

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.9105 of 2008**

Judgment reserved on: January 14, 2008

% Judgment delivered on: January 19, 2009

Suresh Goel & Associates
Through its Proprietor
Mr. Suresh Goel
Officer: S-83, Panchsheel Park
New Delhi-110017.

...Petitioner

Through Mr.Abhinav Vasishth with
Ms.Garima Prashad and
Ms.Neha Goyal, Adv.

Versus

1. Union of India
Through Secretary
Ministry of Defence
New Delhi.

2. The Chief Engineer Air Force, WAC
Military Engineering Services
Palam, Delhi Cantt.-110010.

...Respondents

Through Ms.Jyoti Singh, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

On 23rd April, 2005, the Respondents issued an advertisement in the daily newspaper inviting expressions of interest from architects, architectural firms, architectural institutes, IITs and RECs to promote an architectural competition and submission of a design for an Air Force museum in a two stage competition. It was stated that the estimated cost of the project would be Rs.50 crores and the object of the competition was to obtain architectural designs for the project in accordance with which, after further elaborations, the project would be developed. The competition conditions and registration form were made available with the Chief Engineer (Air Force) at Palam.

2. In response to the advertisement, the Petitioner participated by submitting his proposal. While the terms and conditions of the competition are not on record, it appears that the two stage competition

involved the submission of architectural drawings as Part-1 and a financial bid as Part-2.

3. After an evaluation of the concepts and designs received by the Respondents from various participants, it appears that a Board of Assessors evaluated the design submitted by the Petitioner as being the best. This was duly intimated to the Petitioner by the Respondents by a letter dated 7th June, 2007 in which it was also mentioned that the Petitioner had been selected and approved for consultancy towards the construction of the new Aerospace Museum.

4. As regards the consultancy charges, by a letter dated 20th June, 2007 the Petitioner stated that two preliminary estimates had been prepared in respect of the project – one for Rs.129 crores and the other for Rs.99 crores.

5. It appears that in the meanwhile (and even later) the Petitioner had made project presentations to the Respondents as well as to senior officers of the Air Force and there does not seem to be any dispute about the fact that the concept design furnished by the Petitioner

was the best.

6. It appears that the Petitioner continued to discuss improvements in the project and also continued to give presentations to the Respondents and the last such presentation was made on or about 11th February, 2008. Thereafter, there was no communication from the Respondents to the Petitioner, although the Petitioner addressed a couple of letters to the Respondents.

7. According to learned counsel for the Petitioner, since his client had been informed that his concept design was the best and that he had been selected and approved for consultancy, there was no doubt that the consultancy contract ought to have been awarded to the Petitioner. However, it appears that the Respondents had a completely different intention and they issued an advertisement in the daily newspaper on 13th December, 2008. The advertisement stated that the Chief Engineer in the Air Force (acting on behalf of the President of India) invited applications for consultancy services for an Air Force Museum at Air Force Station, Palam. The estimated cost of the project was Rs.90 lakhs.

8. Feeling upset with this turn of events, the Petitioner filed a writ petition in this Court under Article 226 of the Constitution praying for an appropriate writ, order or direction quashing the advertisement dated 13th December, 2008 and for a direction to the Respondents to honour their selection and appointment letter dated 7th June, 2007 and to execute a consultancy agreement with the Petitioner.

9. The Respondents filed their counter affidavit in which it was stated that what was advertised on 23rd April, 2005 was only a competition in which payments were to be made by the Air Force authorities from within their own fund (non-public funds) without any liability on the Government. The intention of the competition was to finalize the concept of an Air Force Museum and to obtain preliminary estimates in order to ascertain the feasibility of the project. The Respondents have stated in the counter affidavit that an honourarium of Rs.50,000/- was paid to all the participants for their efforts.

10. Significantly, the Respondents have stated (and this appears to be correct from a reading of the terms of the advertisement dated 23rd April, 2005) that the appointment of a consultant was never within the

scope of the competition and there was no sanction in this regard from any of the concerned authorities, more particularly the Ministry of Defence of the Government of India. It was stated by the Respondents that the entire exercise was an in-house exercise only to obtain a concept design and that the sanction for the appointment of a consultant was received by the Respondents only on 6th October, 2008 as per which the consultant was to be appointed through an open tender method. It is in pursuance of this that the subsequent advertisement dated 13th December, 2008 was issued. The sanction letter dated 6th October, 2008 is of importance and this reads as follows: -

“Air HQ/36018/324/1/W(WAC)534/F/D(Air-II)
Government of India
Ministry of Defence
New Delhi, the 6th Oct 2008

The Chief of the Air Staff

SUBJECT: ENGAGEMENT OF A CONSULTANT FOR
THE PROPOSED CONSTRUCTION OF
AEROSPACE MUSEUM AT AIR FORCE
STATION, PALAM

Sir,

I am directed to convey the sanction of President for engagement of a consultant in terms of Para 57(a) (iv) read with Para 24 of DWP-07 for preparation of detailed plan/scheme for various services and to obtain necessary mandatory clearances from various

prescribed authorities/bodies for the work of Aerospace Museum at Air Force Station Palam, New Delhi. The consultant will be selected through open tender to the lowest bidder.

