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

% Date of decision: **27.11.2019**

+ W.P.(C) 11341/2019

DIN BANDHU DASS

..... Petitioner

Through: Mr.Raman Kapur, Senior Counsel
with Mr.M.M.Singh and Mr.S.K.Pal,
Advocates

versus

AIIMS

..... Respondent

Through: Mr.Anand Varma, Mr.Shwetank
Singh and Mr.Dhairya Madan,
Advocates for AIIMS.
Mr.P.S.Bindra, Mr.G.S.Patwalia,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S.SISTANI, J. (ORAL)

C.M.46738/2019 (exemption)

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

W.P.(C) 11341/2019 and C.M.46737/2019 (stay)

3. The present petition is primarily directed against the tender clause No. 13 of NIT No.06/S&E/14-83/2019-20/Hostel and NIT No.07/S&E/14-65/2019-20/Hostel.
4. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.

5. A bid was invited by the respondent on 21.09.2019 for running of a juice shop in front of Hostel No. VII of AIIMS; 24x7 Coffee Shop in front of Hostel No. VII; and an extension counter (kiosk) beside RPC-I Hostel Mess at AIIMS, New Delhi for providing juices, beverages, snacks, shakes, patties, coffee, fruit milk shakes, fruit kulfi etc. for the hostel residents.
6. The last date of submission of the bid for tender NIT No.06/S&E/14-83/2019-20/Hostel was 30.10.2019 at 12.00 pm and bid opening date was 31.10.2019 at 12.00 pm. The last date of submission of bid for tender NIT No.07/S&E/14-65/2019-20/Hostel was 24.10.2019 at 12.00 pm and bid opening date was 25.10.2019 at 12.00 pm.
7. Mr.Raman Kapur, learned senior counsel appearing for the petitioner submits that tender clause No. 13 is arbitrary, fanciful completely subjective and gives unbridled leeway to a committee to award the tender to any person of their choice. Since the entire argument of Mr.Kapur revolves around clause 13, we deem it appropriate to extract the same:

“13. Evaluation Criteria of Bids and Award Criteria:

The final tender evaluation shall be done on 70 % weightage to Quality Component and 30% weightage to Price Bid. The combined highest score obtained on site visit by the competent committee to the establishment being currently run by the bidders (70% weightage) and the rate of Thali quoted by the bidder in Section VII – Price Schedule (30% weightage) shall be considered for awarding tender. The bidder who secures minimum of 40 marks out of 70 marks only be considered for opening of Price bid.

70% weightage given to Quality Component shall be assessed during the site visit by the competent committee on the following criteria indicated in the below mentioned table:

<i>S.No.</i>	<i>Criteria</i>	<i>Max. Marks</i>	<i>Marks Scored</i>
1.	<i>Juice Quality and taste</i>	10	
2.	<i>Cleanliness and hygiene of Juice preparation area, utensils and consumables/ Disposals.</i>	10	
3.	<i>Cleanliness and hygiene of service area, dining area and use of modern equipments/ Juicers etc.</i>	10	
4.	<i>Staff: adequate, trained, experienced, clean uniform, behaviour, Appearance etc.</i>	10	
5.	<i>Raw material storage facility, cold storage, food storage etc.</i>	10	
6.	<i>General: Garbage disposal, Exhaust system, firefighting system, record keeping etc.</i>	10	
7.	<i>Method of Payment (Use of Digital payment system)</i>	10	
	<i>TOTAL</i>	70	

8. Mr.Kapur has also challenged the evaluation criteria and the marks awarded under each criteria. He submits that the committee comprises doctors and, apart from the fact that doctors would not be suited to assessing the listed criteria, it would even otherwise be virtually impossible to decide, say the quality and taste of juice. Similarly, senior counsel contends that other conditions are also completely arbitrary.
9. Counsel for the respondent, on the other hand, submits that there is no infirmity in the evaluation criteria; and that the criteria laid-down also take into account various factors like cleanliness, hygiene, use of modern

equipment, adequately trained staff, raw material storage facilities and general criteria like garbage disposal system, firefighting system and method of payment i.e. digital payment system, all of which are relevant, valid criteria for the tender.

10. The law with regard to deciding the matters pertaining to tenders is clear. In the case of ***Tata Cellular Vs. Union of India (1994) 6 SCC 651*** it was held that the courts are concerned only with the decision-making process and not the decision itself.
11. In the case of ***Afcons Infrastructure Limited. Vs. Nagpur Metro Rail Corporation Limited (2016) 16 SCC 818***, more particularly, in the following paragraphs, it was held as under:

“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.

“14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word “metro” in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

“16. In the present appeals, although there does not appear to be any ambiguity or doubt about the interpretation given by Nmrcl to the tender conditions, we are of the view that even if there was such an ambiguity or doubt, the High Court ought to have refrained from giving its own interpretation unless it had come to a clear conclusion that the interpretation given by Nmrcl was perverse or mala fide or intended to favour one of the bidders. This was certainly not the case either before the High Court or before this Court.”

12. Applying the aforesaid, settled law to the facts of the present case, we are satisfied that there is no infirmity in the tender conditions. The criteria under challenge cannot be termed as arbitrary, completely subjective fanciful or illegal. A careful examination of the number of marks awarded under each head shows that the respondent has given equal weightage to various relevant aspects for a food-vending site, to secure quality, cleanliness, garbage disposal, use of digital payment system, firefighting system and other parameters, which in our view are all relevant.

13. Accordingly, we do not find merit in the writ petition and the same is dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 27, 2019

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