

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.09.2015

+ **W.P.(C) 6959/2015 & CM 12756/2015 & CM 12757/2015**

SURINDER SINGH

... Petitioner

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Satish Kumar with Mr Deepak Singh

For the Respondents : Mr Kavindra Gill

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 12757/2015

Allowed subject to all just exceptions.

CM 17294/2015 & WP(C) 6959/2015

1. This is an application seeking stay of any further proceedings in respect of the Notice Inviting Tender dated 14.05.2015 issued by the Government of India, Ministry of Finance, Department of Expenditure for hiring of services for cleaning of toilets, corridors, staircases and other common areas in the premises occupied by the Ministry of Finance, North Block. The next date which was fixed in the writ petition is 12.02.2016.

2. The learned counsel for the petitioner insisted that an interim direction should be given to stay the tender process and that if the matter is not heard at an early date, the petition would be rendered infructuous. On the insistence of the learned counsel for the petitioner, we have not only heard this application, but have also taken up the hearing of the writ petition. Both the counsel for the petitioner and the counsel for the respondents are present and they have been heard.

3. We may point out that we have not issued any notice on the same and it is only because the respondents volunteered to file a counter-affidavit that we have permitted them to do so. Be that as it may, since the petitioner has raised a point of urgency, we have taken up the writ petition for hearing.

4. On going through the contents of the writ petition, we find that the same are extremely vague and general. The learned counsel for the petitioner sought to argue points which were not pleaded in the writ petition and for which there was no foundation in the averments. The grounds urged in the writ petition are also extremely vague and general in nature. However, during the course of arguments, it transpires that the objection of

the petitioner is that 70% weightage has been given to technical evaluation and 30% weightage has been given to financial evaluation, which, according to him, is unjust. According to the learned counsel for the petitioner, the tender should have been a two-stage tender, in which the bidders should have first qualified the technical stage and then the L-1 ought to have been selected at the financial bid opening stage. It was submitted that by adopting this process of giving different weightages to technical evaluation and financial evaluation, the respondents would end up with a person whose financial quote may be higher than that of the others, including the petitioner.

5. In **Michigan Rubber (India) Ltd. v. The State of Karnataka and Others: (2012) 8 SCC 216**, the Supreme Court 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 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 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 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 negative, then there should be no interference under Article 226.”

6. It is, therefore, clear that the prescribing of tender conditions is within the domain of the employer and cannot be objected to unless the tender conditions are arbitrary or perverse. In the present case, the system of weightage of 70% and 30%, as indicated above, has been stipulated on the premise that the quality of work is a major criterion apart from the price bid criterion. It is not at all necessary that the tender conditions must always stipulate that the L-1 bidder would be selected for the work. The employer may be looking for a better qualified and more experienced bidder (beyond the minimum eligibility conditions) and not just for a bidder who gives the lowest financial quote but may not have the capacity or experience to provide quality work. In such a situation the weightage system can certainly be employed provided that it is not done with a malicious intent or to favour a particular person or to stifle competition. In the present case no such intentions can be discerned. The weightage system adopted in this case cannot be held to be arbitrary or irrational or opposed to public interest.

7. Furthermore, the petitioner participated in the tender without objecting to the tender conditions. The petitioner cannot now be permitted to challenge the tender conditions.

8. Thus, on all counts, the petitioner has no case. This application for stay as well as the writ petition are accordingly dismissed. The next date in the matter stands cancelled.

BADAR DURREZ AHMED, J

**SEPTEMBER 01, 2015
SR**

SANJEEV SACHDEVA, J