

+ W.P.(C) 8737/2007

The Animals Welfare Society Regd., Delhi Petitioners
Through Mr. Neeraj Kishan Kaul, Sr. Adv. with
Mr. Amit Gupta, Mr. Gautam Narayan,
Advs.

Govt. of NCT of Delhi & Anr. Respondents
Through Mr. Raj Kumar, Adv. for R-4
Ms. Sumita Kapil, Adv. for R-2/MCD

1. Whether reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to the Reporter or not? Not Necessary
3. Whether the judgment should be reported in the Digest? Not necessary

The short question that falls for consideration in this petition is whether the rejection of the petitioner's bid for running of what is called a "Rendering Plant" suffers from any illegality or procedural irregularity. According to the respondent Municipal Corporation of Delhi, the bid offered by the petitioner society was rejected as it did not have the experience or the financial capacity to run the plant in question. The challenge to the order of rejection is not therefore well founded, argues the Corporation. Before we examine that aspect, we may set out the factual backdrop in which the controversy arises.

2. The respondent Corporation is constructing a modern slaughter house at Ghazipur pursuant to the directions issued by the Supreme Court. The rendering plant in question forms a part of the said project. The setting up of the slaughter house and the rendering plant is being monitored by their

Lordships of the Supreme Court in public interest proceedings pending before the apex Court.

3. The respondent Corporation appears to have invited expression of interest from reputed experienced & financially strong parties for the running and maintenance of the rendering plant, in response where to, the following four parties came forward to express their interest in the running said plant:

- (i) M/s Hind Agro Industries;
- (ii) M/s (respondent No.4);
- (iii) M/s Consortium Engineering Pvt. Ltd.; and
- (iv) Animal Welfare Society (Regd.) (Petitioner)

4. A pre-qualification Committee constituted by the MCD for short-listing the firms examined. The credentials of the above concerns and found that the petitioner society did not have the requisite experience or the financial backing necessary for an efficient running of the said plant. The remaining three concerns were found to have the requisite experience and the financial backing to undertake the work in question. The requisite documents for submission of the bids were accordingly issued to the said three parties to enable them to submit their technical and financial offers by the 27th June, 2005.

5. When the tender box was opened on 27th June, 2005 at 3:00 PM, only one offer made by respondent No.4 which was examined by the Evaluation Committee under the Chairmanship of the Additional Director (H&A). The Committee found respondent No.4 was found in the same to be technically competent to run the rendering plant, but since a single tender situation had arisen on account of the failure of the remaining tenderers to make their offers, all the pre-qualified tenderers were given one more chance to submit their offers by 7th September, 2005 in the office of the ACA, Veterinary

Services, Chandni Chowk, Delhi. When the tender box was opened again on 7th September, 2005, it was noticed that no new bid had been received. The Commissioner of MCD however appears to have called and persuaded the remaining two pre-qualified bidders to participate in the bid despite which they did not respond. The commercial bid of respondent No.4 was eventually opened on 23rd September, 2005 in the office of the Assistant Chief Accountant (Veterinary Services). The bid contained an offer to provide a monthly lease rent of Rs.12,01,050/- on the terms and conditions contained in the tender documents. The MCD by its resolution dated 30th March, 2006 eventually approved the lease of the rendering plant in favour of respondent No.4. Trial runs of the rendering plant were also completed. In the meantime, the present writ petition was filed by the petitioner challenging the decision of the respondent Corporation whereby the petitioner was denied participation in the bidding process on the ground of its having no experience and financial capacity to undertake the work. A mandamus directing respondents No.2 and 3 to consider the petitioner for the award of the running of the rendering plant has also been prayed for.

6. We have heard learned counsel for the petitioner and perused the record. The short question that falls for consideration is whether the decision of the respondent corporation to shortlist only three out of the four parties who had expressed interest suffers from any illegality or procedural irregularity. The respondent Corporation has, in support of the said decision, filed an affidavit in which it is *inter alia* alleged that the petitioner's expression of interest was evaluated by the Pre-Qualification Committee constituted for the purpose who was of the view that it had neither the experience of running a rendering plant nor the financial backing to enable it to do so. In the additional affidavit filed by Dr. R.B.S. Tyagi, Director Veterinary Sciences, it is *inter alia* stated that a decision to re-advertise the

project had no doubt been taken by the Evaluation Committee to invite more tenderers, but upon consideration the then Commissioner, MCD had directed that the other two pre-qualified bidders who had not responded and submitted their bids could be invited to do so by extending time in their favour. Both the companies who had pre-qualified along with respondent No.4 were accordingly invited for a meeting convened by the Commissioner on 29th August, 2005, but only one of the said two pre-qualified companies, i.e. M/s Consortium Engineering Ltd. attended the same and agreed to submit its technical and financial offer within a week. The second pre-qualified tenderer, namely, M/s Hind Agro Industries also attended a meeting with the Commissioner on 1st September, 2005, but expressed its inability to submit a tender. The Commissioner, all the same, gave both the companies time to submit their technical and financial offers by 7th September, 2005 which they failed to do. It was in that background that respondent No.4 was found to be the only eligible bidder in whose favour the allotment of work was authorized by the Corporation by passing a resolution. The affidavit further goes on to state that respondent No.4 had deployed the requisite manpower to get training during trial runs of the rendering plant which had continued for 1-½ months. Certain mechanical problems in the functioning of the plant were also rectified by the Engineers deputed by the manufacturers of the plant from Denmark.

