



2024:DHC:5377-DB



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

+ **W.P. (C) 9088/2024 & CM APPL. 37190/2024**

ABHAY KUMAR SINGH

...Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Rohan Sharma, Ms. Indra Marla,
Ms. Riya Gulati and Ms. Ranjna
Ahuja, Advocates and Petitioner in
person

versus

MUNICIPAL CORPORATION OF DELHI

...Respondent

Through: Mr. Manu Chaturvedi, Standing
Counsel for MCD alongwith Ms.
Devika Singh Raj Chowdhary,
Advocate for MCD.

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Date of Decision: 15th July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present petition has been filed seeking quashing/declaring the e-tender notice for allotment of Authorized Surface Parking bearing AC/RPC/MCD/2024/D-655 dated 18th June, 2024 issued by the respondent in respect of parking site “*Near Police Station Shakarpur Thana*” at serial No.49 as null and void. The petitioner also seeks a direction to the



respondent to act in accordance with the terms of the Tender Document bearing NIT No. 1602 dated 29th December, 2022, and to calculate the Monthly License Fee (hereinafter referred to as “MLF”) as per the new map.

2. The petitioner states that the respondent had invited tenders on 29th December, 2022, in respect of a parking site “*Near Police Station Shakarpur Thana*”. The said parking site was listed at item No. 39 with a minimum Monthly Reserve Price (hereinafter referred to as “MRP”) of Rs.1,89,825/- for a period of three years with a further option to extend the same for a period of two years.

3. It is stated that the petitioner was declared as the successful bidder *vide* the offer letter dated 3rd May, 2023. The petitioner was informed that the said parking site was allotted for a period of three years with an option to extend for a further period of two years though at the option of the respondent at the MLF of Rs.2,99,999/-. *Vide* the possession letter dated 23rd May, 2023, the said parking site was handed over to the petitioner on 24th May, 2023, for a period of three years.

4. It is stated that while the petitioner was continuing to perform under the terms of the tender, *vide* letter dated 16th April, 2024, the respondent MCD communicated to the petitioner that *vide* the letters dated 26th October, 2023, and 7th February, 2024, the Delhi Transco Limited had informed the respondent that a substantial portion of the parking site cannot be utilized for the said purpose on account of high tension wires running over those affected areas and thus not being available for parking purposes.



It is further stated that in the very same letter, the Competent Authority had revised the MLF to Rs.1,99,999/- from the date of issuance of the said letter.

5. It is further stated by the petitioner that the respondent had issued the impugned e-tender notice dated 18th June, 2024, for the said parking site placed at serial no. 49 at a revised MLF of Rs.42,000/- while the contract of the petitioner was subsisting. It is stated that the last date for submission of bids was 10th July, 2024. Being aggrieved of the same, the petitioner is stated to have issued a communication dated 21st June, 2024, to the respondent requesting it to withdraw the e-tender dated 18th June, 2024. Finding no response, the petitioner filed the present writ petition challenging the aforesaid re-tendering.

Contentions of learned senior counsel for the petitioner:-

6. Mr. Kirti Uppal, learned senior counsel appears for the petitioner and submits that the actions of the respondent are arbitrary, illegal, perverse and contrary to the principles of natural justice and fair play. He submits that despite the fact that the contract was valid and subsisting for a period of three years from the date of actual possession, i.e., 24th May, 2023, coupled with the fact that the said contract has never been terminated, re-tendering of the very same site is contrary to the terms of the contract itself and the impugned e-tender dated 18th June, 2024, is liable to be quashed and set aside.

7. Learned senior counsel submits that no notice of any nature whatsoever has at all been issued by the respondent to the petitioner before



the unilateral and arbitrary decision to re-tender the very same parking site was issued by way of the impugned e-tender. He submits that it was the respondent itself that had not only reduced the area of operation but also had reduced the MLF to Rs.1,99,999/-, which the petitioner had willingly agreed to. This, he submits, that the petitioner was willing to accede to, despite the reduction in an area to the extent of $2/3^{\text{rd}}$ leaving only $1/3^{\text{rd}}$ portion of the original area of the contract. Thus, according to learned senior counsel, from the conduct of the parties, it appears that a revised contract has been worked out between them and agreed to. He submits that having regard to this, the respondent could not have issued the impugned e-tender dated 18th June, 2024.

8. Learned senior counsel also submits that once the petitioner is ready and willing to run the parking site with reduced area at an MLF of Rs.1,99,999/- which is substantially higher than the revised MLF of Rs.42,000/- as per the impugned revised e-tender, it would cause no loss to the exchequer, which ought to have been considered and accepted by the respondent. Thus, he submits that the re-tendering of an already re-tendered contract is neither envisaged nor permissible in law.

