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

+ **W.P.(C) 5334/2019 & CM Nos. 23513-23514/2019**

**CPWD CONTRACTORS ASSOCIATION
AND ORS.**

..... Petitioners

Through: Mr Vinay Kumar Garg, Sr.
Advocate with Mr Vikas
Sharma and Ms Nupur,
Advocates.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms Rashmi Bansal with Ms
Annu Singh, Advocates for R-1
and R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.05.2019

VIBHU BAKHRU, J

1. Petitioner no.1 is an association of contractors enlisted with the Central Public Work Department (CPWD). Petitioner no.3 is an individual contractor enlisted with CPWD as a Class-III contractor. The petitioners have filed the present petition impugning the Office Memorandum dated 14.03.2019 (hereafter 'the impugned OM'). By the impugned OM, CPWD has directed that wherever a contract is awarded for works, other than day-to-day maintenance, the same shall be a comprehensive contract entailing all works including civil, electrical, etc. Similarly, the impugned OM also postulates that

whenever maintenance work is outsourced, only one contract would be entered into by CPWD covering all disciplines. The import of the impugned OM is that multiple contractors at the same site and for the same project are eliminated.

2. The rationale for introducing the impugned OM, as stated in the Office Memorandum, is that multiple contractors for a single project entails certain inconvenience due to frequent entry of their workers, unhygienic conditions and coordination problems with different agencies.

3. The petitioners challenge the impugned OM, essentially, on three fronts. First, it is submitted that the impugned OM is contrary to the Rules of Enlistment of Contractors in CPWD, 2005 (hereafter ‘the Rules’). It is contended that under the Rules, various types of contractors are enlisted in several categories for various disciplines such as civil, electrical, horticulture, etc. The contractors are also enlisted in different categories depending on the value of the works which can be contracted to them. It is contended that if a single comprehensive contract is awarded for a project, various contractors who are enlisted with CPWD may not be eligible to participate in the same. The learned counsel appearing for the petitioners has drawn the attention of this Court to Rule 4.0 of the Rules, which is set out below:-

“4.0 **Applicability:** CPWD enlists contractors who intend to work with the department. It is done to have a ready list of suitable and competent

contractors for CPWD works so as to minimize requirement of verification of credentials of contractors at the time of individual tenders. At the same time, only those contracts are allowed to continue in the list that remain active in CPWD and perform well. Any Indian individual, Sole Proprietorship Firm, Partnership Firm, Public Limited Company or a Private Limited Company may apply for enlistment as a contractor in CPWD under these Rules provided the eligibility criteria and other conditions are satisfied. The enlisted contractors have to abide by all the rules made herein and as amended from time to time during the currency of their enlistment.

4. He submitted that if a comprehensive contract is awarded, then the contractors enlisted in separate categories would be rendered ineligible to apply.

5. Second, it is submitted that the said impugned notification is contrary to Paragraph 4 of the CVC Guidelines. The learned counsel appearing for the petitioners drew the attention of this Court to a Circular dated 01.05.2006 and referred to Paragraph 4 of the said Circular, which reads as under:-

“4. For this purpose, the CVOs are required to be well conversant with their organisation’s works/purchase manual. Wherever works/purchase manuals are non-existent, they should be got prepared, particularly, in those organisations which have substantial procurement activities. CVOs should also ensure that the manuals are updated from time to time. They should check and ensure that the

field staff is well conversant with the extant provisions of the manuals, and the guidelines issued by the Commission/CVOs from time to time. CVOs should have a full and active participation during the CTE inspections to know about the problem areas in the organisation's procurement process."

6. He submitted that all organizations are required to be conversant with the works and purchase manual and also ensure that manuals are updated from time to time. The current system of categorising the contractors on the separate expertise would not be applicable in view of the impugned notification. He contended that in this view, the impugned notification also runs contrary to the requirement for the organisations to be well-versed with their procurement process.

7. Third, he submitted that there are several contractors enlisted in lower categories and can be awarded works only of lower values. He submitted that if a single contract is to be awarded for one project, then the value of the same is likely to be high and this would automatically eliminate the possibility to award works to contractors enlisted in lower categories.

8. This Court is of the view that none of the contentions advanced on behalf of the petitioners are merited. First or all, the Rules are not statutory rules and it is made explicit in the same. The Rules are only for pre-verification of the contractors and do not entitle any of the contractors for award of contracts. The rules merely provide for verification of their eligibility to be considered for a contract for

works of a stipulated value and nature to be awarded works for which they have been pre-qualified. Rule 5 of the Rules is relevant and is set out below:

“Scope – The enlistment of a contractor in CPWD shall only entitle him to be considered for issue of tender papers subject to the conditions laid down in each individual Notice inviting Tenders. It shall not confer any right on him either to be necessarily issued the tender papers or for award of work.”

9. The contractors are required to meet the eligibility criteria set out in separate tenders as and when floated. The Rules do not vest the enlisted contractors with any right to be awarded contracts notwithstanding that they do not fulfil the eligibility conditions. It is also necessary to state that CPWD is entitled to determine the manner in which and the persons with whom to enter into contracts, provided that the same is done in a transparent manner and is not arbitrary or unreasonable.

10. CPWD cannot be compelled to award contracts to multiple contractors if it does not so desire to do so. The enlistment of contractors is for the purpose of pre-verification for the convenience of CPWD and not to confer any right with the individual contractors.

11. The impugned OM cannot, by any stretch, be stated to be arbitrary or unreasonable. It does not fall foul of any of the principles enshrined in Part-III of the Constitution of India.

12. The contention that the impugned OM also runs contrary to the

CVC Guidelines is also bereft of any merit. All organisations are required to be conversant with the purchase manual as well as the procurement process, therefore, the officers of CPWD are now required to apprise themselves the import of the impugned OM and act accordingly. The same does not, in any manner, run contrary to the CVC guidelines.

13. The contention that all smaller contractors would be eliminated, is erroneous. There may be various works of a lower value, which involve only one discipline. Such contracts would be available to those contractors enlisted in the relevant category. Even if it is accepted that contracts for a lower value will be eliminated by virtue of the impugned OM, there is nothing arbitrary or unreasonable about the impugned OM. CPWD cannot be compelled to determine the scope of the contract in a manner so as to accommodate all types of contractors. All that it is required to ensure is that the contracts are awarded in a transparent manner and the selection of the contractors is not done in an arbitrary, capricious or an unreasonable manner.

14. In *Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216*, the Supreme Court had referred to various judgments and had summarised the principles as under:

“**23.** From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act

validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226”

15. As noticed above, the enlistment for the contract is for the convenience of the CPWD. The same entitles the contractor to tender papers but it does not to confer any right for being awarded the contract.

16. In view of the above, the petition is dismissed as being unmerited. All pending applications are disposed of.

MAY 16, 2019
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VIBHU BAKHRU, J



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