

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

+ W. P. (C) 6523/2016 & CM No. 26752/2016 (stay)

Pronounced on: August 17, 2016

COL. DEVINDER SEHRAWATPetitioner
Through: Mr.Abhijat with Ms.Fareha
Ahmed Khan and Ms.Dikshaa Arora, Advs.
Versus

SOUTH DELHI MUNICIPAL
CORPORATION & ANR.Respondents

Through: Mr.Sanjay Poddar, Sr.Adv.
with Mr.Mukesh Gupta and Mr.Govind
Kumar, Advs. for SDMC/R-1.
Mr.Rajesh Mishra, Adv. for R-2.

CORAM
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

: Ms.G.ROHINI, CHIEF JUSTICE:

1. The petitioner is a Member of the Delhi Legislative Assembly having been elected from the constituency of Bijwasan which constitutes a part of the Parliamentary constituency of Najafgarh Zone of South Delhi Municipal Corporation. This petition has been filed as a Public Interest Litigation seeking a direction to the respondent No.1 to modify the Tender dated 04.07.2016 issued by "Integrated Collection and Transportation of Municipal Solid Waste and Street Sweeping Waste in South and West Zones" of the South Delhi Municipal Corporation (SDMC) by including the

Najafgarh Zone and imposing a condition that one Zone shall be awarded to only one concessionaire so as to ensure that each of the four zones of SDMC has a separate and distinct concessionaire. Certain other connected reliefs are also sought.

2. The brief facts of the present case are that the SDMC/respondent No.1 issued a common tender for Collection, Storage and Transportation of Municipal Waste, Street Waste, Street Sweeping Waste, Drain Slit, Green Waste and Construction and Demolition Waste in the South, Central, West and Najafgarh Zones in February 2014. However, this tender process referred to as the First Call was annulled. In June 2014 the respondent No. 1 awarded the tender for central zone whereas the tender for the remaining zones were annulled. Third call i.e. in February 2016 excluded the Najafgarh zone from the tender, in protest of which an objection was raised by the petitioner which resulted in third call being annulled. In April 2016 the Najafgarh zone was included in the fourth call which was later annulled so as to amend certain conditions of the tender documents. In May 2016 the Najafgarh zone was included again in the fifth call which was later annulled by the respondent no 1 due to complaints received by them regarding some of the bidders. In the Sixth Call issued in July 2016, the respondent no.1 without any justifiable explanation excluded Najafgarh Zone from the tender process. Being aggrieved by such exclusion, the petitioner filed this writ petition.

3. It is contended in the writ petition that the exclusion of Najafgarh Zone from the Sixth Call was wholly arbitrary, unjust and illegal especially when this Zone was included in the previous calls. It is further contended that the benefits extended to other zones must also be equally provided to

the Najafgarh Zone in order to ensure parity of treatment between the residents of Najafgarh Zone on one hand and the residents of South, West, Central Zones on the other. It is further contended that no discernible reason was assigned by the respondent no.1 for excluding Najafgarh Zone from the Sixth Call.

4. It is alleged that the residents of the Najafgarh zone have been facing discrimination consistently for the past decade at the hands of the respondent No.1 and while private concessionaires have been appointed by the respondent No.1 to carry out collection, storage, segregation, transportation and delivery of solid waste in South, West and Central Zones using modern and scientific equipments to minimize the discharge of environmental pollutants, the Najafgarh Zone continued to remain under the care of the respondent No.1 and petty dumper operators. It is also alleged that the introduction of Clause 2.2.16 of Request for Proposal (RFP) issued in the Sixth Call permitting existing concessionaire working in other zones to additionally bid in the tender is *mala fide* and unjust.

5. Sh.Abhijat, the learned counsel appearing for the petitioner argued that if the respondent No.1 proceeds with the tender process in terms of Sixth Call, the Najafgarh Zone would suffer as the budget available with SDMC would be exhausted. It is also contended that the transportation of garbage in the dumpers/truck by the respondent No.1 was not in compliance with the Municipal Solid Waste Rules, 2000 since the trucks remained open resulting in the garbage kept falling on the street. The further contention is that the introduction of secondary collection and transportation only in the privileged zone has resulted in an unintelligible classification between the Zones, thus violating Article 14 of the Constitution of India. Placing

reliance upon *CIT vs. Mahindera & Mahindra Ltd.* (1983) 4 SCC 392 , *S.R. Tewari vs. Union of India* 2013 (6) SCC 602 and a recent decision of the High Court of Bombay in *Jayshree Ramakant Khadilkar Pande vs. Municipal Corporation of Greater Mumbai* 2016 SCC Online Bom. 4688, it is also contended by the learned counsel for the petitioner that this Court can exercise the power of judicial review if there is a manifest error in the exercise of power by an authority. It is also submitted by the learned counsel that as per the well settled law, the requirement of Article 14 applies even to contractual matters for regulating the conduct of State activity if the action of State fails to satisfy the test of reasonableness.

