



2024:DHC:8264-DB



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

% Judgment reserved on: 09.10.2024
Judgment delivered on: 25.10.2024

+ W.P.(C) 14324/2024 and CM No.59943/2024

M/S RAVINDRA NATH

..... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Kamlesh Kr Mishra, Ms. Renu, Ms. Shivani Verma and Ms. Snigdha Anand, Advocates.

For the Respondents : Mr. Sanjay Vashishtha, Standing Counsel with Ms. Vasudha Saini and Ms. Harshita Rai, Advocates for MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking setting aside of order dated 24th September, 2024 having reference no. AC/RPC/MCD/2024/D-1700 passed by the Municipal Corporation of Delhi (hereinafter referred to as 'MCD') and the communication dated 22nd August, 2024 bearing reference no. AC/RPC/MCD/2024/D-1354 issued by the Assistant Commissioner, R.P. Cell/MCD whereby the tender has been withdrawn/cancelled. The petitioner further seeks setting aside of



parking NIT no. AC/RPC/MCD/2024/D-1430 dated 30th August, 2024 to the extent whereby it invited Tender/Bid for the parking site namely *Shamshan Ghat under boundary wall, Geeta Colony.*

2. The facts germane to the issue at hand and culled out from the petition are as under:-

(i) *Vide* notification no.AC/RPC/MCD/2024/D-906 dated 11th July, 2024, respondent no.1/MCD opened a tender for allotment of authorized surface parking sites on a monthly license fee basis. E-Bids were invited for a period of three (3) years and further extendable to another period of two (2) years.

(ii) It is the case of the petitioner that the petitioner, on 18th July, 2024 had submitted a complete bid in response to the respondent no.1/MCD's tender.

(iii) Petitioner claims that on 26th July, 2024, respondent no.1/MCD issued a communication regarding the status of the tender indicating that the technical evaluation of the submitted bid was in progress and requested the petitioner to submit clarification on certain documents by 30th July, 2024. Accordingly, on 27th July, 2024, the petitioner provided the necessary explanations and additional documents *via* email to respondent no.2/Assistant Commissioner, R.P. Cell.

(iv) On 21st August, 2024, the petitioner sent a formal letter to the respondent no.1/MCD requesting the opening of the financial bids related to E-tender no. AC/RPC/MCD/2024/D-906.

(v) Thereafter, the petitioner filed a writ petition bearing W.P.(C) 11811/2024 titled as '*M/s. Ravindra Nath vs. Municipal Corporation of Delhi through its Commissioner & Anr.*' before this Court. However, the same was withdrawn by the petitioner with the



liberty to challenge the decision of cancellation of E-tender *vide* notification no. AC/RPC/MCD/2024/D-1354 dated 22nd August, 2024. This had been communicated to the petitioner *via* an email dated 23rd August, 2024 informing him that he may visit the portal for further details.

(vi) Thereafter, the petitioner filed another writ petition bearing W.P.(C) 12099/2024 titled '*Ravindra Nath vs. Municipal Corporation of Delhi through its Commissioner & Anr.*' seeking setting aside of the communication dated 22nd August, 2024 issued by the respondent no.2/Assistant Commissioner, R.P. Cell/MCD whereby the tender has been withdrawn/cancelled. This Court *vide* order dated 2nd September, 2024, directed the respondents to decide the representation dated 27th August, 2024 by way of a speaking order in accordance with law. However, the said representation was not disposed of by the respondents which led to the filing of contempt petition bearing CONT.CAS(C) 1493/2024 seeking compliance with the order dated 2nd September, 2024. *Vide* order dated 23rd September, 2024, the respondents were granted time to decide the representation of the petitioner.

(vii) In compliance with the directions of this Court, the respondents passed the impugned order dated 24th September, 2024 having reference no. AC/RPC/MCD/2024/D-1700. *Vide* the said order, the petitioner's representation dated 27th August, 2024 was rejected, *inter alia*, on the following grounds:- (i) Whenever bids are more than one, values are good with regard to reserve price; (ii) Parking is not a specialized work; and (iii) There is no dearth of bidders.



(viii) Aggrieved by the aforesaid impugned order dated 24th September, 2024 passed by the respondents, the petitioner preferred the present petition.

CONTENTIONS OF THE PETITIONER:-

3. Mr. Kamlesh Kumar Mishra, learned counsel for the petitioner submitted that the grounds for rejection of the representation dated 27th August, 2024, are contradictory to the terms and conditions of the Notice Inviting Tender (hereinafter referred to as 'NIT') having E-tender no. AC/RPC/MCD/2024/D-906 dated 11th July, 2024.

