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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3160/2024, CM APPL. 12995/2024 & CM APPL. 12996/2024

M/S SK ASSOCIATES THROUGH ITS PROPRIETOR SANJEEV KUMAR Petitioner

Through: Mr. Kirti Uppal, Senior Advocate with Mr. Rohan Sharma, Ms. Indira, Ms. Riya Gulati and Mr. Aditya, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Mr. Manu Chaturvedi, Standing Counsel for MCD with Ms. Devika Singh Roy Chowdhury, Advocate with Mr. Bhaskar Seal, Assistant Commissioner, MCD

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+ W.P.(C) 3161/2024, CM APPL. 13001/2024 & CM APPL. 13002/2024

M/S SK ASSOCIATES THROUGH ITS PROPRIETOR SANJEEV KUMAR Petitioner

Through: Mr. Kirti Uppal, Senior Advocate with Mr. Rohan Sharma, Ms. Indira, Ms. Riya Gulati and Mr. Aditya, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Mr. Manu Chaturvedi, Standing Counsel for MCD with Ms. Devika Singh Roy Chowdhury, Advocate with Mr. Bhaskar Seal, Assistant Commissioner, MCD

Reserved on: 13th March, 2024

Date of Decision: 02nd April, 2024

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CORAM:
HON'BLE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petitions have been filed under Article 226 of the Constitution of India by the Petitioner being aggrieved by the action of Respondent in issuing a new Request for Proposal ('RFP'/ 'impugned NIT') dated 10th February, 2024¹ for selection of an agency for operation, management and collection of parking charges using FASTag and digital payments for separate categories of vehicles in respect of parking sites under its jurisdiction.
2. The Petitioner seeks quashing of the impugned NIT to the extent that the same includes the two parking sites allotted to the Petitioner, which are being operated by him in pursuance to award of an earlier Tender dated 14th August 2020. The Petitioner contended that he was allotted the said parking sites for a fixed period of three years [under a written Agreement] and while he has successfully completed two years, the impugned NIT has been issued by the Respondent which has the effect of denying the Petitioner's operations in the third year of license.
3. The Petitioner contended that he presently holds valid and subsisting Agreement(s) for parking site adjoining Red Fox Hotel, Mayur Vihar, Phase-III ('Red Fox Hotel') and the parking site at Sashi Garden, Near Post Office, Patparganj Road, Mayur Vihar ('Sashi Garden') [herein both

¹ Followed by a Corrigendum dated 16th February, 2024



referred as ‘subject parking sites’]

4. It is a matter of record that the Respondent floated a Tender for parking site at Red Fox Hotel on 14th August, 2020. The Petitioner was declared as the successful bidder and Provisional Offer Letter dated 12th January, 2021 was issued in favour of the Petitioner. The parties executed a formal Agreement in pursuance to the award of contract. Upon completion of formalities, the Respondent issued an Allotment Letter dated 12th March, 2021. The possession of the parking site was handed over to the Petitioner on 30th November, 2021. The parties are ad-idem that the license for operating the subject parking site commenced from 30th November, 2021 and initial two years expired on 30th November, 2023. The third year of the license period would expire on 30th November, 2024 (‘third year’). This parking site is subject matter of W.P.(C) 3160/2024.

5. Similarly, with respect to parking site at Sashi Garden, the Respondent floated a Tender on 14th August, 2020. The Provisional Offer Letter is dated 12th February, 2021 and the Letter of Allotment is dated 02nd March, 2021. The parties executed a formal Agreement in pursuance to the award of contract. The possession of this parking site was handed over to the Petitioner on 10th January, 2022. The parties agreed that the license for operating the subject parking site commenced from 10th January, 2022 and initial two years expired on 10th January, 2024. The third year of the license period would expire on 10th January, 2025 (‘third year’). This parking site is subject matter of W.P.(C) 3161/2024.