6. Per contra, it is contended by Sh.Sanjay Poddar, the learned Senior Counsel appearing for the respondents that exclusion of Najafgarh Zone cannot be held to be arbitrary or illegal on any ground whatsoever since an effective system is already in place in the said Zone for transfer of garbage. It is also submitted by the learned Senior Counsel that by letter dated 14.07.2016, the petitioner was already informed the reasons for exclusion of Najafgarh Zone and that the present writ petition which has been filed suppressing the said fact is not *bona fide*. It is sought to be explained by the learned Senior Counsel that 60 odd dumpers and other allied machinery which are fully operational and fit for next couple of years have been deployed for transfer of garbage in Najafgarh Zone and that on an average, 650 metric tones per day of garbage is being transported from the Najafgarh Zone and the allegations made in the writ petition are incorrect and without any basis. Referring to Rule 11 and Rule 15 of Solid Waste Management Rules, 2016, it is submitted by the learned Senior Counsel that the State

policy has not yet been prepared and that Rule 15 would be applicable only after the State policy is prepared.

7. In the counter affidavit filed on behalf of the first respondent on 02.08.2016, it is pleaded that as per the demographic statistics, the average area of Najafgarh Zone is three times as compared to West and Central Zone but population is much less i.e. amounting to 12.89 lakhs (2011 Census). It is also stated that in Najafgarh Zone, besides primary collection, secondary collection and transportation were also being done using departmental machinery. The details of machinery engaged have been furnished as under:

Sr.No.	Machinery/Asset	Existing Provision
1.	Dhaloe/Open Sites	65
2.	Wheel Barrow	528
3.	Tractor Trolley	3
4.	Tricycle Rickshaw	250
5.	Truck Tipper having capacity 8 cum	70
6.	Front Loader	18
7.	Auto Tipper	46
8.	PVC Bins 200 lit	700

8. It is also explained in the counter affidavit that privatization of the Najafgarh Zone was not required and the apprehension of the fund availability is unfounded and baseless. It is further stated that the main idea was to utilize the machines that already exist and those machinery could not be discarded.

9. We have given our thoughtful consideration to the rival submissions made on behalf of the parties.

10. It may at the outset be pointed out that though the prayer in the writ petition includes a direction to the respondents to strictly enforce the Solid Waste Management Rules, 2016 in the area falling in the Najafgarh Zone, essentially the petitioner is aggrieved with the Tender issued by the SDMC for the purpose of "integrated collection and transportation of municipal solid waste and street sweeping waste" in the other Zones of the Corporation and a writ of mandamus is sought to compel the respondent No.1 to modify the Tender Document.

11. The attempt on the part of the petitioner in seeking to challenge the alleged discriminatory action on the part of SDMC in denying modern and scientific equipment to carry out collection, storage, segregation, transportation and delivery of solid waste in Najafgarh Zone in compliance with the Solid Waste Management Rules, 2016 is apparently in public interest. However, the Tender Document for securing such equipment for other Zones of the Corporation has already been issued and the last date of submission for bids was 30.07.2016. This writ petition came to be filed on 26.07.2016 seeking a direction to revise the tender by including Najafgarh Zone also in the Tender Document and to stay the tender process pending the writ petition.

12. Grant of such relief invariably interferes and disturbs the entire tender process resulting in public detriment insofar as the other Zones of the Corporation are concerned. Though we have no manner of doubt that the present Public Interest petition is *bona fide* and in the interest of residents of Najafgarh Zone, it appears to us that the relief as sought by the petitioner is not appropriate to remedy the injustice alleged to have been done to the people of Najafgarh Zone. As held in ***Raunaq International Ltd. vs. I.V.R.***

***Construction Ltd. and Others* (1999) 1 SCC 492**, this Court while exercising the power of judicial review has to weigh the competing public interests to find if there is overwhelming public interest as against public detriment before interfering with the tender process.

13. In the facts and circumstances of the present case, we are of the view that no such relief is warranted, particularly in view of the decision of the Standing Committee of the Corporation dated 29.06.2016 to exclude Najafgarh Zone from the present Tender process. Therefore, we decline to grant any relief so far as the Tender process which is in progress.

14. However, we are of the view that the issues raised in the writ petition with regard to the insufficiency of the existing mechanism and the need for securing modern and scientific equipment for Najafgarh Zone in terms of the Solid Waste Management Rules, 2016 deserves a relook by the respondent No.1. The mere fact that the Corporation has spent about Rs.25 crores for procurement of new/heavy machinery for waste disposal exclusively for the Najafgarh Zone and that the same is still fit for rendering services, does not appear to be a justifiable reason to deprive the said Zone the modern and scientific equipment on par with the other Zones.

15. We, therefore, consider it appropriate to direct the respondent No.1 to reconsider the request of Najafgarh Zone for providing modern and scientific equipment in compliance with the provisions of the Solid Waste Management Rules, 2016 and take an appropriate decision after giving an opportunity of being heard to the petitioner herein, other public representatives as well as other stakeholders. Such decision shall be taken within eight weeks from today and in case it is found that Najafgarh Zone is also entitled to have modern and scientific equipment in terms of Solid

Waste Management Rules, 2016, expeditious steps be taken at the earliest for securing the same.

16. The writ petition is accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

AUGUST 17, 2016

pmc

