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

Date of decision : 17.09.2019

+ **W.P.(C) 10061/2019 & CM APPL. Nos. 41603-04/2019**

STAR FORMS

..... Petitioner

Through : Mr. Annirudh Sharma & Ms.Shriya
Chanda, Advocates.

versus

**DIRECTORATE OF EDUCATION, GOVT.
OF NCT OF DELHI**

..... Respondent

Through : Mr. Satyakam, ASC for GNCTD with
Ms.Savita Drall, DDE (Exam) DOE.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. This petition is filed under Article 226 of the Constitution of India for a writ/order or direction to the respondent for quashing the tender issued by Directorate of Education, Govt. of Delhi on 05.07.2019 for confidential printing and supply of question papers for classes III to XII for the academic year 2019-20 being tender No. (1)/P&SQP/19-20.

2. Learned counsel for the petitioner submits that the petitioner submitted its technical and financial bids in the month of July, 2019 as per

the requirement of the tender alongwith EMD.

3. Counsel for the petitioner has drawn the attention of this court to the tender conditions as per which the technical bid was to be opened on 26.07.2019 at 11.00 a.m. and thereafter the financial bid was to be opened.

4. Counsel contends that the entire procedure followed by the respondent is arbitrary, illegal and fanciful and that the petitioner has been kept in the dark as to why the tender has not been awarded to the petitioner. It is also contended that the petitioner is qualified in all respects for getting the contract. He submits that the entire tendering procedure is liable to be quashed and set aside.

5. Mr. Satyakam, learned Additional Standing Counsel for the respondent has entered appearance on advance copy and has drawn the attention of this court to clause 18 of the tender conditions, which we reproduce below :

“18. Selection of Firms :

As per provision contained in GFR 2017, the contract will be awarded to the lowest evaluated bidder whose bid is found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per terms & conditions mentioned in the tender document. However, as printing of question papers is a time bound and sensitive work, Past Performance of the firm shall also be taken in consideration while assigning the job. No firm, which had worked for the Directorate of Education during the last three years and whose work/services had not been satisfactory, or

the sister concern of such firm, shall be considered for opening of the financial bid.”

6. Counsel further states that the petitioner did not qualify for the technical bid for the reason that a penalty was imposed twice upon the petitioner on 26.06.2018 and 26.12.2018.

7. Learned counsel for the respondent has produced the original file containing the communication to show that the reason for rejection of tender was duly informed to the petitioner.

8. We have heard learned counsel for the parties and considered the rival submissions. Dealing with a matter pertaining to tender, the Supreme Court of India in the case of **Jagdish Mandal v. State of Orissa & Ors.** reported as (2007) 14 SCC 517 has observed as under :

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to

protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. 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”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

9. In the case of ***Michigan Rubber (India) Ltd. v. State of Karnataka & Ors.***, reported as (2012) 8 SCC 216, the Supreme Court has observed as under :

“35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.”

10. Applying the law as noted above to the facts of the present case, this court is only concerned with the decision-making process for awarding the tender and not with the decision rendered by the respondent.

11. In view of the above discussion, we are satisfied that the petitioner did not qualify the technical bid for the tender in view of clause 18 of the tender document.

12. Resultantly, we find no merit in the writ petition ; and the same is dismissed alongwith the accompanying applications.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 17, 2019

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