

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

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Judgment reserved on: 31st July, 2015

Judgment delivered on: 11th August, 2015

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WP(C) No. 6618/2015

M/S N.K. SECURITIES

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

AND

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W.P.(C) 6619/2015

R.D. ENTERPRISES

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

AND

+

W.P.(C) 6620/2015

TOP EDGE SECURITIES AND SERVICES PVT. LTD..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

AND

+

W.P.(C) 6621/2015

M/S. SURAKSHA SECURITY AGENCY

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Shukla with Mr Sridhar Raj, Advocates

For the Respondents : Mr Peeyoosh Kalra, Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The petitioners have filed the present petition impugning Notice Inviting Tender (in short "NIT") for providing security services in the Government schools, Stadia & Field Offices of Directorate of Education, GNCT of Delhi as per requirements of clusters namely Cluster-A, Cluster-B, Cluster-C & Cluster-D vide Tender Enquiry No. 2015_DC_75441_1.

2. Petitioners challenge clause 5.1 of Section 2 of Instructions to Bidders whereby partnership and proprietorship firms have been denied participation in the tender. With regard to this challenge, learned counsel for the respondent has submitted that the said condition has been waived and

partnerships and proprietorship firms have been permitted to participate. In this view of the matter, the challenge of the petitioners to this Clause does not survive.

3. The only other challenge raised by the petitioners to the NIT is that the respondents have clubbed various schools and categorized the schools into four clusters thereby increasing the value of the tender, which has resulted in increase in the value of the Earnest Money Deposit and the Performance Guarantee required to be submitted in terms of the NIT. It has been contended that since the schools have been clubbed into four clusters, the estimated tender value has increased manifold thereby eliminating small players and the tender is restricted to large players, who have substantially larger funds to provide the Earnest Money Deposit and the Performance Guarantees of substantial amounts.

4. Learned counsel for the petitioners has submitted that the estimated tender values for the four Clusters range from Rs. 16.2 crores to Rs. 19.2 crores and the EMD required to be submitted per Cluster ranges between 33 Lakhs to 39 Lakhs and the Performance Guarantee required to be submitted is 10% of the contractual value. It is contended that because of the clubbing, the Earnest Money Deposit and the Performance Guarantee required to be submitted is substantial thereby making it impossible for small security agencies to participate and only large security agencies would be able to

participate in the tender. This, it is contended, would reduce the competition and thus, the NIT is liable to be quashed.

5. It is settled law that the scope of court's interference in tenders matters is very restricted and limited. Where the State acts in a reasonable and fair manner and in public interest, the court would refrain from interfering. Greater latitude is to be conceded to State authorities in matters of formulating condition of tenders and awarding contracts. Interference by courts is not warranted unless the action of the tendering authority is *mala fide* or is a misuse of statutory powers. Courts would not interfere merely because it feels that some terms in the tender would have been fair, wiser or more logical, 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.”

6. The contention of the petitioners that the NIT should be quashed merely because the NIT clubs various schools into four clusters thereby increasing the tender value cannot be sustained. The tender inviting authority has a free hand in settling the terms of the tender. The tender inviting authority with a view to obtain better services and highest quality can always impose conditions that are reasonable and fair. It is only where the process adopted or decision made by the authority is mala fide or intended to favour someone or where the process adopted or decision made is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached. The eligibility criteria prescribed in our view does not in any manner violate the principles laid down in **Michigan Rubber (India) Limited (Supra)** warranting interference. The tender inviting authority in our view has not imposed any unfair or unreasonable conditions nor is there any malice or misuse of statutory power by the tendering authority. Merely because by imposition of a particular condition, the petitioners become ineligible or are not in a

position to meet the financial requirement of submission of Earnest Money Deposit and the Performance Guarantee, the NIT would not be vitiated.

7. In our view, there is no merit in the petitions. The petitions are accordingly dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

August 11, 2015
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