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

% *Date of decision: 18th December, 2018*

\+ W.P.(C) 13605/2018 & CM. Nos. 53014/2018, 53015/2018 and 53016/2018

MUKESH KUMAR ..... Petitioner

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Indranil Ghosh, Mr. Kunal Singh & Mr. Rahul Kukreja, Advs.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: Ms. Mini Pushkarna, Adv. for DMRC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. Nos. 53015/2018 and 53016/2018

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 13605/2018

1. The present petition has been filed by the petitioner with the following prayers:-

> *"In view of the foregoing facts and circumstances, the petitioner most respectfully prays that this Hon'ble Court may be pleased to:*

A. Issue a Writ of Mandamus setting aside the unreasoned letter dated 24.10.2018 rejecting the representation of the petitioner.

B. Issue a Writ of Certiorari or any other appropriate writ calling for details of the records on the basis of which the representation of the petitioner was rejected without assigning any reasons.

C. Issue a writ of or in the nature of Mandamus or any other appropriate writ, directing the respondent No.2 to cancel the tender MT-1 RR awarded to M/s Arcelor Mittal, Espana, S.A., and recall the Letter of Acceoptance dated 27.08.2018;

D. Issue a Writ of Certiorari or any other appropriate writ upon the respondent No.2 calling for the records, on which basis the respondent No.2 awarded the contract to M/s Arcelor Mittal, Espana, S.A., despite it being technically disqualified in terms of the tender.

E. Issue a writ of or in the nature of Mandamus or any other appropriate writ, directing the respondent No.2 to call for fresh bids from parties and ensure strict adherence to the specifications set out in IRS-T-12-2009 at their manufacturing facilities, before awarding the contract;

F. Pass an ex-parte ad interim order staying the operation of the Letter of Acceptance dated 27.08.2018 issued by the respondent No.2 to M/s Arcleor Mittal, Espana, S.A., *G. Pass any further orders as this Hon'ble Court may deem fit and proper under the present facts and circumstances."*

2. In substance, the challenge is to the communication dated October 24, 2018 whereby the DMRC has rejected the representation of the petitioner by stating that the same does not have any merit.

3. This is a second round of litigation, inasmuch as the petitioner having earlier approached this Court, vide W.P.(C) No. 8292/2018, which was disposed of on August 14, 2018.

4. It is the submission of Mr. Jayant Mehta, learned Senior Counsel for the petitioner that the present petition is by a public spirited individual and Advocate by profession being conscious of the issues relating to public safety and well-being. It is his contention that the respondent No.2 arbitrarily, without assigning any reason dismissed the representation of the petitioner vide letter dated October 24, 2018 and had on extraneous consideration arbitrarily and illegally awarded the tender for supply of 1080 Grade Head Hardened (HH) Rails to a Company M/s Arcelor Mittal Espana, S.A., which is manufacturing rails without conforming to

the standards specified in IRS-T-12-2009 thereby endangering the life of millions of intended metro commuters.

5. During his submissions, he has taken us through the provisions of the tender to contend that a tenderer must comply with the standards specified in IRS-T-12-2009. He also states, on August 14, 2018, when this Court had disposed of W.P.(C) 8292/2018, the DMRC had written a letter to the M/s Arcelor Mittal Espana, the contents of which reads as under:-

> *"Ref- (i) Your online e-tender submission on dated 18.01.2018*
>
> *(ii) Writ petition filed in Hon'ble High Court of Delhi.*
>
> *Through the documents submitted with writ petition referred at (ii) above, it has come to the notice of this office that RDSO has carried out inspection & process approval of rail manufacturing facilities at Gijon, Spain from 30.05.2018 to 14.08.2018.*
>
> *On the basis of inspection and test results RDSO team has found that Ultrasonic testing, falling weight test, inspection Gauges and Templates, End Squareness, Brand Marking, Hot Stamping and Cold Punching are not complying to IRS-T-12-2009. From your tender submission, it has been noted*

that you have offered to supply rails from same manufacturing plant i.e Gijon, Spain.