6. The Petitioner is aggrieved as the impugned NIT has been issued by the Respondent for the subject parking sites during the subsistence of the



Agreement(s) entered between the parties. The Petitioner stated that the Respondent has wrongfully withheld extending the license for the third year of operations in violation of Clause 4 of the Agreement(s). The Petitioner contended that he remains ready and willing to implement the new parking policy changes proposed by the Respondent for the subject parking sites in accordance with Clause 30 of the Agreement.

Arguments of the respective parties

7. Learned senior counsel for the Petitioner stated that the subject parking sites were allotted to the Petitioner for a period of three years as is evident from Clause 4 of the Agreement. He stated that the Petitioner has operated the subject parking sites for a period of two years and is entitled to operate for the third year. He stated that the Agreement contemplates operation of the subject parking sites by the Petitioner even beyond initial three years. He stated that admittedly the starting date of license is to be reckoned from the date of issuance of the possession letter for each parking sites.

7.1. He stated that any departure or variation to Clause 4 made by the Respondent in the contents of Letters of Allotment for each parking sites cannot affect the rights of the Petitioner under the written Agreement to operate the subject parking sites for three years. He relied upon the judgment of the Supreme Court in ***Suresh Kumar Wadhwa v. State of Madhya Pradesh and Others***² and judgment of Coordinate Bench of this Court in ***Cjdarcl Logistics Ltd. v. Rites Ltd. and Others***³.

7.2. He stated that the Respondent's action of floating the impugned NIT

² (2017) 16 SCC 757 at Paras 25, 26, 35

³ (2022) SCC OnLine DEL 1665 at Paras 43, 44, 45 and 46



for the subject parking sites allotted *vide* earlier Tender dated 14th August 2020, before the expiry of the third year is arbitrary and violative of Clause 4 of the Agreement.

7.3. He stated that the Petitioner remains ready and willing to comply with all the terms and conditions proposed by Respondent in the impugned NIT for migrating to the new policy of collection of parking charges using FASTag and other digital payments, for separate categories of vehicles, for the operation of the subject parking sites in the third year. He stated that all necessary changes for implementing the new methodology will be carried out at the parking sites. He stated that this eventuality is contemplated in Clause 30 of the Agreement. He stated that the Petitioner is willing to pay enhanced Monthly License Fees ('MLF') for the third year as specified by the Respondent. He stated that, however, the Respondent inexplicably is not availing the said option under the Agreement.

7.4. He stated that in similar facts, the Respondent has permitted another existing contractor⁴ to migrate his parking site to new parking policy and his parking site is not included in the impugned NIT.

7.5. He stated that the Petitioner undertakes, if the Petitioner is permitted to operate the parking sites for the third year, the Petitioner will withdraw his claims for remission of MLF for the first two years of license.

8. In reply, learned Standing Counsel for Respondent stated that on a conjoint reading of the Provisional Offer Letter(s) and the Letter(s) of Allotment issued for each subject parking sites, it is plainly evident that the initial period of the license was for two years only and the extension, if any,

⁴ W.P.(C) No. 1364/2024 titled as Jagtar Singh v. MCD dated 31st January, 2024.



for the third year was at the discretion of the Respondent. He stated that in conformity with the said understanding, the Petitioner applied for extension of license for the third year, which has been declined by the Respondent *vide* letter dated 14th February, 2024 due to the policy decision of migrating the operation of subject parking sites into smart parking sites with FASTag facility. He stated that the Respondent denies that the initial period of Agreement awarded to the Petitioner was for three years as alleged. He stated that Clause 4 of the Agreement also intends the license period as 2+1 and the third year is at the pleasure of the Respondent.

8.1. He stated that the Petitioner herein having accepted the Letter(s) of Allotment for each parking sites without any demur, which limits the license to a period of two years is estopped from contending to the contrary.

8.2. He relied upon the judgments of the Coordinate Bench of this Court in *Sanjay Yadav v. North Delhi Municipal Corporation*⁵ and *Sudhakar Tiwari v. Delhi Development Authority*⁶ for contending that the Petitioner herein is bound by the variation of Clause 4 of the Agreement(s) through their respective Letter(s) of allotment. He also raised an objection to the maintainability of the present petition in a commercial contract.

