



2023:DHC:9449



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

% **Date of order: 13th December, 2023**

+ **W.P.(C) 9740/2023**

KC INDIA TEST LABORATORIES AND ORS. Petitioners

Through: Mr. Rajiv Kumar, Advocate

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mr. Keshav Sehgal, Ms. Vrinda Kapoor, Mr. Shivam Gaur and Ms. Ramya Soni, Advocates and Ms. Vrinda Kapoor, Ms. Saumya Soni and Mr. Vishal Vaid, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 14, 19, 21 and 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(i). To conduct testing of construction materials for DDA as before one year backwards for over 20 years.

(ii). To quash/set aside the DDA Circular no. 228 dated 18.05.202 and DDA's 'speaking Orders' dated 20.02.2023 served by Respondent being violation of Article 14 of constitution.

(iii). To compensate the Petitioner's laboratories on account of

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illegal stoppage of material sample testing already continuing for the last twenty years.

(iv). To pass any such order as this Hon'ble Court may feel fit and proper in the facts and circumstances of the case. Accordingly, the instant petition stands dismissed.”

2. The brief facts necessary for the adjudication of the instant petition are reproduced hereunder:

- a) The petitioners are private labs duly certified by the National Accreditation Board for Testing and Calibration Laboratories (hereinafter “NABL”) in order to conduct testing of construction materials for the respondent no.1/DDA and have been empaneled with the DDA for a few years.
- b) The respondent no.3/the Chief Engineer Quality Assurance and Control (QAC) has been assigned to check the quality of works at field division level in various DDA zones, thereby, drawing samples of the material consumed in the construction of civil, electrical and horticulture works in order to ensure quality.
- c) The respondent no.1 invited applications through advertisement dated 2nd December, 2021 for fresh empanelment for a period of two years w.e.f. 31st March, 2022 from private material testing labs from Delhi.
- d) The petitioners responded to the aforesaid advertisement and submitted all the requisite documents required for the same, thereby, applying for fresh empanelment with the respondent no.1/DDA.



- e) Subsequently, the petitioners' labs qualified in the scrutiny of the documents as well as in the physical inspection carried out by the Committee of Senior Engineers as constituted by the respondent no.1/DDA.
- f) Thereafter, the respondent no.1/DDA rejected the empanelment requests of the petitioners and only considered the nine private labs from Delhi region, thereby, ignoring the labs located within the NCR region of Delhi.
- g) Further, being aggrieved by the said rejections, the petitioners filed a writ petition bearing no. WP(C) 438/2023. The said petition was disposed of vide order dated 13th January, 2023 with directions to the respondent to decide the representation of all the petitioners and to communicate the decision with regards to their empanelment within two weeks.
- h) Subsequently, the respondent no.1/DDA passed a speaking order dated 20th February, 2023 bearing No. F1(1)/2023/court case/ CB (QAC) 47, whereby, the respondent no.1/DDA provided details as to why the applications of the petitioners were rejected.
- i) Aggrieved by the aforesaid speaking orders, the petitioners have preferred the instant petition.

3. Learned counsel appearing on behalf of the petitioners submitted that the speaking order passed by the respondent no.1/DDA did not comply with the order dated 13th January, 2013 and therefore is in violation of Article 14



of the Constitution of India. It is submitted that the content of the speaking order is misleading, irrational, unjustified and unlawful and hence the petitioners have preferred a fresh writ petition.

4. It is submitted that the respondent no.1/ DDA invited bids from the National Capital Region of Delhi (hereinafter “NCR”)but refused to consider any application from NCR for the purposes of empanelment.

5. It is submitted that the respondents did not obey the directions issued by this Court vide order dated 13th January, 2023 as a result of which the petitioners filed an application for execution of the orders vide CM APPL. 10508/2023 which was disposed of vide order dated 20th March, 2023 with liberty to the petitioners to assail the speaking orders in accordance with law.