4. He stated that respondents *vide* impugned order dated 24th September, 2024, made the following observations:

“4. And Whereas, the Tender Committee, based on the reply received, finalized the minutes of Technical evaluation of bids. In the minutes, it was proposed to reject two bidders from whom no reply was received and also to open financial bid against one bidder from whom reply was received. The file was submitted before the Competent Authority for approval of technical minutes on the above lines which was issued by the Tender Committee.

5. And whereas, the Competent Authority, rejecting the single bid, directed to refloat the tender and finalize quickly. The Competent Authority also observed that whenever bids are more than one, the bids received are well justified and acceptable.”

5. He further stated that Clause 10, sub-clause (iii) of the “Acceptance of E-Tender/Bid” of Section – 1, respecting “Eligibility Criteria and Essential Pre-requisites” of the NIT clearly stipulates that the parking contract may be given to the highest bidder, even if there is valid single bidder/E-Tenderer at the discretion of the Competent Authority. He stated that rejection of the petitioner’s bid only on the ground that the petitioner was the single bidder is not a reasonable justification. According to learned counsel for the petitioner, discretion



of the Competent Authority has to be reasonable and not arbitrary in nature. He invited attention to Clause 10, sub-clause (iii) of the eligibility criteria and essential pre-requisites of the NIT which is reproduced hereunder:

“10. Acceptance of E-Tender/Bid:

i. ...

ii. ...

iii. Parking contract may be given to the highest bidder (at the discretion of the competent authority), even if there is valid single bidder/E-Tenderer. The decision of MCD in this regard shall be binding and final on the all the bidders.”

6. Learned counsel for the petitioner argued that the respondent was fully authorised to finalise the tender process in favour of the petitioner in view of the above clause. He stated that there is no legal impediment prohibiting the respondent to exercise its power under the aforesaid clause.

7. On that basis, he submitted that the action of revocation/cancellation is contrary to the express terms of the tender document and needs to be set aside. As a consequence, he prayed that the tender process be completed with the petitioner being sole bidder.

CONTENTIONS OF RESPONDENT NO. 1/MCD:-

8. *Per contra*, Mr. Sanjay Vashishtha, learned counsel for respondent no.1/MCD stated that a fresh tender has already been floated for the said parking site *vide* NIT dated 30th August, 2024 and that the petitioner is free to participate in the said Tender. He placed reliance on para 11 of the impugned order dated 24th September, 2024 which is extracted hereunder:

“11. Further, the said parking site has again been placed in parking NIT No. AC/RPC/MCD/2024/D-1430 dated 30.08.2024 and the bidder i.e. Sh. Ravindra Nath is free to participate in respect of the said



parking site namely Shamshan Ghat Under Boundary Wall Geeta Colony through ongoing parking NIT.”

9. Learned counsel for the respondent argued that despite the presence of sub-clause (iii) of Clause 10 above, the respondent tender issuing authority is at liberty to revoke/cancel the tender process in case there is only one bidder in public interest.

ANALYSIS AND CONCLUSIONS :-

10. This Court has heard the arguments of the learned counsel for the parties and perused the record.

11. The dispute in hand lies within a narrow compass. In that, whether the Competent Authority of the respondent had any right, authority or jurisdiction to cancel/revoke the contract only on the ground of the petitioner being the sole bidder left.

12. This issue is no more *res integra*. The Supreme Court in ***State of Jharkhand & Ors. vs. CWE-SOMA Consortium, (2016) 14 SCC 172***, has held that the tender issuing authority has the right to cancel or revoke a tender in case the same attracts only a sole bidder, keeping in view the larger public interest and for ensuring greater participation for the purposes of competitiveness. In such circumstances, it was also held that invitation for fresh bids is neither *mala fide* nor can be construed to be a lack of *bona fide*. The relevant paragraphs of the aforesaid judgement are extracted hereunder:

“15. The State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India. In the case in hand, in view of lack of real competition, the State found it advisable not to proceed with the tender with only one responsive bid available before it. When there was only one tenderer, in order to make the tender more competitive, the Tender Committee



decided to cancel the tender and invited a fresh tender and the decision of the appellant did not suffer from any arbitrariness or unreasonableness.

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xxx

xxx

20. Admittedly, in the pre-bid meeting held on 24-3-2014, ten tenderers have participated. After conclusion of the pre-bid meeting on 24-3-2014, as a result of stringent conditions prescribed in Clauses 4.5(A)(a) and 4.5(A)(c), only three tenderers could participate in the bidding process and submit their bids. As noticed earlier, upon scrutiny two were found non-responsive. In our considered view, the High Court erred in presuming that there was adequate competition. In order to make the tender more competitive, the Tender Committee in its collective wisdom has taken the decision to cancel and reinvoke tenders in the light of SBD norms. As noticed earlier, the same was reiterated in a subsequent meeting held on 9-7-2014. While so, the High Court was not justified to sit in judgment over the decision of the Tender Committee and substitute its opinion on the cancellation of tender. Decision of the State issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there are any mala fides or want of bona fides in such decision. While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fide, unreasonableness or arbitrariness.

