

(2019) 09 DEL CK 0099

In the Delhi High Court

Case No : Civil Writ Petition No. 2158 Of 2019

Sanjay

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0099

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Soayib Qureshi, Mini Pushkarna, Swagata Bhuyan, Shiva Pandey

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to:

(a) Issue an appropriate Writ, Order or Direction in favour of the Petitioner quashing the order dated 21.02.2019 passed by the Respondent;

(b) Issue an appropriate writ, order or direction in the nature of declaration in favour of the petitioner and against the Respondent and thereby declare that the petitioner is not disqualified under 1(d) of the tender & OR / IN THE ALTERNATE Issue an appropriate Writ, order or direction in the nature of declaration in favour of the Petitioner and against the Respondent thereby directing the Respondent to allot the parking sites to the Petitioner;

(c) Pass ex-party interim order direction the Respondent to not allot the parking sites in which the Petitioner has been declared as a Highest Bidder to any other party.

(d) Award costs of the present proceedings in favour of the Petitioner and against the Respondents; and

(e) Pass such further order (s) as this Hon'ble Court may deem fit and proper to do complete justice in the facts and circumstances of the present case."

2. In substance, the challenge in the writ petition is, to the order dated February 21, 2019 passed by the respondent on a representation made by the petitioner dated February 07, 2019. The representation is rejected thereby confirming the decision taken by respondent that as the petitioner has contravened provisions of Clause 1(d) of the terms and conditions of the Contract that is, he is having financial transaction, with a blacklisted parking contractor of South DMC, the petitioner be disqualified for award of car parking contract.

3. Pursuant to a Notification issued by the respondent on May 23, 2018 for allotment of seven authorized parking sites, the petitioner who submitted his bids was declared H-1 bidder qua two sites being Group-II in front of Plot No.11, Rajendra Place and Group-V, Plot No.A, near Cinema Building, Rajendra Place.

4. It is his case that despite a successful bidder for two parking sites, he has not been issued a Letter of Intent. The petitioner made various visits to the respondent in order to understand the reason for not issuing the Letter of Intent as the same has been issued to other similarly placed higher bidders. As no response came forward and the respondent failed to address the issue, the petitioner wrote a letter dated February 04, 2018 to the respondent and requested it to clarify the situation. However, no response was forthcoming. This made petitioner approach this Court in a writ petition being W.P.(C) 1478/2019. This Court disposed of the writ petition directing the respondent to decide the representation of the petitioner. The respondent passed an order disqualifying the petitioner on the ground of alleged financial transaction with an entity, which has been disqualified by the South Delhi Municipal Corporation. It is this action, which is under challenge by the petitioner.

5. The respondent has filed a counter affidavit, wherein it is stated that it has vide Notification dated May 23, 2018 invited fresh bids from eligible bidders for participation in the e-auction for allotment of authorized parking sites falling under the jurisdiction of the North DMC. It is stated that as per Clause 2B(iii) of the terms & conditions of the tender, every person intending to take part in the tender, was required to mandatorily provide appropriate documents confirming the eligibility for participation in the tender. The petitioner having submitted all the documents; e-auction was held on August 28, 2018. The petitioner was found to be the highest bidder with respect to two parking areas, which have been noted above. It is their case, after conclusion of the e-auction, the Department initiated the process of scrutinizing the documents submitted by the authorized tenderers. The documents as submitted by the petitioner including his bank statements of the last three years reveal that the petitioner had made a transaction of Rs. 66,500/- with a blacklisted contractor of the South Delhi

Municipal Corporation namely Ravinder Singh Rathi in the year 2015. This fact has been admitted by the petitioner in the writ petition. It is also stated that the Committee dealing with allotment of parking sites pursuant to NIT dated May 23, 2018 headed by Addl. Commissioner (Revenue), was clearly of the opinion that the petitioner needs to be disqualified in view of clear terms and conditions of the tender. According to the respondent, the one transaction itself is a clear pointer to the fact of close nexus, which the petitioner had with the blacklisted contractor. In substance, the respondent has justified the issuance of the impugned order dated February 21, 2019 whereby the petitioner has been disqualified from being awarded tender for operation of the parking sites for which the petitioner was H-1 bidder.

