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

+ **W.P.(C) 6114/2017**

**GREEN VALLEY ENERGY VENTURES PRIVATE
LIMITED**

..... Petitioner

Through: Mr Kushal Gupta, Advocate.

versus

ARCHAEOLOGICAL SURVEY OF INDIA Respondent

Through: Mr Vikas Mahajan and Mr S. S. Rai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.07.2017

CM No. 25385/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 6114/2017 & CM Nos. 25383/2017 & 25384/2017

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “(i) Quash the work order/award issued by the Respondent in favour of M/s Akshit Builders;
- (ii) Quash the discontinuation notice dated 11.07.2017 issued by the Respondent to the Petitioner;
- (iii) Direct the Respondent to issue fresh tender inviting bids for plying e-rikshaws at Red Fort premises, from ASI Parking to entry of Red Fort at Lahori Gate side;”

4. The respondent (hereafter 'ASI') issued a Notice Inviting Tender (NIT) dated 03.04.2017 for inviting bids for plying e-rickshaws at Red Fort premises, from ASI parking to entry of Red Fort at Lahori Gate for a period of three years which could be extended for a further period of two years on the basis of mutual consent.

5. The petitioner (and two other bidders) submitted their bids in terms of the aforesaid NIT.

6. The petitioner and one other bidder were disqualified as they did not fulfil the eligibility criteria as specified in the NIT; they did not have the relevant experience.

7. The petitioner is not challenging its disqualification as it is its conceded case that it did not qualify as per the specified eligibility criteria. The sole ground for filing the petition appears to be that with the disqualification of two of the three bidders, there remained only one competent bidder and thus the tender could not be proceeded with. According to the petitioner, if in a tendering process all bidders except one are disqualified, the tender must fail. He relied on the decision of the High Court of Madhya Pradesh in *Elixir Impex Pvt. Ltd. v. State of M.P. and Others: 2013 (2) MP LJ 89* in support of his contention.

8. This Court is not persuaded to accept the aforesaid contention. An invitation to tender is only a method of selecting the person with whom a contract can be entered into. The said issue cannot be put in a straitjacket formula requiring the agency to find at least two eligible persons desiring to

enter into the contract. In the present case, ASI remained with only one qualified bidder and in absence of any other person qualifying the eligibility criteria, ASI had an option either to proceed with the tender or to find any other alternative method for awarding the contract.

9. This Court is unable to accept the contention that award of contract to the sole qualifying bidder offends Article 14 of the Constitution of India. Article 14 strikes at arbitrariness, unreasonableness to ensure the rule of law. Article 14 of the Constitution does not in any manner curtail discretion of the authorities, especially in contractual matters, provided such discretion is not exercised arbitrarily, capriciously or in a manner, which offends the rule of equal protection. The above issue was explained by the Supreme Court in *Jagdish Mandal v. State of Orissa and Ors.*: (2007) 14 SCC 517 as under:-

"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

10. In the present case, this Court is not persuaded to accept that the award of tender to the sole qualified bidder is irrational, arbitrary or unreasonable or offends Article 14 of the Constitution of India.

11. The petition and the pending applications are, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 21, 2017

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