21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in *Tata Cellular v. Union of India* (1994) 6 SCC 651, in para (70) it was held as under:-

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be



considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

(emphasis in original)

22. *The Government must have freedom of contract. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. and Anr. (2005) 6 SCC 138, in para (12) this Court held as under: (SCC p. 147)*

“12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)”

The court does not have the expertise to correct the administrative decision as held in Laxmikant and Ors. v. Satyawand and Ors. (1996) 4 SCC 208, the Government must have freedom of contract.

23. *The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender.*

24. *Having addressed the correctness of reasonings recorded by the High Court, it is important to note one further aspect. When the SLP came up for hearing, by an order dated 10.08.2015, while granting interim stay on the operation of the impugned judgment, this Court directed that the appellants shall be free to invite fresh tenders and process the same, but no allotment shall be made without permission*



of this Court. The appellant State has filed an additional document stating that about 20,421.43 acre of land is to be acquired under the “Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013” which came into force on 01-01-2014. Section 41 of the said Act states that no acquisition of land as far as possible could be made in the scheduled area. If it is necessary, it should be done only as per last resort. It also states that land in scheduled areas can only be acquired with the prior consent of Gram Sabha or Panchayats or the autonomous District Councils. The learned Attorney General submitted that the entire submergence area of the proposed Icha Dam is in the scheduled area and the remaining land for Icha Dam can be acquired only with the prior consent of the Gram Sabha of the affected villages. It is further stated that the issue was discussed in the meeting of Tribal Advisory Council held on 27-09-2014 and that Tribal Advisory Council and the Sub-Committee opined that the construction of Icha-Kharkai Dam may be cancelled. The learned Attorney General, therefore, submitted that there are some issues which need to be resolved before floating a fresh tender of Icha dam. The impugned judgment of the High Court is liable to be set aside.”

(emphasis supplied)

13. In the present case too, it is not disputed that three (3) bidders including the petitioner had submitted their bid documents. On the ground that two (2) bidders had not responded, the respondent had decided to open the Financial Bid of the petitioner. Subsequently, the Competent Authority appears to have revisited the action and decided to revoke/cancel the entire tender process. The grounds mentioned in the impugned order dated 24th September, 2024, rejecting the representation of the petitioner appear to be in alignment with the law as laid down by the Supreme Court.

14. Though, Clause 10, sub-clause (iii) of the tender does stipulate that a single bidder can be granted the award of contract, yet the same would not preclude or prohibit the respondent from revoking/cancelling the tender process, in public interest. There cannot be any doubt that the larger participation of bidders would serve the purpose of competitive pricing, excellence in workmanship and execution of contract, but also



discourage monopoly and incompetency. That apart, in case the respondent found it appropriate to cancel the tender for the purposes of greater participation coupled with greater revenue generation, it had the right to take such action. (See: ***State of Jharkhand vs. Sociedade De Fomento Industrial Pvt. Ltd.***, 2023 SCC OnLine SC 1482 and ***Virendra Kapoor v. Airports Authority of India***, 2009 SCC OnLine Del 92).

15. Learned counsel for the petitioner had also argued that the impugned order of rejection was non-speaking and did not contain any valid reasons. This issue need not be dilated upon by this Court inasmuch as in the case of ***Silppi Constructions Contractors vs. Union of India & Anr.***, (2020) 16 SCC 489”, the Supreme Court has held as under:-

“25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.”

In view of the authoritative pronouncement in ***Silppi Constructions Contractors*** (*supra*), there is no obligation upon the respondents to have given detailed reasons for rejection of the representation of the petitioner though, this Court finds that the impugned order does indicate valid reasons for the cancellation/revocation of the tender.

16. Besides, nothing precludes the petitioner from participating in the re-tendering process. In fact, the respondents themselves have, in the



impugned order stated that the petitioner would be at liberty to participate in the re-tendering process. Surely, the petitioner cannot submit that it should be preferred in exclusion of other possible competitors. That would be in the teeth of the judgement of the Supreme Court in *Cwe-Soma Consortium (supra)*.

17. In the light of above, this Court does not find any merits in the present writ petition and the same is dismissed alongwith pending applications.

TUSHAR RAO GEDELA, J

MANMOHAN, CJ

OCTOBER 25, 2024/rl