8.3. He stated that the Respondent is willing to permit the Petitioner to continue operating the parking sites until the new tender is awarded to the successful bidder in pursuance to impugned NIT and for this purpose relies upon the limited offer of extension made *vide* letter dated 14th February, 2024.

8.4. He stated that the license has expired by efflux of time after

⁵ 2023 SCC OnLine Del 2445 at Para Nos. 23 to 28



completion of two years and, therefore, the Respondent has rightly included the subject parking sites in the impugned NIT. He stated that the Agreement executed in favour of the Petitioner has not been terminated and the Petitioner presently continues to operate the subject parking sites [though two years have expired] at the pleasure of the Respondent. He stated, however, since the Agreement is a license in favour of the Petitioner, the same is revocable at the pleasure of the Respondent, though admittedly no such revocation has been recorded in the files or communicated to the Petitioner. He relied upon Section 62(c) of the Easements Act, 1882 ('Easements Act') to contend that the license had expired by efflux of time after two years. He stated that there is no subsisting agreement between the parties.

8.5. He stated, in addition, that the Petitioner herein has been writing letters to the Respondent, right from inception and raising disputes with respect to the extent of physical area of the subject parking sites handed over for operation and wrongfully seeking remission of license fees. He stated that the Respondent disputes the veracity of the said claims of the Petitioner and stated that issuing of the said letters by the Petitioner is contrary to the terms of the Agreement. He, however, fairly stated that no such ground or plea has been furnished in the letter dated 14th February, 2024 declining extension for the third year.

8.6. He stated that lastly the reliance placed by the Petitioner on the extension granted to Mr. Jagtar Singh in W.P.(C) 1364/2024 is untenable as the physical characteristics of the said parking site is distinct and hence,

⁶ (2016) SCC OnLine DEL 667 at Paras 21 to 24



facts are distinguishable.

Analysis and findings

9. We have heard the learned counsel for the parties and perused the record.

10. The facts arising for consideration have been set out at paras 4 and 5 hereinabove.

11. The issue arising for consideration in these petitions is with respect to the right of the Petitioner to continue operation of the subject parking sites for the third year as per the contractual period agreed under the earlier Tender dated 14th August, 2020 and the consequent Agreement(s) executed between the parties.

12. Since the terms and conditions of the (i) Tender dated 14th August, 2020; (ii) the Agreement(s); (iii) the contents of Provisional Offer Letter(s); and (iv) the contents of Allotment Letter(s) for both the subject parking sites are identical, for the sake of convenience, reference in this judgment is being made to the documents with respect to parking site at Sashi Garden, which is subject matter of W.P.(C) 3161/2024.

13. The Tender dated 14th August, 2020 contained specific terms and conditions with respect to the intended period of the contract, wherein Clauses 4 and 8(i) read as under:

“4. Duration of Contract:

The duration of the contract/license will be for the duration of three years with effect from the date of handing over the site to the licensee. After the expiry of two years, the monthly license fee will be enhanced by 05% (five percent for the next year, subject to the satisfactory completion of period of first two years of contract. The parking site allowed operating beyond three years period (in any circumstances) then the contractor has to pay monthly license fee by enhancing 05% of last/ current MLF.



The duration of the parking site will not be enhanced on the ground that the said parking site was closed/cancelled due to some administrative reasons or any other reasons.

The duration of contract period i.e. three years will be considered from the date of possession only. The period will not be enhanced on the ground that the parking site was operational from any other date or the same was un-operational for some period during the tenure.

However, if the licensee continues to operate the site after expiry of period and without any permission from EDMC, be shall be liable to pay to the corporation the misuse/damages charges @ double the monthly license fee for such period of unauthorized occupation. The firm/individual will also be blacklisted for future tender.”

.....