6. It is further submitted that the respondent no.1/DDA was directed to communicate the petitioners’ as to why they had excluded the private labs in NCR for conduction of tests of construction material for DDA, when the advertisement included private labs in the NCR region, however, the respondents failed to do so.

7. It is submitted that the petitioners’ labs were provided with a satisfactory rating as per the performance report of the labs in the year 2021, moreover, the labs are in close vicinity of DDA works division which is around Delhi borders.

8. It is submitted that since the speaking orders as well as the empanelment list was uploaded on the website of the respondent no.1/DDA, therefore, the same cannot be considered to be a necessary reply to the individual representationsof the labs that applied for empanelment.



9. It is submitted that the respondent no.1/DDA has not followed the procedure for empanelment as provided under the DDA (QAC) Quality Manual ISO 9001:2015, dated 27th August, 2018 (hereinafter “quality manual”). The same constitutes *malafide* on the part of the respondent ultimately violating the petitioners’ legal rights.

10. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs as prayed for may be granted.

11. *Per Contra*, learned counsel appearing on behalf of the respondent no.1/DDA vehemently opposed the instant petition submitting to the effect that the respondent no.1/DDA has duly complied with the order dated 13th January, 2023 and accordingly passed a detailed order on the representations of the petitioners.

12. It is submitted that the instant petition garbs the colour of a public interest litigation (hereinafter “PIL”), since the petitioners seem to be challenging the entire process of empanelment, even when the case of the petitioners has been duly decided by the respondent no.1/DDA vide speaking order dated 20th February, 2023.

13. It is submitted that the respondent/DDA conducted a hearing on 6th February, 2023 to assess the case of the petitioners and only after following the due process of law it decided upon the petitioners’ representations.

14. It is submitted that the specialised tests proposed to be conducted by the respondent no.1/DDA are already available in the Government Sector labs and the respondent no.1 organization does not have the administrative



and technical need to approve the private labs located outside the NCR of Delhi limits.

15. It is submitted that the DDA officers cannot freely travel to labs located outside of Delhi to witness testing, and therefore labs located within the limits of the NCR of Delhi prove to be more efficient in order to carry out the testing process smoothly.

16. It is further submitted that the respondent no.1/DDA has not violated any procedure as established by the quality manual and has followed the due process of law, in order to decide the list of empaneled labs.

17. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being devoid of any merits.

18. Heard the parties and perused the record.

19. It is the case of the petitioners that they had been empaneled with the respondent no.1/DDA for a number of years and in pursuance of the advertisement dated 2nd December, 2021, the petitioners applied for fresh empanelment which was rejected by the respondent no.1/DDA. It is contended that the petitioners filed a writ petition bearing no. 438/2023, which was disposed of with directions to the respondent no.1/DDA to pass and communicate the decision regarding the empanelment of the petitioners. It is further contended that the respondent no.1/DDA passed a speaking order dated 20th February, 2023, whereby the applications of the petitioners seeking fresh empanelment were rejected, however, the same was not in compliance with the directions issued by this Court. Aggrieved by the said speaking order as well as the circular dated 18th May, 2022, which



enlisted the labs as shortlisted for the empanelment, the petitioners have preferred the instant petition.

20. In rival contentions it is submitted that the respondents have duly complied with the directions so issued by this Court and passed a well detailed speaking order, thereby, providing extensive reasoning as to why the petitioners' application for fresh empanelment was rejected. It is contended that since the petitioners' grievance was decided vide the said speaking order, the present petition appears to take garb of a PIL and the same cannot be decided by this Court under its writ jurisdiction. It is further contended that the respondent no.1/DDA has not violated any procedural rules established by the quality manual. It is also contended that the instant petition is liable to be dismissed since it is devoid of any merit.

