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

% Judgment delivered on: 17.08.2015

+ **W.P.(C) 7757/2015**

**METROPOLITAN SOCIAL ART
& CULTURAL SOCIETY**

..... Petitioner

versus

DELHI STATE GOVERNMENT & ANR Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Sushil Kumar Pandey, Advocate.
For the Respondent No. 1 : Mr Gautam Narayan, Additional Standing Counsel.
For the Respondent No.2 : Mr K.C. Dubey, Advocate.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.15284/2015(exemption)

Exemption is allowed, subject to all just exceptions.

W.P.(C) 7757/2015 & CM No.15283/2015(stay)

This petition is directed against the Notice Inviting Tender dated 15.07.2015 issued by the East Delhi Municipal Corporation (Education Department : HQ) with regard to the Mid-Day Meal Programme under National Programme for Nutritional Support to Primary Education (NP-NSPE).

The grievance of the petitioner is that in the eligibility criteria for voluntary Organizations, serial No.5 prescribes that the voluntary organization

should have space of a minimum plotted area of 1000 sq. yds. for establishing a semi-automated kitchen. He submits that on an earlier occasion, when the tender was floated on 16.03.2011, the condition with regard to space prescribed was only 500 sq. yds. The learned counsel for the petitioner submits that for this tender also, the condition should be 500 sq.yds. and not 1000 sq. yds.

We have heard the learned counsel for the parties. There is no dispute that one eligibility criteria for voluntary organizations is that the organization, which intends to bid, must have a minimum plotted area of 1,000 sq.yds. for establishing a semi-automated kitchen. The voluntary organization is required to cater to a minimum of 60,000 students each day. Therefore, it has been submitted by the learned counsel appearing for the respondents that the condition of having a minimum plotted area of 1,000 sq. yds. is not an arbitrary or unreasonable condition because considerations of personal hygiene and larger public interest have also to be kept in mind. The specific clause contained in the NIT is given at serial No.14 under the heading ‘general terms and conditions’ which clearly stipulates that the supply of cooked meals from each kitchen would be limited to a minimum of 60,000 and a maximum of 1,60,000 units per day.

The learned counsel for the respondents has also drawn our attention to the decision of the Supreme Court in the case of **Michigan Rubber (India) Limited v. State of Karnataka And Others : 2012 (8) SCC 218**, wherein the Supreme Court, after referring to various other decisions, set down the following principles:-

“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?
(underlining added)

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

On going through the above extract, it is evident that in the matter of formulating conditions of a tender document, a great decree of latitude is required to be conceded to the State Authorities unless and until the action of the tendering authority is found to be malicious or a misuse of its powers. That is not the case here and, therefore, no interference is warranted. Furthermore, it has also been indicated that in any tender, certain pre-conditions and qualifications have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. The setting down of minimum area of 1,000 sq. yds. is one such pre-condition/qualification. We do not find this to be unreasonable or arbitrary keeping in mind the magnitude of the number of meals to be supplied from each kitchen. The said term of the tender, which is objected to in the present petition is, in our view, reasonable and fair and is not contrary to public interest.

There is no interference by this Court is called for.

The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 17, 2015
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