“8. Payment of security deposit and Monthly license fee (MLF):

*(i) **As the tenure of each parking site is only for three years, successful bidder shall have to deposit six months advance license fee along with applicable taxes from date of possession. The license fee has to be paid in the form of Demand Draft Only (Cheque will not be entertained) in the name of the “Commissioner, EDMC”, Before start of second half year, the licensee will have to deposit license fee for the next six months period, fifteen days before the end of first half year. Before completion of two years of the license the licensee will have to deposit half yearly license fee with 05% enhancement in the MLF fifteen days & before the end of second year for continuation of the license for the next half year period.** All these payments should be made from the corresponding bank account of the concerned firm/individual/company. The successful contractor has to deposit all applicable taxes (present as well as future levied taxes on parking activity along with the quoted monthly license fee of respective parking site.”*

(Emphasis supplied)

14. On a plain reading of the aforesaid Clause 8(i) with Clause 4, it is clearly evident that the tenure of the awarded contract was agreed for a period of three years.

15. Clause 4 of the Tender stipulates that for the first two years of the license the monthly license fee will remain constant and thereafter, for the third year of the license, the Respondent will be entitled to receive enhanced MLF; however, right was reserved to the Respondent to review the



satisfactory completion of the terms of the Agreement for the initial period of two years. Therefore, if the Respondent was satisfied with the performance of the Petitioner in the first two years of operations, the extension of the license for the third year upon payment of enhanced license fees was specifically agreed as per the Agreement.

16. Admittedly, the aforesaid terms and conditions of the Tender dated 14th August, 2020, are also [verbatim] terms and conditions of the Agreement executed between the parties; as contemplated in Clause 10(a) of the said Tender.

17. The Petitioner upon being declared as the successful bidder was issued a Provisional Allotment Letter dated 12th February, 2021, wherein the relevant portion relied upon by the Respondent reads as under:

“

.....

4. Period: *The contract is for temporary allotment of the above parking site for **02 years** from the date of handing over. After the expiry of two years, the monthly licence fee will be enhanced by 05% (five percent) for the next year, subject to the satisfactory completion of period of two years of contract. The parking site allowed operating **beyond three years** period (in any circumstances) then the contractor has to pay monthly license fee by enhancing 05% of last/current MLF as provided in clause No.4 of the NIT No. D-98 dated 14.08.2020.”*

(Emphasis supplied)

The aforesaid contents of the letter mirror the Clause 4 of Tender and the subsequent Agreement executed between the parties. The letter, therefore, contemplates three years of operations.

18. The Respondent by this Provisional Allotment Letter called upon the Petitioner to execute an Agreement as required under Clause 10(a) of the Tender dated 14th August, 2020. It is a matter of record that an Agreement



dated 01st March, 2021⁷ was duly executed by the Petitioner for the parking site situated at Shashi Garden and Clauses 4 and 8(i) of the Tender verbatim find mention on the same terms in the said Agreement.

19. The Respondent, thereafter, issued a Letter of Allotment dated 02nd March, 2021 and the relevant portion of the letter relied upon by the Respondent reads as under:

“Ref:- This office provisional offer letter No. D-485 dated 12.02.2021 and your acceptance dated 24.02.2021 in respect of above mentioned parking site.

With reference to the above, I am directed to inform you that as accepted by you and deposited requisite amount & documents in this department.

The East Delhi Municipal Corporation has allotted the said parking site namely Sashi Garden Near Post Office (Site Sl.No.18) having, area of 2158 sq. mtrs. to you for the period of two years w.e.f, 03.03.2021 to 02.03.2023 @ MLF of Rs. 2,46,966/- + applicable taxes, which may be extended for further one year as per terms & conditions of contract.

Therefore, you are directed to operate the above mentioned parking site as per enclosed map & agreement/terms & conditions of the contract.”

