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

Date of decision: **17.09.2019**

+ W.P.(C) 3515/2019

M/S GILL INTERNATIONAL LTD.

..... Petitioner

Through: Mr.Vipul Ganda, Mr.Vikas Yadav,
Ms.Dipika Ganda and Mr.Aman
Chaudhary, Advts.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr.Ashim Sood, CGSC for R-1.
Ms.Meenakshi Arora, Sr.Adv. with
Ms.Mala Naryan, Ms.Neha Dawar,
Mr.Rahul Narayan and Mr.Digvijay,
Advts. for R-2/IOCL.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S.SISTANI, J. (ORAL)

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a writ of mandamus against the respondents to quash decision dated 26.03.2019 of respondent No.2, whereby it is contended that the technical bid of the petitioner was rejected without giving any justifiable reasons and with the sole motive to favour another bidder.
2. Some necessary facts which are required to be noticed for disposal of this writ petition are that on 11.07.2018, a notice was issued by respondent No. 2 inviting E-tender for setting-up new LPG Bottling

facilities at 60 different locations from private bottlers having ready built plant/willing to construct new LPG bottling facility.

3. Accordingly, a common tender for all 60 identified locations was floated. The object was that the successful bidder should be able to create adequate plant and infrastructural facilities and possess competence to engage in the activities required for handling of the LPG bottling operations with caution and safety.
4. The petitioner claims to be registered as a Micro Small Enterprises dealing in LPG products since the year 1997, and having vast experience of 22 years in refilling LPG cylinders. The petitioner also claims that it has been running its private bottling plant for the past 22 years, having sound financial track record to carry-out the job work of refilling LPG cylinders by establishing a new bottling plant.
5. The petitioner company participated in the E-tender issued by respondent No. 2 for the location at Sikar (Rajasthan) and submitted all the required documents.
6. After evaluation of the pre-qualification criteria, eligibility criteria and technical bid documents, the petitioner was found eligible for Round II; and was called for interview on 24.01.2019, along with all the original documents as digitally submitted on the e-portal.
7. After being successful at the interview, the members of the industry committee as constituted by respondent No. 2 conducted Round III i.e. Inspection of Site/facilities on 27.02.2019. During the inspection, the committee found an electricity power distribution line passing through the offered site and advised the petitioner to take appropriate steps for shifting the same. The petitioner not only informed the committee that

the electrical line passing through the offered land was an electrical distribution line (low-tension) and not an electrical transmission line, but also assured that the low-tension electrical distribution line shall be removed.

8. The complaint of the petitioner is that as per the tender documents, respondent No.2 had to intimate the petitioner about the suitability or non-suitability of the offered land within 7 days of site inspection, that is by 06.03.2019. However, on 26.03.2019 the respondent No.2 rejected the technical bid of the petitioner without giving any cogent reason and awarded the tender to a favoured applicant, who, according to the petitioner, does not even qualify for the tender on merits.
9. Mr. Ganda, learned counsel for the petitioner submits that respondent No. 2 hurriedly fixed the time for opening of financial bid on 27.03.2019 at 4.10 p.m. within 24 hours of rejection of the petitioner's technical bid. Mr. Ganda further submits that the rejection of the tender by the respondents is baseless, *mala fide* and arbitrary and with a view only to accommodating a particular party, which is now the successful tenderer/bidder.
10. Mr. Ganda further submits that the ground of rejection of the technical bid of the petitioner is illegal as there is no overhead high-tension electrical line passing through the plot. The existing overhead electrical line is a power distribution/ service line, which is not a disqualification as per the wording of the tender. Moreover, the said power distribution/service line is meant for running of a tube-well and the electricity department has already given its consent to shift it from the offered site. In support of his contention, Mr. Ganda relies upon the

definition of ‘transmission lines’ and ‘service line’ as defined under the Electricity Act, 2003. He further submits that a transmission line carries current at 69 kV or more while a distribution line carries current at less than 69 kV. Counsel further relies upon one of the terms of the tender documents, under the head of ‘Plant Layout’, which reads as under:

“2.1 LOCATION & SAFETY DISTANCES

2.1.1 LOCATION :

While assessing the suitability of any site for location of LPG storage facilities, the following aspects shall be considered :

a) In addition to the requirements for safety the plant should be located in such a manner so as not to be contiguous to any industry having open flame. Property line of the plant shall be away from the central line of the road/railways as per statutory requirements and overhead high tension wire shall not traverse through the battery limit of the plant.”

11. Ms. Meenakshi Arora, learned senior counsel appearing for respondent No.2 submits that the technical bid of the petitioner was rejected since there are overhead electrical lines/wires existing at the offered site which makes it unsafe to carry-out LPG bottling operations. Ms. Arora submits that the eligibility criteria as contained in Clause 8(iii) of the tender documents specifically stipulates that a plot offered has to be free from overhead power transmission cables/wires, mobile towers or any other type of electrical structure etc. She further submits that in view of the specific tender eligibility criteria, the respondents were well within their right to reject the petitioner’s tender. Learned counsel for respondent No.2 has drawn the attention of the Court to the photographs taken by the Committee members which clearly show the

passing of the wires over the area in question. The aforementioned Clause 8(iii) is reproduced hereinbelow:

“8. Additional eligibility criteria: Bidders also need to fulfil the set criteria as mentioned in the Tender document in various sections. Any deviation to the set criteria observed at any stage shall lead to rejection of the Bid/Offer at the particular Round in the selection process-

(iii) the Ready Built Plant and/or Offered land should be one contiguous plot, free from live overhead power transmission cables/wires, mobile towers or any type of electrical structure etc.”

12. We have heard learned counsel for the parties.
13. A reading of the aforementioned Clause 8(iii) of the tender documents clearly shows that the offered site is required to be free from live overhead electrical power transmission cables/wires. This stipulation has been incorporated in the tender to ensure that LPG bottling operations are carried-out safely and smoothly, and existence of live overhead wires/cables in the LPG plant area may cause dangerous accidents. Moreover, the photographs of the offered site, as placed on record, clearly show the existence of overhead electrical wires passing through the offered site.
14. Having regard to the fact that a site inspection was carried-out by the committee in the presence of the petitioners, and considering the photographs placed on record, we find no infirmity in the stand taken by the respondents. On point of fact therefore, we find no infirmity in the decision rejecting the technical bid of the petitioner.
15. The law mandates only a limited scope of interference by the Court in

the decision-making process in rejecting or accepting a tender. The Courts interference is warranted only when the decision of rejection or acceptance of tender is mala fide or evidently aimed at favoring a particular party. It would be useful to refer to the observations of the Supreme Court in *Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and Another*, (2016) 16 SCC 818, more particularly paras 11, 15, and 16, which read as under :

“11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] 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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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.”

16. In view of the above discussion, we are of the view that the writ petition is devoid of any merit. The same is dismissed accordingly.

CM APPL. 16114/2019 (stay)

17. In view of the order passed in the writ petition, the application also stands dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 17, 2019/rb