9. Mr. Uppal also invites attention to Clause 6 of Section II respecting “*Instructions to Bidders*” of the tender document dealing with the premature closure of the contract. He submits that even according to the said clause, assuming that the Government or any instrumentality required some area of the parking site and the respondent retained the right to cancel the license agreement, the same could only be done by giving one month’s



notice in writing. Learned senior counsel vehemently submits that no such notice in terms of Clause 6 has been issued to the petitioner till date. According to him, the non-issuance of one month's notice would be fatal to the action of re-tendering and as such, the impugned e-tender dated 18th June, 2024, is liable to be quashed and set aside.

10. Learned senior counsel also submits that the respondent had power only to reduce the area in the public interest and correspondingly adjust the MLF. According to learned senior counsel, the said area was not only reduced but even the MLF was correspondingly adjusted. That having been done, he submits that the respondent had no power to unilaterally terminate the contract. Even on this score, the respondent MCD has miserably failed to give reasons as to why then, the need for re-tendering arose. Thus, he submits that for lack of reason, the action of re-tendering was arbitrary, perverse and unconstitutional. He submits that on this ground, the impugned e-tender dated 18th June, 2024, ought to be quashed.

Contentions of learned counsel for respondent:-

11. *Per Contra*, Mr. Manu Chaturvedi, learned counsel for the respondent submits that the said re-tendering has been conducted in accordance with the terms of the original contract itself. He relies upon Clause 10(A) of the original contract dated 29th December, 2022, respecting termination of the contract. He invites the attention of this Court, particularly to Clause B to submit that once the Delhi Transco Limited had communicated that 2/3rd of the parking site cannot be utilized for such purpose in view of the high tension wires over the said area,



making it dangerous to human life, there was no option with the respondent but to reduce the area. He submits that once the area to the extent of $2/3^{\text{rd}}$ was reduced, the original tender had undergone a substantial material change in specifications.

12. He further submits that having regard to the fact that the parking site itself underwent a substantial change in area from the original area as per the original tender dated 29th December, 2022, the remaining $1/3^{\text{rd}}$ portion could not have been leased out at the MLF of Rs.1,99,999/-. He submits that keeping in view the substantial difference in the area on account of the letter of Delhi Transco Limited, the respondent had no choice other than to call for fresh tenders in respect of the remaining portion. He submits that the entire parking site was one single unit not divisible in three portions like the learned senior counsel for the petitioner has sought to portray, and therefore, the said area having undergone a transformation in terms of area available for parking site, the respondent did not have any choice other than to re-tender.

13. Learned counsel also submits that according to sub-Clause (b) of Clause 10(A), once the land of the parking lot is required or taken from the respondent by any Government Authority, then in that case, the Clause stipulated that the agreement would automatically stand terminated. On the strength of the aforesaid sub-clause too, learned counsel submits that the present writ petition has no merits.

Analysis and Conclusion:-

14. This Court has heard the arguments of Mr. Kirti Uppal, learned senior



counsel for the petitioner as also Mr. Manu Chaturvedi, learned counsel for the respondent. We have also minutely scrutinized the tender documents placed on record by the petitioner.

15. We observe from the arguments addressed by the parties as also by the covenants in the original contract coupled with the letters/correspondences placed on record that the petitioner has neither disputed nor challenged the stand of the respondent regarding the letters issued by the Delhi Transco Limited. It is clear from the letter dated 16th April, 2024, that the petitioner was informed about the reduction in the area on cogent grounds of Delhi Transco Limited informing the respondent about the unviability of usage of 2/3rd portion of the parking site due to overhead hanging high tension electricity cables running over the said area. It is apparent that the said cables made the said area unviable and also dangerous to human life and property. The decision of the Delhi Transco Limited prohibiting the usage of said 2/3rd portion even otherwise cannot be disputed or challenged by the petitioner. Thus, there can be no quarrel that the parking site to the extent of the original area awarded *vide* the original e-tender dated 29th December, 2022, was drastically reduced resulting in substantial material change in the terms and condition of the original e-tender and contract thereto.

16. We also observe from the letter dated 16th April, 2024 that the petitioner continued to operate the reduced parking site at the revised MLF of Rs.1,99,999/-. It was also informed to the petitioner that the same was continued only till the handing over of the site to the new H-1 bidder. For



clarity, the said letter dated 16th April, 2024 is reproduced hereunder:-

“No.AC/RPC/MCD/2024/D-134

Dated: 16.04.2024

To,

Sh. Abhay Kumar Singh,
B-365, Block-B, Rajveer Colony,
Gharoli Extn. Delhi-110096.
(E-mail: Abhay.kur2009@gmail.com)

Sub:- Regarding parking site at Near Police Station Shakurpur Thana.