(Emphasis supplied)

The Respondent has relied upon contents of this letter of allotment to contend that the contract period stood truncated to two years. We are unable to accept this contention as extension for the third year as per the terms of the Agreement, which includes Clauses 4 and 30, are clearly incorporated by reference therein.

20. Admittedly, upon expiry of the initial two years, the Petitioner applied for formal extension of license for a further period of one year as per the terms and conditions of the Agreement. In reply, the Respondent while

⁷ The copy of the Agreement was handed over by the Petitioner during the course of hearing on 04th March, 2024



admitting that the license is extendable for a further period of one year, *vide* communication dated 14th February, 2024 declined to grant the extension on the ground that it has taken a decision to include the parking site situated at Shashi Garden in its ongoing FASTag parking NIT. The relevant portion of the letter reads as under:

“Sub:- Regarding extension of contract period of parking site situated at Shashi Garden near Post Office, Patparganj, Village.

*1. With reference to the subject cited above, the parking site situated at Shashi Garden near Post Office, Patparganj Village was allotted to you on the MLF of Rs.2,46,966/- for a **period of two years, extendable for further one more year** vide letter. No. AO/RPC/EDMC/2021/D-538 dated 02.03.2021. The possession of said parking site was handed over to you on 10.01.2022 on certain terms and conditions of NIT as agreed upon by you.*

2. On expiry of initially contract period, you have requested for extension of the contract period for further one year. With reference to your request for further extension of contract period of said parking site, it is to inform you that the said parking site has now been decided to include in ongoing FASTag parking NIT and hence your request for extension of contract period of said parking site for further one year has not been accorded to by the Competent Authority.

3. However, the Competent Authority has decided that in case you are agreeable to run/continue the contract till discovery of new H-1 bidder of FASTag parking, the same is allowed. As such you are requested to furnish your consent immediately, so as to enable this department to accord permission on the above line accordingly.

..... ”

(Emphasis Supplied)

21. We are of the considered opinion that the said communication dated 14th February, 2024 is in breach of Clauses 4, 8 and 30 of the terms of the Agreement. Clauses 4 and 8 have been reproduced above; Clause 30 is reproduced hereinbelow:

“30. Compliance of any change/revision in the policy/rates of fees:



(a) Notwithstanding anything contained in this Agreement, EDMC has a right to revise the rates of parking fee at any time. In case of revision of rates of parking fee for different category or specific category of vehicles during the currency of the present agreement, EDMC shall reserve the right to modify the monthly license fee (MLF) in the proportionate ratio from the date of implementation of such revised rates of parking fee. The contractor shall be bound to accept the offer failing which the allotment will be cancelled and deposited amount including MLF & BG/FDR be forfeited and the said parking site will be placed in next NIT.

(b) Any change in the parking policy by EDMC during the period of license, will be applicable to the present agreement and binding on all, including the parking licensee. Non-compliance of the same for any reason whatsoever, will lead to the cancellation of the license and deposited amount (including MLF & BG/FDR) will be forfeited.

(c) Presently, registration of the parking contractor in EDMC is not necessary. However, the issue is under process to make registration of parking licensee mandatory. In case such policy is approved during the currency of the present license the parking contractor shall be required to comply with the same and get itself registered with the EDMC, as per the approved terms & conditions and guidelines.

(d) The contractor has to follow all applicable by-laws in its parking lot, failing which penalty will be imposed as per Clause No. 26.

(e) Revision of parking rates & MLF: Parking rates are received from time to time. Wherever parking rates are received, the MLF for parking will also be revised proportionality."

(Emphasis supplied)

Clause 30 of the Agreement expressly saves the right of the Respondent to implement its parking policy changes in the subsisting contracts and it is only if the contractor refuses to implement the proposed policy of the Respondent, therefore, the Respondent has a right to cancel the Agreement and re-tender the parking site.

