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

\+ W.P.(C) 2729/2019, C.M. APPL.12582/2019

SH. SHYAM SINGH CHOUDHARY AND ANR. ..... Petitioners

Through : Sh. Ashim Vachher, Sh. Achal Gupta and Ms. Annie Rais, Advocates.

versus

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

Through : Sh. Satish Aggarwala, Advocate.
Ms. Amrita Prakash, CGSC with Sh. Hari Shankar Sharma, Advocate, for Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **25.04.2019**

The petitioners are aggrieved by the rejection of their tender/offer for letting out premises. It is contended that the Additional Director General of GST (Intelligence) [hereafter "Addl. DG"] had issued the Notice Inviting Tender for hiring suitable premises on rent in Gurugram.

The petitioners along with six other bidders had submitted offers. The bids of others were rejected at the technical evaluation stage. The petitioners complain that the respondents have acted arbitrarily in rejecting their tender. Reference is made to the letter dated 12.02.2018, containing the bid evaluation; the letters dated 16.03.2018, 25.05.2018 and 27.09.2018 – the last of which even stated that the bid appeared to be tentatively acceptable and that a draft lease deed would be entered into subject to final approval by the competent authority. It is submitted that in the wake of this extended correspondence and the fact that the respondent authorities kept the matter pending for final decision for an inordinately long time, the ultimate rejection communicated on 01.03.2019 is arbitrary and violative of Article 14 of the Constitution. Learned counsel brought to the notice of the Court that according to the CPWD Manual which the respondents went by, the acceptable rent was ₹143 per sq.ft. and the valuation of the premises resorted to by the respondents and officials was ₹122.50 per sq. ft. whereas the bid (as negotiated) had offered to let out the premises at ₹117 per sq. ft.

The Court had issued notice and called upon the respondents to file their counter affidavit which they did. In the counter affidavit, it is alleged that even though the petitioners' bid was the lowest, no final decision with respect to hiring of the space was taken as it was to be ultimately decided by the competent authority, i.e. the Ministry of Finance.

During the course of hearing, the original tender file containing the decision of the competent authority, communicated to the Addl. DG was brought. The correspondence which exists on the file shows that the Ministry was primarily concerned with two aspects – (i) that some of the components/elements of rent collected had the tendency to result in recurring liability and more importantly, (ii) that a composite or lumpsum quotation in respect of each floor of the premises was not given.

The file contains the petitioners' tender. The Ministry's concerns, in the opinion of the Court, are justified. Whereas the petitioners indicated the "bare shell" rate of rent at ₹64 per sq. ft., in regard to the other components – flooring, ceiling, toilet, store, common area maintenance and service charge for additional facilities (such as lifts, standby generator, AC fixtures and cleaning of premises etc.). Separate rates were quoted, each of which the petitioners offered to negotiate.

Given these, the Addl. DG was of the opinion that since some lumpsum monthly rent was quoted, and the bidder indicated only a bare shell rent presumably contrary to the bids of the others, the offer was not acceptable.

This Court is of the opinion that the characterization of the final decision as arbitrary merely because the petitioners' bid for letting out the premises to the Department of GST was not accepted is not borne out. It is now quite well established that Article 226 of the Constitution does not authorise the Court to review the merits of the decision, but rather the process of the decision making and scrutiny whether it was tainted by *mala fide*, procedural irregularity, impropriety or illegality. None of these elements present themselves to the Court. In fact, if the petitioners' claims were to be accepted and the direction issued, the Court would virtually be specifically performing a non-existing agreement: a proposition as untenable on implementation, as it is not acceptable in its statement.

For the foregoing reasons, the Court is of the opinion that there is no merit in the petition. It is accordingly dismissed along with the pending application.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 25, 2019/ajk