7. The petitioner society claims to be an animal welfare society. A copy of the Memorandum of Association of the society placed on record sets out objectives of the society which include working for the welfare of the animals, establishing, running and managing shelter homes for stranded animals, taking care of the dead animals and establishing places for disposal of their carcasses, providing medical facilities for animals, promoting national conscience among citizens to work for the welfare of the animals and

generally to do all such acts, deeds and things as may be helpful for the promotion of the aims and objectives of the society. Apart from the memorandum of association and the registration certificate, the petitioner has not produced any document to show that the society has either established any rendering plant anywhere in the country or undertaken any other work relating to such a plant. There is also nothing on record to show that the society has any income or financial resources to enable it to undertake the work in question. As a matter of fact, the society is not even approved as a contractor for removal of dead animals from within the jurisdiction of MCD at any point of time. A list of contractors engaged for removal of dead animals in MCD limits for the period 2003 to 2005 has been filed by the respondent Corporation which does not include the name of the petitioner society. This lends credence to the version of the respondent that the society although registered for achieving the objectives mentioned in its memorandum of association, has no experience in the establishment or running of any rendering plant or in the removal of the carcasses of dead animals or their disposal. The argument advanced on behalf of the petitioner society that Mr. Ghanshyam Singh who happens to be one of the office bearers of the society has worked in the Animal Husbandry or Food Processing Centres in different capacities or in the slaughter houses or Carcasses Utilization Unit does not constitute the experience of the society to run a rendering house. It is this lack of experience and the lack of financial capacity of the society that has proved fatal to its expression of interest and the attempt to enter the bidding process. We had in specific terms asked learned counsel for the petitioner whether the society had any financial reserves, regardless of the sources from which the same have been arranged to undertake the work. We did not receive any satisfactory answer from him nor was any material produced before us to demonstrate that the decision of

the MCD excluding it from the bidding process was arbitrary, high handed or discriminatory in nature. In comparison to the petitioner's lack of experience and absence of financial backing, respondent No.4 has demonstrated, to the satisfaction of the competent authority, not only its experience in undertaking the work of running and managing Abattoirs through M/s Organic Foods Limited, its sister company but also its financial standing. It was, no doubt, argued on behalf of the petitioner that the experience claimed by respondent No.4 was by reference to its sister concern which was running an Abattoir in Nigeria on lease from Government which could not according to the petitioner count towards experience of respondent No.4 but as against petitioner No.1 which has no experience whatsoever in the field of running the rendering plant or disposal of carcasses, the experience of respondent No.4 company could not be said to be unsatisfactory especially when none of the other companies who had earlier expressed interest had come forward to submit their bids. Respondent No.4 has described its experience and financial capacity in the following words, which cannot be termed as a case of no experience:

“EXPERIENCE OF THE COMPANY

Aztec Exim Pvt. Ltd., the Indian company of the group at the moment has a turnover of about Rs.20 crores a year and is at presently involved in importing into India, several commodities through its sister companies based in Mauritius, Nigeria, Cameroon, Ethiopia and several other countries in Africa and the Middle East.

The expertise of the group extends to metals and its processing which includes Steel, Lead and Aluminium. The company as a group also trades in several agricultural commodities including Rice, Wood and other specialized Organic Foods. One of the companies in the group, M/s Organic Foods Ltd., Nigeria, has run an Abattoir Complex including Rendering Plant for a period of three years on lease from the Government of Nigeria. This Abattoir, M/s Mokwa Ranch and Abattoir Ltd., based in the Niger State of Nigeria had a capacity for about 60000

heads per year.

The group is currently looking for an Abattoir on Lease and also several Rendering facilities as a drive for diversification of our groups' activities. The operational staff of Organic Foods Ltd., Nigeria is well experienced in the operation of running an Abattoir and rendering plant and will be available to operate and manage the rendering facilities currently being leased out by Delhi Municipal Corporation, Delhi. They comprise of a chief engineer assisted by specialist engineers (Electrical, Mechanical, Processing, Rendering and Civil) most are Indian nationals except one. The chairman is the major stake holder in all these companies and is leading the diversification drive.

Aztec Exim Pvt. Ltd. and the other companies in the group have tie ups with several banks both in India and abroad and have the know-how end technologies which are needed in terms of trained manpower to run the rendering plant.”

8. We also do not find any merit in the submission made on behalf of the petitioner that since a decision had at one stage been taken to re-advertise the work, the failure of the respondent corporation to do so rendered the allotment of work to respondent No.4 illegal. It is true that at some stage in the process of evaluation of the expression of interest received from the intending parties, a recommendation was made for re-tendering the work but the mere fact that the fresh tenders were not invited pursuant to the said recommendation does not invalidate the allotment of work in favour of respondent No.4. We say so because the grievance against non-advertisement of the work in terms of the said recommendation could be made only by a party who was denied an opportunity by any such failure and not by a party who has, upon consideration of its offer, been found to be unsuitable or unworthy of the job. That apart, the alternative to the re-tendering process which the Commissioner had chosen could not be said to be wholly impracticable or wide off the mark. The Commissioner appears to have held the view that the fixation of a contract for running of the plant

could not be expedited by simply re-tendering the same especially when neither any agency nor any company had shown any interest in the said work. His attempt to persuade the other two pre-qualified tenderers to submit their tenders was therefore one of the options which was available and could cut short the delay and provide a realistic solution to the problem of finding a suitable party. The said effort having failed respondent No.4 alone was left in the fray whose offer was eventually accepted by the MCD by passing a resolution in the house to that effect. We find nothing irregular or illegal about this process especially when the same has met the approval of the elected representatives of the Corporation and culminated in a resolution favouring allotment of the work to the said respondent.

9. In the totality of these circumstances, therefore, we see no reason to interfere with the ongoing process of fixing a proper contract for running of the rendering plant. This petition accordingly fails and is hereby dismissed but in the circumstances without any order as to costs.

T.S. THAKUR, J.

ARUNA SURESH, J.

MARCH 11, 2008
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