

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

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Judgment reserved on: 19th August, 2015
Judgment delivered on: 01st September, 2015

+ **WP(C) No. 7000/2014**

DIN BANDHU DAS

..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr S.D. Shorey, Advocate.
For the Respondent No.1	: Ms Nikhita Khetrapal, Ms Nidhi Raman and Mr Anil Kumar, Advocates for LNJP.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The petitioner has filed the present petition seeking quashing of the requirement of e-tender issued by the respondents insofar as it restricts the bidders only to "Not-for-Profit Registered Societies working in the field of

education, health & Social Service and govt. undertakings (Central/State) and having experience of taking care of food/beverages related kiosks"

2. The respondents had invited an open e-tender for allotment of kiosks in Lok Nayak Hospital and Sushruta Trauma Centre from the representatives belonging to "Not-for-Profit Registered Societies working in the field of education, health & Social Service and govt. undertakings (Central/State) and having experience of taking care of food/beverages related kiosks".

3. The petitioner has filed the present petition impugning the said tender solely on the ground that the same is restricted to "Not-for-profit" registered societies and government undertakings (Central/State). It is contended by the petitioner that by restricting the tender to "Not-for-profit" registered societies and government undertakings (Central/State), the respondents have narrowed the field of participants and have deprived the petitioner of the right to participate in the tender. The petitioner has contended that if quality was an issue, the respondents could always ensure that the quality is maintained by the person to whom the tender is allotted and as such no prejudice would be caused to the patients and their attendants if the tender was open to the public and not restricted to "Not-for-profit" registered societies and government undertakings (Central/State).

4. The respondent No.2/hospital has filed a counter affidavit contending that the e-tender was floated for allotment of kiosks to provide eatables,

beverages etc. to the patients, their attendants and visitors in the premises of the hospital and Sushruta Trauma Centre, which is an annexe of the hospital and under the overall administrative and financial control of the answering respondent.

5. It is contended by the respondent No.2 that the objective of the respondent No.2/hospital, which is a fully public funded institution mainly catering to poor and economically weaker sections of the society is to provide health care, almost free of cost and to also ensure that visitors and attendants of the patients, who are there in the hospital get eatables and drinks of standard quality for their consumption and at a nominal affordable price. It is submitted that most of the services including medicines, food, operations and admissions etc. are provided free to the patients and services such as eatables and drinks for the consumption of those accompanying the patients are provided at a nominal price. It is contended that when such welfare services, which do not generate any revenue, are provided to the poorer sections of the society, it is important that care is taken to limit the extra out-of-pocket expenses for the patients and their families to the minimum. It is contended that as per the experience of the respondent No.2, if such services are taken up by the private and corporate vendors, the patients and their relatives/attendants will not be provided eatables at affordable prices. It has been noticed that private individuals and vendors often lower the

quality of the eatables/consumables in order to ensure profit to themselves. Various complaints were received by the Hospital due to poor and sub-standard quality of food provided by private vendors when the tender process was open to private parties.

6. It is contended that the not-for-profit organizations are equipped to supply eatables, beverages etc. under a strict budget, at a minimal price and their quality is under scrutiny. It is contended that a policy decision based on the above rationale was taken in the larger interest of the patients, their attendants and visitors to ensure provision of quality eatables at a nominal price. It is further contended that the petitioner cannot impugn a tender condition based on the above rationale and the tender calling authority is the best judge with regard to formulation and prescription of tender conditions.

7. The law with regard to interference in tender conditions is fairly well settled. The scope of a court's interference in tender matters is very restricted and limited. Where the State acts in a reasonable and fair manner and in public interest, the interference would be at a minimal, if at all. Greater latitude is to be conceded to state authorities in matters of formulating conditions of tenders and awarding contracts. The courts would not interfere with the formulation of conditions of tenders unless the action of the tendering authority is mala fide or is misuse of statutory powers.

Courts would not interfere merely because it is felt that some term in the tender could have been fairer or more logical.

8. The Supreme Court in ***Michigan Rubber (India) Limited Vs. State of Karnataka and Ors.***: (2012) 8 Supreme Court Cases 216 held as under:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be

malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. *Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

(Italics supplied)

9. The rationale given by the respondent No. 2 for taking the policy decision of restricting the tender to “Not-for-profit” registered societies and

government undertakings (Central/State) is reasonable and the decision has been taken in the interest of patients, their attendants and visitors. The subject kiosks are situated in the hospital catering to the poor and weaker sections of society and as such the decision of the respondent No.2 in restricting the tender to the said organizations cannot be said to be arbitrary or malafide. The explanation tendered by the respondent No. 2 is that if it was an open tendering, open to private parties, there would be a likelihood that for maximizing profit, either the rates of the items would increase or the quality would be compromised. If a profit making organization were to get the tender, its sole motive would be to maximize its profits which is possible only by increase of rates and if rates are regulated by the respondent No.2 then the only way profit can be maximized is by compromising on quality and quantity which would not be in the interest of the patients, their attendants and visitors. The contention of the petitioner that the petitioner is being deprived of the opportunity to participate has no merit. There is no right of a party to participate in each and every tender. The tender calling authority has sufficient latitude in restricting the tender to a section/group of participants provided there is a reasonable rationale for restricting the same. We find that the explanation rendered by the respondent No.2 is reasonable and in greater public interest. The petitioner does not have any vested rights of participation in the tender, he can only participate if eligible under the tender conditions.

10. The judgments in the case of *Tata Cellular Versus Union of India: (1994) 6 SCC 651* and *Ramana Dayaram Shetty Versus International Airport Authority of India: (1979) 3 SCC 489* sought to be relied upon by the counsel for the petitioner do not come to the aid of the petitioner in as much as we are of the view that policy decision taken by the Respondents in restricting the tender to “Not-for-profit” registered societies and government undertakings (Central/State) is not arbitrary, unfair, unreasonable or irrational.

11. In view of the above, we find no merit in the petition. Accordingly, the same is dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 01, 2015
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