

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 14.02.2017

+ **W.P.(C) 1312/2017 & CM 5980/2017**

M/S. HIMALAYAN TIFFIN SERVICES ... Petitioner

versus

**CSIR-COUNCIL OF SCIENTIFIC &
INDUSTRIAL RESEARCH** ... Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr Rahul Pandey

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The present petition is directed against the notice inviting tender for providing catering and housekeeping services which was issued by the CSIR (Council of Scientific and Industrial Research), New Delhi. The said notice was issued on 21.01.2017 and the last date and time for submission of tenders is 14.02.2017 at 2:30 pm.

2. The petitioner is aggrieved by the eligibility condition, whereby only prospective bidders having experience of rendering both catering and

housekeeping services to guest houses have been stated to be eligible. The petitioner does not have any experience in housekeeping service. According to the learned counsel for the petitioner, the condition stipulated by the respondent is onerous and restricts competition. According to him, even persons who have experience only in catering ought to also be allowed to participate in the tender.

3. From the notice inviting tender, we find that the object of the tender is to select a person/entity which would be providing catering and housekeeping services for the Science Centre and Maharani Bagh Guest House for a period of two years. In other words, both catering and housekeeping services are to be rendered by the successful bidder. Therefore, it is not at all arbitrary or unusual on the part of the respondent to have required experience of rendering both catering & housekeeping services to Guest houses of Institutes of Government/Semi Government/Autonomous Bodies/PSUs/Nationalised Banks.

4. In **Michigan Rubber (India) Limited v. State of Karnataka and Others: (2012) 8 SCC 216**, the Supreme Court, after a review of several

decisions, including the decision in *Jagdish Mandal v. State of Orissa*:

(2007) 14 SCC 517 culled out 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 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.”

(underlining added)

5. It will be seen from the above extract that in the matter of formulating conditions of a tender document and also for award of a contract, a high degree of latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious or in misuse of its powers. Interference of the Court is not warranted unless the action is arbitrary, irrational or malicious. It is also provided in the said decision that 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.

6. Considering these principles, it becomes clear that the respondent has invited tenders for providing catering and housekeeping services for the Science Centre and Maharani Bagh Guest House for a period of two years. Therefore, providing for an eligibility condition that only those persons who have experience of rendering both catering and housekeeping services cannot, by any stretch of imagination, be regarded as arbitrary or whimsical.

7. This Court also in **Sunil Gulati v. Delhi Development Authority** and another connected matter decided on 03.01.2017 in WP(C) 11911/2015 and WP(C) 6481/2016, following the principles in several Supreme Court decisions, including **Tata Cellular v. Union of India: 1994 (6) SCC 651** and **Monarch Infrastructure (P) Limited v. Commissioner, Ulhasnagar Municipal Corporation and Others: 2000 (5) SCC 287**, reiterated that the authority inviting a tender ought to have a free hand in setting the terms of the tender and that not allowing this much play in the joints to a government agency which invites the tender would amount to denying the government its administrative rights and functions of fixing of an eligibility criteria.

8. In view of the foregoing, we find that the eligibility criteria of requiring bidders to have experience of rendering both catering and housekeeping services has a clear nexus with the object of the tender, that is, to provide catering and housekeeping services for the Science Centre and Maharani Bagh Guest House for a period of two years. Therefore, the action on the part of the respondent in prescribing such a condition, as an eligibility criteria, cannot be faulted. There is no merit in the writ petition. The same is dismissed.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

FEBRUARY 14, 2017
SR