22. There are four reasons for concluding that the Respondent's refusal to extend the license for the third year is in violation of the terms of the Agreement. *First*, the intended duration of the license under the Tender dated 14th August, 2020 as well as the Agreement is three years and not two



years as sought to argued by the Respondent. *Second*, the extension for third year can be refused by the Respondent only if it concludes that the licensee had failed to ‘satisfactorily’ complete the first two years of the license. In the facts of this case, there is no allegation against the Petitioner with respect to non-satisfactory performance in the first two years. The letter dated 14th February, 2024, in fact, offers to extend the period of license until the new bidder is selected. Therefore, the satisfaction of performance in the first two years is admitted and is a matter of record. *Third*, as per Clause 30 of the Agreement the Respondent was entitled to call upon the Petitioner to implement the new policy of FASTag and digital payment facilities for separate categories of vehicles in its operations for the parking sites during the third year. The Petitioner has, in fact, represented to the Respondent that it remains ready and willing to migrate to the FASTag and digital payment facilities and implement the necessary changes for the same at the subject parking sites as well as fulfill the financial obligations [re: enhanced MLF] to be performed in pursuance to the new policy for converting the parking site into smart parking sites. The Respondent has not disputed the Petitioner’s ability to undertake the said migration. However, the Respondent without any justification has failed to call upon the Petitioner as per Clause 30 of the Agreement to migrate to the FASTag policy in the third year. Therefore, the justification offered by the Respondent in its letter of rejection dated 14th February 2024 that the extension for third year cannot be granted due to change in parking policy is contrary to the express terms of the Agreement. *Fourth*, since the agreed tenure of the license under the Tender and Agreement was for three years, the Respondent is wrong in



contending that the Agreement came to an end, at the end of the initial two years. The Respondent is not at liberty to include the subject parking sites in the impugned NIT as the Agreement is subsisting and valid. For the same reason, the reliance placed by the Respondent on Section 62(c) of the Easements Act is not applicable to the facts of this case.

23. The Respondent has admittedly extended the benefit of migration to the new parking policy to its existing contractors of other parking sites for the unexpired period of their respective contracts or the Respondent has not included the parking sites, which are under an existing contract, in the new impugned NIT.

24. The Respondent has admittedly not examined the scope of its contractual obligation of extending the option of migration to the new parking policy to the Petitioner as per Clause 30 of the Tender dated 14th August, 2020 and the Agreement. In fact, after the filing of the present petition, during the hearings as well the Petitioner reiterated its willingness to abide by all the terms of the new parking policy as per Clause 30 as well as in accordance with the terms and conditions proposed in the impugned NIT; however, the learned counsel for the Respondent, on instructions, stated that the Respondent is unable to consider the said case of the Petitioner as the NIT for the new Tender stands issued.

25. The Respondent's unwillingness to examine or extend the option of migration to the new parking policy is in violation of Clause 30 of the Agreement. The Respondent has not furnished any reasonable ground before this Court for not extending the said option to the Petitioner and this action of the Respondent if unchecked could lead to favoritism in violation of



Article 14 of the Constitution. Thus, the action of the Respondent being in violation of the terms of the binding terms of the Tender dated 14th August, 2020 and the Agreement cannot be sustained.

26. The contention of the Respondent that the Agreement executed with the Petitioner in pursuance to the Tender dated 14th August, 2020 expired at the end of the initial two years of license is incorrect. The Agreement is for a tenure period of three years and the extension for third year of license has been wrongly denied by the Respondent. In fact, the Respondent has failed to consider the request for extension in accordance with the contractual terms and has perfunctorily declined the extension on an incorrect understanding that the Agreement expired by efflux of time after initial two years. The Petitioner fulfilled all the conditions entitling him to the grant of extension for the third year; upon fulfilment Respondent is obliged to extend the license for the third year and, therefore, the Agreement did not come to an end on the efflux of the second year of license.

27. It would have been an entirely different matter if the Petitioner had declined or objected to migrate to the FASTag and digital payment facilities for separate category of vehicles as per the new policy of the Respondent for operating the parking site or refuse to carry out the changes required to be made at the parking site or pay the enhanced license fees. However, the Petitioner herein has reiterated its willingness to implement the new policy and pay the enhanced license fees. Therefore, as per Clauses 4 and 30 of the Agreement, the Respondent is bound to extend the license for the third year and the Petitioner is obliged to implement the new parking policy of the Respondent and pay enhanced license fees.