21. *Prime facie*, this Court is of the view that the present petition appears to take the color of a petition filed in public interest i.e., a PIL. It is a well settled principle of law that a PIL cannot be filed by an individual seeking their personal gains. The Hon'ble Supreme Court in ***Kansing Kalusing Thakore v. Rabari Maganbhai Vashrambhai*, (2006) 12 SCC 360**, held that an individual with a *bonafide* intent and having sufficient cause has the *locus standi* to file petitions in the nature of public interests, i.e, a PIL. The relevant paragraphs of the aforesaid judgment have been reproduced herein:

"24. We have given our careful consideration to the rival submissions made by the respective counsel appearing for the respective parties. The writ petition filed by the respondents herein is an abuse of the process of the court. By this PIL, the



respondents sought to ventilate/redress their personal grievances inasmuch as they are able to holding clout in Village Rasana Nana and were enjoying illegal possession in several lands contained under said Survey Nos. 125 and 126. The appellants herein were deliberately not made parties to the writ petition allegedly filed in public interest. It is a matter of record that the writ petitioners are the people who encroached upon the land sought to be granted to the appellants herein and hence having no legal right to continue their illegal occupancy, devised means to approach the High Court in alleged public interest. This would be evident from the affidavit of the Deputy Collector filed on 24-3-2005. The maintainability of the writ petition at the instance of the respondents was specifically raised before the High Court. The maintainability of the PIL which was in issue was unfortunately not decided by the High Court. The High Court, in our opinion, ought to have decided the maintainability of the PIL maintained at the instance of the encroachers and land-grabbers and rejected the writ petitions at the threshold. This Court in a catena of decisions held that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have locus standi and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights but not a person for personal gain or private profit or political or any oblique consideration. The High Court ought to have rejected the writ petition at the threshold as observed by this Court in Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] . In our opinion, the writ petition filed by the respondents was not aimed at redressal of genuine public wrong or public injury but was founded on personal vendetta. It is the duty of the High Court not to allow such process to be abused for oblique considerations and the petitions filed by such busy bodies deserves to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs.



22. Bearing in mind the aforesaid judgment as well as the submissions made by the respondents, it appears that the petitioners are filing the present petition for their own vested interests rather than the interest of the public at large. The petitioners have presented the instant petition in a manner that their rights are being violated, however, the arguments advanced by them are such that appear to be for larger public interest, thereby, taking the colour of a PIL. The same is also evident from prayer (i) to the instant petition, whereby, the petitioners are seeking testing of construction materials for DDA as before one year backwards for over 20 years.

23. At this juncture, it is imperative for this Court to analyse the speaking order as passed by the respondent no.1/DDA, in compliance with the directions issued by this Court vide order dated 13th January, 2023. The relevant portion of the same has been reproduced hereunder:

“As per the direction, the reply of petitioners representation dated- 30.05.2022 & 06.06.2022 is that that approved empanelment list dated- 18.05.2022 was uploaded on DDA website i.e. on www.dda.org.in. Hence, it was not considered necessary to reply individual representation of the labs who applied for empanelment.

The view of Legal Department as mention has been incorporated in the Speaking Order as under:-

- 1. Foremost requirement was to mention Hon'ble High Court direction, which has been done correctly.*
- 2. As per second requirement of the Legal Department to give personal hearing to the petitioner, hearing was conducted on 06.02.2023 with prior intimation. The detail status of the*



hearing of the petitioner along with view of the competent authority i.e. EM/DDA are as under:

- i) During the hearing the respective lab owners/petitioners were asked to submit their representations with the mention of their point of interest.*
- ii) During the personal hearing all the three lab owners/petitioners stated that they were already empanelled with DDA for last many years and their performance in testing of material, promptness in collection and delivery of report of the samples etc. have never been questioned.*
- iii) During the physical inspection carried out by the committee of the DDA, nothing adverse was observed/pointed out by the committee.*
- iv) Accordingly, all the three labs. responded to the above directions and submitted that their written submission stating that their petition itself may be considered as their representation.(Ref: 192C to 194C)*
- v) During the hearing the respective owners/petitioners were asked how they collect the samples from site. The petitioners stated that they collect the samples from site and carry them to lab. for testing at their own cost.*

The requirement to identify and shortlist testing laboratories is not for routine testing, facility for which is already available at site laboratories set up by executing contractors as per terms and conditions of the contract, zonal laboratories and/or central laboratory under CE(QAC).

