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

Date of Decision: 14.08.2018

+ **W.P.(C) 8292/2018**

MUKESH KUMAR

..... Petitioner

Through: Mr. Vishwajit Singh and Mr. Pankaj Singh, Advs. for petitioner along with Mr. Mukesh Kumar, petitioner-in-person.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel for DMRC/R-2 with Ms. Shiva Pandey, Adv. along with Mr. Sanjay Kumar, Law Officer and Mr. Kamlesh Kumar Jain, (Dy. Chief Engineer).

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

RAJENDRA MENON, CJ (ORAL):

CM APPL. 31808/2018 (*exemption*)

Allowed, subject to just exceptions.

W.P.(C) 8292/2018 & CM APPL. 31807/2018 (*stay*)

1. Seeking a writ of mandamus directing respondent No.2/Delhi Metro Rail Corporation Ltd. (DMRC) not to award the Rail Supply Contract to M/s Arcelor Mittal and restraining them from awarding the contract for

supply of rail to the said concern, this petition has been filed in public interest.

2. Petitioner claiming to be an Advocate submits that the Railway Board published an E-Global Tender No.TKP-2 of 2017 inviting bids for electronic offers with regard to manufacture and supply of UIC 60 Kg. (880 Grade Prime, Class-A Rails of 25 m. or 26 m. length as per the Indian Railways Standard Specifications. It is the case of the petitioner that inspection of the establishment of M/s Arcelor Mittal's Steel Manufacturing Plant was carried out by the officials of the Research Design and Standards Organization (RDSO) and in their report brought on record from Page 200 onwards it is pointed out that the technical specifications were rejected as they were not complying with the IRS-T-12-2009 specification. It is submitted that in spite of the above and in spite of the knowledge with regard to the technical rejection by RDSO in their report, DMRC is proposing to grant the contract to M/s Arcelor Mittal Ltd. Contending that this is not in public interest and is contrary to the mandate and directions of the Railway Board the mandamus in question is sought for.

3. Learned counsel appearing for the petitioner invited our attention to various aspects as indicated hereinabove and submitted that the award of the contract should be interfered with.

4. Learned counsel appearing for the respondent No.2/DMRC submitted that for the present the contract has not been finalized, it is further pointed out by her that the inspection in question conducted by RDSO is not with regard to the requirement of the contract in question but it is with regard to another contract to be awarded by the Railway Administration and not the DMRC. She further invites our attention to the Railway Board's circular

dated 03.08.2017 Para 4 thereof to say that for procuring rails by DMRC certification and inspection from RDSO is not required.

5. Having heard learned counsel for the parties and on consideration of the rival contentions, we find that for the present the contract itself has not been awarded and as pointed out to us the DMRC is yet to take a final decision in the matter. That apart, from the material produced before us, we find that the contention of the petitioner with regard to the inspection report submitted by RDSO seems to be *prima facie* not applicable for the procurement in question. Taking note of all these circumstances, we are not inclined to interfere into the matter at this stage at the instance of the petitioner on the basis of the material placed on record.

6. Accordingly, the petition stands dismissed. However, the petitioner shall have liberty to bring the facts to the notice of the Competent Authority and it would be for the Competent Authority to consider the same in accordance with law. The pending application also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 14, 2018

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