 further records that the decision to debar the petitioner and forfeit the EMD has also been taken as the documents filed by the petitioner were found to be fake. The learned counsel for the petitioner submits that the respondents had alleged that the petitioner had also participated in the tender in the year 2012 and the documents submitted alongwith the said tender were found to be fake. The petitioner alleges that the petitioner had not participated in the said tender and therefore, had requested the respondent no. 1 to carry out an investigation into the same. The respondent no. 1, however, by the communication dated

15.02.2013 rejected the claim of the petitioner and called upon the petitioner to show cause why action be not taken against it.

8. In the counter affidavit dated 26.08.2019 filed by the respondent no. 1, the respondent no. 1 alleges that as far as the 2012 tender was concerned, though the documents filed by the petitioner were found to be fake, the Committee had decided to take a lenient view and return the EMD submitted by the petitioner for the said tender. Even for the present tender, on enquiry it was revealed that the Chartered Accountant who is claimed to have audited the balance sheet and other financial data of the petitioner, is not registered with the Institute of Chartered Accountants of India. It was clear that the petitioner had submitted fake financial data for the said tender as well. It is further submitted that the petitioner had submitted other documents as well, which were also found to be fake.

9. To a pointed query of this Court as to whether the Show Cause Notice was issued to the petitioner on such allegations regarding the 2013 tender, the learned counsel for the respondent no. 1 submits that the same were orally informed to the petitioner and the petitioner apologized for the same. This is vehemently denied by the learned counsel for the petitioner.

10. Be that as it may, even the Impugned Order dated 21.04.2014 does not indicate that any Show Cause Notice was issued to the petitioner before the action of forfeiture of the EMD and debarment of the petitioner from the future tenders was taken by the respondent no. 1 on the basis of false documents being submitted by the petitioner

with respect to the 2013 tender. As far as the 2012 tender is concerned, the respondent no. 1 itself admits that the issue stood closed with the acceptance of the apology of the petitioner.

11. In light of the above, the Impugned Letter dated 21.04.2014 cannot be sustained as it is in violation of the Principles of Natural Justice and is accordingly set aside. However, it is made clear that the respondent no. 1 shall be at liberty to initiate fresh action against the petitioner, if so advised, in accordance with law. If no such action is taken by the respondent no. 1 against the petitioner within a period of six weeks, the EMD of the petitioner shall be returned to the petitioner.

12. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

JANUARY 29, 2020/rv