You are requested to comment on the issue raised by RDSO to enable us to complete the evaluation of bids.

Further, you are requested to extend validity of your offer by another 15 days i.e upto 31.08.2018 using the proforma attached herewith as the validity of your offer is expiring on 16.08.2018."

6. He has also drawn our attention to the reply sent by the M/s Arcelor Mittal Espana, which reads as under:-

"*We acknowledge: receipt of letter no. DMRC/20/III/495/2017 dated 14.08.2018 where your request to comment on issues raised by RDSO during inspection and process approval visit of our manufacturing facilities located in Gijon Spain and extension of our offer validity until 31.08.2018.*

We wish to inform you, regarding status of each point mentioned in your letter:

We wish to inform you, regarding status of each point mentioned in your letter.

i. "Ultrasonic testing – corrective actions are in place, will be completed by the end of September before any material for DMRC is produced.

ii. Falling Weight test - currently more demanding parameters are adapted at our mill for conducting this test vs. Requirements of IRS-T-12-2009 standard. Anyhow, if DMRC is not fully satisfied, it can be changed within required delivery schedule.

iii. Cold punching - RDSO comment referred to 880 grade and it does not apply to 1080 HH grade rails required for DMRC project.

iv. Guages, templates, end squareness, brand marking, hot stamping - all these are minor issues and are being adjusted without any further delay.

Moreover, we enclose letter confirming extension of offer validity until 31.08.2018."

7. It is his submission that the letter of M/s Arcelor Mittal Espana clearly demonstrates that M/s Arcelor Mittal Espana was not complying with the relevant technical standards, which were required to be fulfilled by a tenderer. It is his submission, on this ground only the award of the work to the said party need to be set aside.

8. On the other hand Ms. Mini Pushkarna, learned counsel for the DMRC has placed before us, a compilation of documents to contend that the tender Committee after noting the writ petition

having filed before this Court against M/s Arcelor Mittal Espana had, vide letter dated August 14, 2018 requested M/s Arcelor Mittal Espana to comment on the issues raised by RDSO in inspection of their plant in Spain. The clarification provided by M/s Arcelor Mittal Espana was on the following four aspects, and in view of the explanation offered by M/s Arcelor Mittal Espana, the Tender Committee was of the view that the M/s Arcelor Mittal Espana will be in a position to supply rails as per the requirements of IRS-T-12-2009.

> *"i. "Ultrasonic testing – corrective actions are in place, will be completed by the end of September before any material for DMRC is produced.*
>
> *ii. Falling Weight test - currently more demanding parameters are adapted at our mill for conducting this test vs. Requirements of IRS-T-12-2009 standard. Anyhow, if DMRC is not fully satisfied, it can be changed within required delivery schedule.*
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> *iii. Cold punching - RDSO comment referred to 880 grade and it does not apply to 1080 HH grade rails required for DMRC project.*
>
> *iv. Guages, templates, end squareness, brand marking, hot stamping - all these are minor issues and are being adjusted without any further delay."*

9. The relevant part of the decision of the Tender Committee is reproduce as under:

> *"In view of explanation/assurance given by the bidder, Tender Committee is of the opinion that M/s Arcelor Mittal Espana, SA (4/4) will be in a position to supply rails as per the requirements of IRS-T-12-2009."*

10. Having noted the submission made by Ms. Pushkarna, Mr. Jayant Mehta states, that he shall be satisfied if the submission made by Ms. Pushkarna is taken on record.

11. Having noted the submission made by Ms. Pushkarna that the rails shall be supplied by M/s Arcelor Mittal Espana in terms of requirements of IRS-T-12-2009, the same is taken on record. In view of the statement made by Ms. Pushkarna, we do not see any reason to entertain the writ petition. The writ petition is dismissed.

CM. No. 53014/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 18, 2018/*ak*