Labs are identified and shortlisted for specialized tests in addition to the ones as enumerated which already exist for routine tests.

Such labs in Government Sector, Semi Government or Private Sector include all govt. Institutes, Indian Institutes of Technology, National Institutes of Technology, Central and State research centres, Centrally and State funded laboratories



and already stand approved i.e. no approval is required for testing in these laboratories/institutes.

Where specialised testing facility is not available in Government Sector, Private Labs. Accredited by NABL or any other accreditation body which operates in accordance with ISO/EC 17011 and accredits labs as per ISO/IEC 17025 for testing and calibration scopes are also identified and approved. A general tendency has been observed that DDA officers find it difficult to travel beyond the limits of NCT of Delhi on their own reckoning to witness the specialized testing at the laboratory as it needs prior approval whenever they intend to witness testing at labs situated outside the limits of NCT Delhi. Therefore, all such private labs which are either accredited by NABL or by any other accreditation body which operates in accordance with ISO/IEC 17011 and accredits labs as per ISO/IEC 17025 for testing and calibration scopes, which are available within the limits of NCT of Delhi and undertake specialised test which are not available in Government Sector, have been approved...

...As the specialised tests proposed to be conducted by DDA are already available in labs in Government Sector and in private sector within NCT of Delhi, DDA does not have any administrative and technical need to approve the private labs located outside the NCT of Delhi limits.

During approval of the empanelled lab. the view of the competent authority i.e. EM/DDA was the reliability of the services it renders. We are strongly relying in labs outside Delhi who will collect samples and supposedly carry them to lab where they shall be tested. In other words, we shall have very little control over the samples are handed over. Also, as per the TA rules, DDA officers cannot freely travel of their own volition to such labs outside Delhi to witness testing. Therefore, empanelling lab outside Delhi is a deterrent to an efficient and



quality conscious engineer who may like to get it tested in his presence.

Therefore, with due consideration, the lab located within the territory of Delhi only were approved by the competent authority i.e. EM/DDA.

3) Third requirement i.e. petitioner facts are as under: i) that the private labs duly certified by NABL to conduct testing of construction materials for DDA and other agencies In Delhi/NCR.

ii)The Respondents are the DDA and other Government instrumentalities concerning quality control of construction materials consumed in construction works.

iii)The grievance of the petitioner labs is that the official respondents earlier issued empanelment certificates to all the labs certified by NABL to conduct testing of construction material for DDA in Delhi/NCR. This time respondents issued empanelment certificates only to nine private labs of Delhi and did not issue to petitioner labs in NCR of Delhi.

4). The fourth requirement is mentioning of Prayer Clause of the petitioner still required to be mentioned which is as under:

i) Writ of mandamus against the respondents challenging DDA circular no. 228 dated- 18.05.2022 and quashing the same.

ii)The main objective of the petitioner appear to be direct the official respondents to issue 1 release the empanelment certificate to conduct testing of construction material for DDA in Delhi and NCR.

5) Fifth requirement is DDA stand in the matter is as under:

The view and decision with reason of the competent authority i.e. EM/DDA(refer pg. no.125 & 126) is as under:

i)Approved labs will collect samples from the site at their own cost.

ii)Testing charges shall be borne by contractors as per rates fixed by DDA. iii) For samples drawn by QAC, charges shall be borne by DDA.



iv) Labs outside Delhi have their sample collection units in Delhi.

v) As per data produced, it is seen that labs based at Rai, Sonipat have performed satisfactorily along with other labs at Ghaziabad & Faridabad. Delhi labs have also performed well.

vi) Various new labs located outside Delhi have been nominated, rather strongly, for empanelment with the understanding that they would provide services at par with Shri Ram Institute at Delhi. The moot question is not in the laboratory, but in the reliability of the services it renders. We are strongly relying in labs outside Delhi who will collect samples and supposedly carry them to lab where they shall be tested. In other words, we shall have very little control over the samples are handed over. Also, as per the TA rules, DDA officers cannot freely travel of their own volition to such labs outside Delhi to witness testing: therefore, empanelling lab outside Delhi is a deterrent to an efficient and quality conscious engineer who may like to get it tested in his presence.