6. The learned counsel for the petitioner, during the course of his submissions has stated that the impugned action of the respondent is in violation of principles of natural justice and has been passed without application of mind. According to him, an entity can be disqualified only when the respondent is of the opinion that the tenderer is acting in collusion with, for the benefit of another party, who has been disqualified to participate in tender on its own. Such an opinion is required to be taken based upon credible material. In any case, the impugned order is bereft of any reasoning, which also show non application of mind. He submitted that the case of the petitioner does not fall on any of the grounds as mentioned in Clause 1(d) of the tender conditions. He also stated that there has never been any transaction of Rs. 60,000/- between the petitioner and the said person. He conceded that there is only one transaction between the petitioner and the said person and the same was for an amount of Rs. 66,500/- and the same was dated December 08, 2015. Even, this aspect would bear testimony of non application of mind on the part of the respondent. He also stated, the said transaction in no manner can be construed as a "frequent huge transaction" so as to disqualify the petitioner. The learned counsel for the petitioner stated that the impugned action has been taken against the petitioner to benefit a third party, inasmuch as the respondent has since 2015 granted tenders to the petitioner time and again despite the said transaction having been brought to the notice through the statement of account. In other words, the respondent having permitted the petitioner to participate in the tender and further operate the parking sites, is now estopped from disqualifying the petitioner. In any case, it is his submission that the transaction of Rs. 66,500/- was in the nature of financial assistance given to the said person. He stated that the petitioner has no relation with the said person and only know the said person being engaged in similar business activities. He seeks quashing of the impugned order.

7. On the other hand, Ms. Pushkarna, would reiterate the stand taken by the respondent in their affidavit.

8. Having heard the learned counsel for the parties, the only issue which arises for consideration is, whether the impugned order disqualifying the petitioner from being awarded the tender, is justified. The respondent has relied upon Clause

1(d) of the Tender document, which reads as under:-

"1(d) Any person / party / firm or registered parking contractor who is disqualified or ineligible to participate in the tender according to aforesaid conditions shall not be qualified to offer the tender in the name of its associate concern subsidiaries / principals / front / related concerns in which he has substantial financial stakes / shows common addresses / common partners or Directors / frequent financial transaction of huge amounts and the Commissioner / authorized officer on his behalf may declare the tenderer disqualified on this ground, if he is of the opinion that the said tenderer is acting in collusion with for the benefit of any other party who would have been disqualified to participate in tender of his own. The decision of the Competent Authority shall be final and binding on such bidders."

9. Suffice would it be to state, that the said stipulation inter-alia contemplates a person / party / firm or registered parking contractor who is disqualified or ineligible to participate in the tender shall not be qualified to offer the tender in the name of its associate, concerned subsidiaries / principals / front/ related concerns in which he has substantial financial stakes, shows common addresses / common partners or Directors / frequent financial transaction of huge amounts. So it follows, that the petitioner being a front man of Ravinder Singh Rathi, because of frequent financial transactions, is disqualified to participate in the tender. The question is whether one financial transaction is sufficient to come to a conclusion that there is a nexus between the petitioner and Shri Rathi, and also the petitioner is the front man of Rathi. The answer has to be in negative. This I say so, as it is the case of the petitioner, that the one transaction is a financial assistance given by the petitioner to Shri Rathi. The respondent has, except the single transaction, not shown any other transaction. Even this transaction was of December, 2015, much before the e-auction was held on August 28, 2018 for the tenders submitted pursuant to notification dated August 23, 2015, when the petitioner could not be sure that tenders shall be awarded to him. In any case, if the transaction is relatable to a tender, awarded to the petitioner, then it should be shown, that, the petitioner had applied as a front man of Shri Rathi, and the payments made to Shri Rathi, was from the proceeds received by the petitioner, pursuant to the award of the tender. Further the plea of Ld. Counsel for the petitioner that he has been awarded other tenders on the basis of same bank statements, is appealing. In fact, the respondents have to show something more like, (1) more than one financial transaction (2) common partners / Directors (3) common addresses for establishing nexus between the petitioner and the person blacklisted. The intent of the provisions is that the person who has been blacklisted by any Corporation is not allowed to bid for the tender through a proxy.

10. On a specific query to Ms. Pushkarna whether there is any evidence with the Corporation that this financial transaction between the petitioner and Shri Rathi was in collusion and in fact the petitioner was acting for the benefit of Sh. Rathi,

who was blacklisted and could not have participated in the tender of its own, the answer of Ms. Pushkarna was in the negative. If that be so, in the absence of any credible evidence that the petitioner was acting in collusion with Shri Rathi, the respondent could not have invoked the provision of Clause 1(d) of the tender conditions, which is reproduced above. The decision is a perverse decision not based on legally acceptable evidence; and cannot have any immunity from interference, as such need to be set aside.

11. Accordingly, the impugned order dated February 21, 2019 is set aside. The respondent is directed to issue Letter (s) of Intent to the petitioner with regard to two sites for which the petitioner was found to be the highest bidder. This shall be done within a period of two months from the date of receipt of copy of this order.

12. The petition is disposed of. No costs.