

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

Date of decision: 28th January, 2011

+

W.P.(C) 3551/2008

BEDI & BEDI ASSOCIATES

..... Petitioner

Through: Mr. Amit Tiwari, Advocate.

versus

M.C.D

.... Respondent

Through: Mr. Anshum Jain for Ms. Suparna
Srivastava, Advocate.

AND

+

CONT.CAS(C) 515/2009

BEDI & BEDI ASSOCIATES

..... Petitioner

Through: Mr. Amit Tiwari, Advocate.

versus

K.S.MEHRA & ORS.

.... Respondents

Through: Mr. Anshum Jain for Ms. Suparna
Srivastava, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|--|----|
| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported
in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The writ petition was filed claiming that the petitioner, a sole proprietary of a retired Military Officer, was engaged in supply of manpower and human resources to the various government organizations since the year 1986; that in October, 2004 the petitioner had

participated in the open tender invited by the respondent MCD for empanelment of contractors for providing Data Entry Operators to the respondent MCD; that the petitioner was so empanelled and from October, 2004 onwards as an empanelled contractor was receiving requisitions from various departments of the respondent MCD and providing them manpower to execute the work of Data Entry; that on 8th September, 2007 the respondent MCD issued a fresh advertisement for empanelling the contractors for providing Data Entry Operators; that the petitioner participated in the said tender and also deposited ₹10,000/- as security; that the respondent MCD however neither declared the result of the said tender nor refunded the sum of ₹10,000/- deposited by the petitioner till the filing of the petition; that the petitioner had learnt that the respondent MCD has abandoned the said tender and decided to allocate the work only to the companies empanelled with Govt. of NCT of Delhi for providing Data Entry Services; that on 25th April, 2008 the respondent MCD had issued a circular intimating empanelment of only four firms for providing Data Entry Operators to all departments of the respondent MCD. Upon representations of the petitioner to the respondent MCD not meeting with any success, this writ petition was filed contending that the respondent MCD could not without open tender select the persons for rendering the said services. The relief of quashing of the circular dated 25th April, 2008 (supra) and mandamus to the respondent MCD to carry out exercise of empanelment of contractors for the said purpose by inviting open tender has been claimed.

2. Notice of the petition was issued. On the plea of the petitioner that its Data Entry Operators till the filing of the writ petition were still working for various departments of the respondent MCD, it was also ordered that the circular dated 25th April, 2008 shall not come in the way of the petitioner supplying Data Entry Operators to the various departments of the respondent MCD on the terms already applicable. The said interim order was made absolute on 15th September, 2009.

3. The petitioner has filed an additional affidavit pleading that even petitioner is empanelled with the Govt. of NCT of Delhi and also with the Department of Information & Technology of the Govt. of NCT of Delhi. The respondent MCD has filed a counter affidavit contending that the petitioner has concealed facts. It is pleaded that in the tender invited in August, 2007 and in which the petitioner had admittedly participated, it was expressly provided that the non-conforming bids shall not be considered; as per the condition of the said tender, the bidders were required to be a company registered under the Indian Companies Act, 1956 and to have a valid ISO 9001:2000 certificate; that the petitioner was neither a company nor having the ISO certificate and the bid of the petitioner was therefore non-conforming and was rejected as such by the Evaluation Committee. It is however further pleaded that the companies selected/empanelled pursuant to the said tender were also unable to provide experienced and skilled Data Entry Operators; that in these circumstances, it was felt that the process adopted earlier of empanelment was non-workable and the process being

followed by the Government of NCT of Delhi for empanelling and then going for limited tenders from empanelled contractors was reasonable; accordingly the panel/process of Govt. of NCT of Delhi for procuring Data Entry Operators by limited tenders on need basis by various departments/divisions was adopted and circulated on 25th April, 2008. It is however further pleaded that vide circular dated 13th July, 2009 the circular dated 25th April, 2008 impugned in this petition has also been discharged and w.e.f. 1st July, 2009 Data Entry Operators are being procured from government agencies like M/s DOEACC, as per the requirement of various departments of the respondent MCD.

4. The petitioner has filed a rejoinder in which the circular dated 13th July, 2009 discharging the circular dated 25th April, 2008 is not disputed.

5. In view of the aforesaid subsequent event of the circular dated 25th April, 2008 impugned in this petition having been discharged, the relief qua the circular dated 25th April, 2008 does not survive.

6. As far as the other relief claimed of directing the respondent MCD to carry out exercise of empanelment of contractors for providing Data Entry Operators, is concerned, as long as the respondent MCD is not favouring any particular party/person/company by awarding the contract therefor to that party only, the respondent MCD cannot be compelled to empanel the contractors or to invite the tender therefor. The petitioner cannot insist that the respondent MCD should avail of supply of Data Entry Operators from private persons/entities/companies only and not from government agencies.

The government companies/agencies fall in entirely different class from the private players/suppliers. The respondent MCD is fully entitled to fulfill its requirements from government agencies/companies. However if the respondent MCD at any point of time requires the Data Entry Operators from private players/suppliers as the petitioner, the same has to be in a transparent manner through an open tender and the respondent MCD/its officials cannot pick and choose the private parties/persons/companies with whom it may choose to deal.

7. It is not the case of the petitioner that the respondent MCD at present is availing Data Entry Operators from any private party. Thus the petitioner is not entitled to the second relief claimed also at this stage, save for the observations aforesaid.

8. Contempt petition was filed averring breach of the interim order in the writ petition by issuance of a circular dated 23rd March, 2009 by the respondent MCD informing all the departments concerned that writ petition filed by the petitioner stood dismissed on 17th July, 2008 and thus the interim order stood vacated and advising its various departments to revert the Data Entry Operators engaged through the petitioner. Notice was issued. The respondent MCD has filed a reply explaining that on 17th July, 2008, Contempt petition No.350/2008 earlier filed by the petitioner was dismissed; however mistakenly it was understood that the writ petition had been dismissed and circular dated 23rd March, 2009 issued under such mistaken belief; however immediately on realizing the mistake another circular dated

6th July, 2009 was issued informing the correct position to all the departments and withdrawing the circular dated 23rd March, 2009. No rejoinder has been filed by the petitioner inspite of opportunity. I am satisfied with the explanation given by the respondent MCD and do not find any willful disobedience of the order of this Court by any official of the respondent MCD. Moreover the petitioner under the interim orders in this petition has continued to supply Data Entry Operators even after 1st July, 2009 when the respondent MCD switched to the government companies/agencies. The petitioner has thus been sufficiently compensated.

9. The counsel for the petitioner during the hearing had relied on *Harinder Singh Arora v. Union of India* (1986) 3 SCC 247 and on *Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd.* (1997) 1 SCC 53. However the said judgments in the circumstances are not found apposite.

10. The writ petition is therefore dismissed as infructuous and no case for proceeding for contempt is made out; the Contempt petition is dismissed. The interim order stands vacated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JANUARY 28, 2011

pp