Therefore, with due consideration, the lab located within the territory of Delhi only are hereby approved. This approval is for following circumstances.

i) Test is not available with Govt. labs situated in Delhi.

ii) Test is not available in Govt. Engineering colleges situated in Delhi.

iii) Test is not available in Zonal and Central lab of DDA.

Lastly decision is require to be passed based on the above mention ground and facts is to be taken by the competent authority i.e. EM/DDA.

Beside above the brief facts of the case are as under:

i) Expression of interest was invited from the interested Pvt. material testing laboratories up to 24.12.2021 through press release dated 02.12.2021. Total 29 nos. of applications were received.

ii) After examination of records inspection work has carried out



by the committee i.e. CE/HQ/(QAC), CE/SEZ, SE(QAC), EE/QAC/(Lab.) and EE/HQ/(QAC) as per their availability.

iii) After inspection 23 nos. labs were having valid NABL scope and were recommended for approval by the committee.

iv) These labs were situated Delhi and outside Delhi but within NCR as per advertisement.

v) The competent authority i.e. EM/DDA approved nine pvt. labs situated in Delhi with the view and reasons as mentioned above.

vi) The recommendation and approval note is available at pg. 125 to 130.

In view of above, the file is submitted for necessary action in the matter. All three petitioners i.e. 1) KC INDIA TEST LABORATORIES LLP AND ORS.(Ghaziabad), 2) ARIHANT ANALYTICAL LABORATORY Pvt. Ltd.(Sonipat), 3) STALLER TEST HOUSE, (Noida) are hereby informed with view, decision with reason accordingly.

This issues with the approval of competent authority. CE/HQ/(QAC)”

24. A bare perusal of the aforesaid speaking order makes it evident that the respondent no.1/DDA has provided detailed reasoning as to why the representations of the petitioners were rejected. It has been categorically stated that the respondent no.1/DDA considered all 29 applications that it received in pursuance of the advertisement dated 2nd December, 2021. The reasons provided by the respondent no.1/DDA are for reasons that are best suited to them and the requirements of the organization. It does not warrant the interference of this Court as it suffers from no illegality on the face of it. The respondent no.1/DDA, has stated in their speaking order that the question which arises is not about the laboratory but about the services so



rendered by them. It has been stated that the process of carrying the samples for testing, the respondent no.1/DDA will have very little control over the samples so handed over. Moreover, it has been stated that the DDA officers cannot freely travel of their own volition to such labs in order to supervise the tests being conducted. It has also been stated that empaneling a lab outside Delhi would hamper the overall efficiency of the entire testing process.

25. Taking into consideration the facts of the instant petition, it is crystal clear that the petitioners have been carrying the samples from the site to their labs at their own cost, which has also been admitted by them in the hearing conducted by the respondent no.1/DDA on 6th February, 2023. Admittedly, the petitioners have more control over the material than the respondent no.1/DDA, which is something the DDA is attempting to rectify. The respondent no.1/DDA is best aware of their requirements to ensure smooth functioning of the organisation and have committed no illegality in the process of the same. The respondent no.1/DDA has duly complied with the order dated 13th January, 2023, passed by this Court and provided a detailed reasoning as to why the petitioners' applications were rejected.

26. This Court under its writ jurisdiction cannot interfere with orders wherein there is no patent illegality that has been committed at the hands of any party. In the instant petition, the respondent no.1/DDA has taken into consideration the applications of the petitioners and provided detailed reasons for rejecting the same, therefore, not warranting any interference of this Court.



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27. In view of the aforesaid discussions, the instant petition is dismissed.
28. Pending applications, if any, also stand dismissed.
29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 13, 2023
gs/ds/ryp

Click here to check corrigendum, if any