2. The expenditure involved is debitable to Major Head 4076 (Capital Outlay on Defence Services) Sub Major Head 03 (Air Force), Minor head 202(Construction Works), Detailed Head 2(ii).
3. This issues with the concurrence of Min of Def (Fin/Air) vide their I.D No. 953/P&W/AF dated 06th October, 2008.

Yours faithfully

Sd/-

(SK Jha)

Under Secretary to the Government of India”

11. It was submitted by learned counsel for the Respondents that the financial offer given by the Petitioner was way beyond the estimate. Even otherwise, there was no question of awarding any consultancy project to the Petitioner for the Air Force Museum. It was also submitted that the Manual of Policies and Procedure of Employment of Consultants issued by the Ministry of Finance of the Government of India on 31st August, 2006 clearly requires the entering into a contract with the consultant. In the present case, no contract was entered into with the Petitioner and, therefore, no right had either accrued or vested

in favour of the Petitioner.

12. On these broad facts, it was submitted by learned counsel for the Petitioner that since his client had given the best concept design and was selected and approved as a consultant in terms of the letter dated 7th June, 2007 there was no question of the Respondents going back on their proposed appointment. Secondly, it was submitted that the Petitioner had a legitimate expectation that it would be appointed as a consultant and it was encouraged to believe this since it was entertained time and again by the Respondents and even requested to make presentations. In our opinion, none of these contentions can be accepted.

13. It is quite clear that what was advertised on 23rd April, 2005 was only a competition for submitting an architectural design for an Air Force Museum. It is true that the advertisement also required the parties to submit a financial bid but it appears that it was only for the purposes of getting an idea of the cost involved, particularly since this was the first time that the Air Force was coming out with the concept of an Air Force Museum. The advertisement may have had the trappings of a

notice inviting tender but its terms and conditions were certainly not those of a notice inviting tender but were more in the nature of a competition leading to further discussions between the participant submitting the best concept design or perhaps the lowest financial bid.

14. In any event, the Petitioner could not have continued to harbour an impression that it would be appointed as a consultant notwithstanding the letter dated 7th June, 2007 simply because there was no follow-up contract entered into between the parties, as postulated by the Manual of Policies and Procedure of Employment of Consultants. It is true that the letter dated 7th June, 2007 mentioned that the Petitioner was selected and approved for consultancy but that did not culminate into a written contract between the parties. It is for this reason that the Petitioner did not acquire any consultancy rights.

15. Learned counsel for the Petitioner submitted that the Respondents were wrong in contending that the officers with whom the Petitioner had discussions or negotiations were not authorized to conduct these discussions and bind the Respondents. In our opinion, it was not necessary to go into this submission made in the counter

affidavit because ex-facie even if the officers were competent and authorized to discuss and negotiate with the Petitioner, the deliberations did not fructify into a contract.

16. It was submitted by learned counsel for the Petitioner that his client had a legitimate expectation that it would be awarded the consultancy. In support of his submission he relied upon *Punjab Communications Ltd. v. Union of India and others*, (1999) 4 SCC 727. In our opinion, this decision does not advance the case of the Petitioner. In every tender, a qualified bidder has a legitimate expectation that he would be awarded the contract but that does not mean that every bidder must be awarded a contract. The award of a contract is a commercial venture and it needs to be looked at from a commercial point of view.

17. In so far as the present case is concerned, there is not even a semblance of a commercial venture as is apparent from the advertisement dated 23rd April, 2005. What was advertised was a competition which might lead the most successful participant to be awarded a consultancy for an Air Force Museum. However, there is nothing to suggest that a firm or conclusive decision was taken by the

Respondents in this regard. Even if such a decision was taken by the Respondents, it would have been subject to necessary financial sanctions to be granted by the Government of India. It has come on record that the competition was carried out by the Respondents through an in-house procedure involving non-public funds. But when it came to the utilization of public funds (in terms of giving a contract for an Air Force Museum), the rules and regulations formulated by the Government of India for award of such a contract came into play. As mentioned in the sanction letter dated 6th October, 2008 a particular procedure had to be followed and that procedure was the selection of a consultant through an open tender in favour of the lowest bidder. The sanction given to the Respondents by the Government of India came only in October, 2008 which was more than three years after the advertisement inviting expressions of interest was issued on 23rd April, 2005. These facts lead us to accept the contention of the Respondents that they had only undertaken an in-house exercise for their own benefit and to enable them to get an idea how to cope with setting up of a high quality Air Force Museum.

18. In our opinion, the Petitioner has not made out any case for

grant of any relief, as prayed for. Accordingly, the writ petition is dismissed.

19. It appears that the Petitioner spent a considerable period of time, knowledge and expertise in preparing the drawings for the Air Force Museum. In our opinion, it would have been advisable for the Respondents to have played its cards upfront rather than to exploit the architectural and designing abilities of the Petitioner and leaving it in the lurch midway. The Petitioner has reason to feel upset though not a good enough reason in law for the award of a consultancy. Consequently, we refrain from awarding any costs while dismissing the writ petition.

MADAN B. LOKUR, J

January 19, 2009
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SIDDHARTH MRIDUL, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.