28. The judgment of the Coordinate Bench of this Court in *Sanjay Yadav vs. North Delhi Municipal Corporation* (supra) relied upon by the Respondent is not applicable to the facts of this case. In the said judgment, the Court in the facts of that case, came to a finding⁸ that the appellant therein was in breach of its obligations under the agreement with respect to payment of license fees and therefore, the Court concluded that the respondent corporation was well within its right to proceed with the re-tendering of the parking site. Similarly, the reliance placed by the Respondent on the judgment of the Coordinate Bench in the case of *Sudhakar Tiwari vs. Delhi Development Authority* (supra) is not attracted to the facts of this case. In the said case, the Division Bench was hearing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. In that case, the Arbitrator held that the claimant was bound by the terms of the written license deed and rejected its claim for refund of license fees on the plea that the area of the parking site provided to him was only 40%. The Division Bench upheld the award and did not find any merit in the claim of refund.

In the facts of the case in hand, the Petitioner herein is seeking enforcement of Clause 4 of the written Agreement and seeking a writ against the Respondent for violating its contractual obligation under Clause 4; we, therefore find no application of the judgment relied upon by the Respondent.

29. The maintainability of writ proceedings in contractual matters against the State or its instrumentalities such as the Respondent herein is well settled. In this regard, it would be relevant to refer to the judgments of the

⁸ Paras 29, 30, 31



Supreme Court in *ABL International Ltd. vs. Export Credit Guarantee Corpn. of India Ltd. and Others*⁹ and *Unitech Ltd. and Others vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others*¹⁰. The scope of interference by way of judicial review in contractual matters though is to be exercised by the Court with circumspection, the Respondent cannot raise an objection to the examination of its action by the Court only because it's a contractual matter. In the present case, after examining the terms of the Tender dated 14th August, 2020 and the consequent written Agreement between the parties, as noted above we are of the opinion that the Respondent's action in re-tendering the subject parking sites during the subsistence of the Agreement(s) is arbitrary, illegal and violative of the contractual provisions.

30. We accordingly allow the present writ petitions and quash the impugned NIT to the extent that it includes the parking site situated at 'Sashi Garden' at serial no. 2 of Cluster No. 8 and Red Fox Hotel at serial no. 3 of Cluster No. 1 respectively. It is directed that the Petitioner will be entitled to operate the subject parking sites for the third year, subject to strict compliance of the undertaking given to this Court at the hearing dated 13th March, 2024 to the effect that (i) the Petitioner will pay the enhanced MLF as prescribed in the RFP and abide by all the terms and conditions prescribed in the RFP dated 10th February, 2024 for the subject parking sites, (ii) the Petitioner will convert the subject parking sites to smart parking sites with FASTag and digital payment facilities for separate category of vehicles as per the technical conditions prescribed in RFP dated 10th February, 2024,

⁹ (2004) 3 SCC 553 at paras 8 to 14, 23



and (iii) the Petitioner will operate and manage the subject parking sites on 'as is where is basis' and not claim any remission of the MLF for the entire period of operations with effect from the initial possession date. Therefore, all past claims of the Petitioner for remission of MLF for the past period shall stand withdrawn with immediate effect.

31. It is clarified that we have not accepted the contention of the Petitioner that MLF for the parking site at Sashi Garden should be Rs. 2,58,000/- instead of Rs. 3,44,000/-. It is directed that the Petitioner will be liable to pay MLF at Rs. 3,44,000/-.

32. The petitions stand disposed of in the aforesaid terms. The pending applications, if any, also stand disposed of.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

APRIL 02, 2024/hp/ms

¹⁰ 2021 SCC OnLine SC 99 at paras 38 to 40