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

% *Date of Judgment: 17th December, 2019*

+ W.P.(C) 13227/2019

STANDING CONFERENCE OF PUBLIC ENTERPRISES (SCOPE)
..... Petitioner

Through Mr. Om Prakash, Mr. Inderjit Singh,
Mr. Pradeep Kumar Tripathi & Mr.
Rajeev Ranjan Pathak, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION AND ANR.

..... Respondents
Through Mr. Tushar Sannu, ASC for EDMC
with Ms. Ankita Bhadouriya,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL. 53804/2019 (exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 13227/2019 & CM APPL. 53803/2019 (stay)

3. This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a writ of mandamus or direction to quash and set-aside the decision of rejection of the bid of the petitioner. The petitioner also seeks a direction for award of the tender with respect to

parking site S. No.53 around SCOPE Minar, Plot No.2, District Center, Laxmi Nagar, Delhi, having an area of approx. 5418 sq. mtrs., owned by the Delhi Development Authority.

4. In this case a notice inviting tender was issued on 26.08.2019. The petitioner participated in the tendering process and submitted its tender on 27.09.2019. The last date for submission of bid was extended on 03.10.2019 to 15.10.2019. The technical bids were opened in the presence of representative of the petitioner on 15.10.2019. The petitioner learnt that there were only two successful bidders, being the petitioner and respondent No.2. On 18.11.2019, the financial bid of respondent No.2 was accepted, ignoring the financial bid of the petitioner. Despite a representation having been made by the petitioner seeking reasons for non-consideration of its bid, no convincing answer was received, which has led to filing of the present writ petition.
5. Learned counsel for the petitioner submits that the action of respondent No.1 is fanciful and smacks of mala fides and arbitrariness, as the bid of the petitioner has been rejected without assigning any cogent reason. It is contended by counsel for petitioner that the entire exercise has been carried-out to favour respondent No.2, without taking into consideration that the petitioner was the highest bidder. It is contended that respondent No.1, being an instrumentality of State, is bound to act in a fair, just and transparent manner and cannot reject a bid purely on technical reasons. Additionally, it is contended that respondent No.1 did not inform the petitioner of the reasons for rejection of its bid.
6. Learned counsel for respondent No.1, who enters appearance on advance copy, submits that the bid of the petitioner was rejected for a

cogent reason, namely that the petitioner did not comply with clause 2(V) of the terms and conditions for allotment of parking sites in the EDMC area, which requires furnishing of certain documents. Clause 2 (V) reads as under :

“2(V) Copy of the PAN Card(s) of the applicant individual or proprietorship firm. In case of partnership firm or Pvt. Ltd. Company, PAN Card(s) of the firm/company as well as all partners/directors should be attached (as applicable).”

7. Counsel for respondent No.1 submits that only the PAN card of the petitioner society was furnished and not of its office-bearers. He submits that clause 2(V) would apply not only to partners/directors of firms/companies but also to societies and their office-bearers.
8. In response, learned counsel for the petitioner submits that in terms of clause 1(a), a registered society is also eligible to bid; but since clause 2(V) is silent as regards submission of individual PAN cards of office-bearers of a society, the same were not submitted.
9. We have heard learned counsels for the parties and have considered their rival submissions.
10. Clauses 1(a), 2(V) and 6(d) of the terms and conditions are reproduced below :

“1(a) Any adult individual citizen of India/Firm/Company/Registered Society/Registered Co-operative Society, Capable of entering into license agreement, who has/have cleared all up to date outstanding dues of the EDMC, if any, shall be eligible to participate in the tender for allotment of parking sites on license basis as per terms & conditions of this tender.

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"2(V) Copy of the PAN Card(s) of the applicant individual or proprietorship firm. In case of partnership firm or Pvt. Ltd. Company, PAN Card(s) of the firm/company as well as all partners/directors should be attached (as applicable).

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"6. Responsibility of tenderer before offering bid:

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(d) If, individual/proprietor/any of the (partner/director/member) has been Black Listed on any subject by any government organization namely Erstwhile MCD, SDMC, NDMC, EDMC, Railways, DMRC, New Delhi Municipal Council, DDA, Delhi Govt. etc. then the offer will be terminated immediately and bid will be cancelled and the deposited/enclosed payments (including EMD, MLF & BG/FDR) will be forfeited. No refund will be allowed in any circumstances."

11. A reading of clause 1(a) would show that any individual citizen, firm, company, registered society or registered co-operative society is eligible to participate in the tender for allotment of parking sites on license basis. Clause 2(V) makes it abundantly clear that PAN cards of applicants – individual or partnership firm or private limited companies are to be submitted, including of all partners/directors. In our view, there is no doubt that this clause would squarely apply to all bidders, including a society such as the petitioner ; and therefore also to the office-bearers of the society; and the petitioner cannot be heard to say that because the PAN card of the society has been furnished clause 2(V) would stand complied with. The objectives and relevance of clause 2(V) can be gathered from clause 6(d) extracted above.
12. Learned counsel for the petitioner then submits that clause 6(d) would only apply after acceptance of the bid. We find no force in the

submission so made, for the reason that a reading of the first line of clause 6 itself would show that it relates to the “*Responsibility of tenderer before offering bid.*”

13. It is well-settled that while deciding matters pertaining to tenders, the court is concerned with the decision-making process and not the decision itself. The court is to satisfy itself that the action of the respondent is not arbitrary, fanciful or illegal. A brief reference to some judicial precedents may not be out of place. In the case of ***Tata Cellular vs. Union of India*** reported as (1994) 6 SCC 651, the Supreme Court has held as under:

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

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"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."*

14. Thereafter in the case of ***Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited & Anr.*** reported as (2016) 16 SCC 818, the Supreme Court has held as under:

"11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) it was held by this Court, relying on a

host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us."

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"13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."

15. Following the principles of ***Tata Cellular*** (supra) and ***Afcons Infrastructure Limited*** (supra) the Supreme Court in ***Municipal Corporation, Ujjain and Another vs. BVG India Limited & Ors.*** reported as (2018) 5 SCC 462, has further held as under:

"64. Thus, the questions to be decided in this appeal are answered as follows:

64.1. Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert

consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

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"64.3. It is not open to the court to independently evaluate the technical bids and financial bids of the parties as an appellate authority for coming to its conclusion inasmuch as unless the thresholds of mala fides, intention to favour someone or bias, arbitrariness, irrationality or perversity are met, where a decision is taken purely on public interest, the court ordinarily should exercise judicial restraint."

16. Also, in ***Silppi Constructions Contractors v. Union of India & Anr.*** reported as 2019 SCC OnLine SC 1133, the Supreme Court has held as under:

"19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The

Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

"20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

17. It is further the settled legal position that every term and condition of a tender document is to be given due weightage and is to be meaningfully

construed, as has inter alia been held in the case of ***Ramana Dayaram Shetty vs. International Airport Authority of India and Ors.*** reported as (1979) 3 SCC 489 wherein the Supreme Court has held as under:

"7. ...It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use". To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable..."

18. In view of the above discussion, we find that the terms and conditions of the tender insofar as they relate to submission of the applicant/bidder's PAN card are unambiguous; and clause 2(V) makes it clear that the PAN card of each individual director/partner, and which includes PAN cards of the office-bearers of a society, are to be supplied.
19. In the above view of the matter, we find no infirmity in the decision making process of the respondent. No grounds are therefore made-out for interference of this court by way the present petition.

20. Accordingly, the writ petition and the pending application are dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 17, 2019/ck