Sir,

With reference to the subject cited above, it to inform that the parking site situated at Near Police Station Shakurpur Thana was allotted to Sh. Abhay Kumar Singh vide letter No. AC/RPC/MCD/2023/D-493 dated 23.05.2023 on the MLF of Rs.2,99,999/- for the period of three years and extendable for further two more years. The possession of said parking site was handed over to the contractor on 23.05.2023.

On the request of Delhi Transco Limited vide letter dated 26.10.2023 & 07.02.2024, the Competent Authority has decided that the said parking site will be placed in upcoming parking NIT with fresh AutoCAD map after taking into consideration the observation of Delhi Transco Limited. Further, the Competent Authority has decided that, till handing over of the site to new H-1 bidder., the site will be run by you with revised ECS of 52 (4W). Accordingly, the MLF of said parking site has also been revised to Rs.1,99,999/- from the date of issuing this letter.

Sd/-
Administrative Officer
RP Cell/MCD”

(emphasis supplied)

It is clear from the said recital that the petitioner was already informed about the intention of the respondent to re-tender the reduced parking site and was continued only till the handing over of the site to the new H-1 bidder. It is also clear that the original contract was neither re-



tendered nor revised in favour of the petitioner, as is being claimed. Thus, the submissions of the petitioner on this aspect are without any merits.

17. So far as the submission regarding non-issuance of notice before cancellation/termination of the contract is concerned, suffice it to say that the said submission is negated by the covenants of the contract itself. In particular, sub-Clause (b) of Clause 10(A) of the original contract. In order to appreciate the said observation, it would be apposite to extract the same hereunder:-

“10.(A) Termination of the Contract

a) MCD shall also have the right to terminate this Agreement by giving thirty (30) days prior written notice to the Contractor without assigning any reason to the Contractor.

b) In the event, the land of the parking lot is required or taken from MCD by any Government Authority under any Applicable Laws, then in that case, the said Agreement shall automatically stand terminated and Contractor have no right to claim any damages, cost of expenses etc. from MCD in any manner.

c).....”

(emphasis supplied)

It is apparent from the plain reading of sub-Clause (b) that a subsisting agreement executed between the parties automatically would stand terminated coupled with the fact that the Contractor would have no right to claim damages, cost or expenses from the respondent. Having regard to the fact that it is not disputed that 2/3rd portion of the original parking site had been taken over by the Delhi Transco Limited in accordance with law, conditions of sub-Clause (b) would come into effect.



Resultantly, the argument that no notice was issued before termination of the contract, would fail.

18. In view of the fact that we have concluded that the contract itself is deemed to have been terminated by virtue of the consequence of sub-Clause (b) of Clause 10(A) of the original contract, the submissions that the petitioner could have been permitted to continue with the MLF of Rs.1,99,999/- for the reduced area or that the respondent could not have re-tendered while the agreement was subsisting are rendered otiose. Once the original contract automatically stands terminated in terms of the aforesaid clause, the necessary corollary would be that the respondent would be constrained to call for fresh tenders in respect of the reduced area. We are also of the view that since admittedly, the original parking site area had undergone reduction, not only the term of the tender regarding the area has undergone change but also necessarily the reduced area will attract the revised MLF. Thus, the original contract clearly having undergone substantial material change, would call for a fresh tendering process.

19. Learned senior counsel relies upon the judgement dated 02nd April, 2024, passed by the Coordinate Bench in *W.P.(C) 3160/2024* captioned *M/s SK Associates through its proprietor Sanjeev Kumar versus Municipal Corporation of Delhi*. We have perused the said judgement and find that the same would not be applicable to the facts of the present case. It is pertinently observed that the contract in the said case had Clause 30 which was in respect of “*Compliance of any change/revision in the policy/rates of fees*”. As per the said Clause, the contractor, in a subsisting



agreement was bound to accept the revision of rates failing which the allotment was liable to be cancelled. It was also stipulated that if there was any change in the parking policy by the respondent during the subsistence of the said license the same would be applicable and binding on all including the parking licensee. The non-compliance of this condition by the Contractor would also entail cancellation of the license. In that case, the petitioner therein who was the contractor, had categorically agreed to implement the change in policy despite which the respondent had proceeded to re-tender. It was this Clause, which the Coordinate Bench found to have been violated by the respondent and consequently, the re-tendering was declared to be arbitrary, illegal and violative of contractual provisions and was quashed.

In the present case, the learned senior counsel has not been able to draw our attention to any similar Clause in the present contract. Moreover, on facts, the present case is distinguishable and hence, not applicable.

20. In view of the above, there is no merit in the writ petition and accordingly stands dismissed along with pending applications, without any order as to costs.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 15, 2024/rl