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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 31.07.2019

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W.P.(C) 6574/2018

THE 3R TECHNOLOGIES

..... Petitioner

Through: Mr. Akash Nagar, Ms. Roopal
Tripathi and Ms. R. Jain, Advocates.

versus

U O I & ANR

..... Respondents

Through: Ms. Saroj Bidawat, Advocate for UOI.
Ms. Vibha Mahajan Seth and
Ms. Shweta Bhardwaj, Advocates for
R-2 with Mr. Sushant Tripathi, Legal
Assistant for DMRC in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal. The petitioner is a manufacturer and service provider under the Micro, Small and Medium Enterprises (MSME) category in the field of waste treatment and disposal. An e-tender was invited by the respondent on 24.5.2018 with respect to operation and maintenance of

sewage treatment plants at CHTP, SLTP, GTNI, AJG, HCC metro stations, effluent treatment plant at Sultanpur depot and water treatment plant at Sultanpur depot and Gurgaon staff quarters. Approximate cost of the work was Rs.174.53 lacs. The petitioner submitted its bid on 11.5.2018, which was rejected on 24.5.2018.

2. The first submission of learned counsel for the petitioner is that the communication dated 24.5.2018 informing the petitioner with regard to rejection of the bid is devoid of any reason. The second submission of learned counsel for the petitioner is that since the petitioner falls in the MSME category, the petitioner is entitled to various reliefs/concessions and thus the bid of the petitioner could not have been rejected.

3. Learned counsel for the respondent submits that the petitioner is well aware about the reasons of rejection, which is that the petitioner did not comply with the minimum eligibility criteria, more particularly the work experience and financial standing. Reliance is placed on Clause 1.2.2, the relevant portion of which is reproduced herein below:-

“1.2.2 Minimum Eligibility Criteria

(a) Work Experience : The tenderers will be qualified only if they have successfully completed work(s) during last 5 (five) years ending last day of the month previous to the month of tender submission in any Central Govt./state Govt./PSU's/DMRC or any private Limited company of repute as given below:

- (i) At least one “similar work” **of value of **Rs.46.54** lakhs*
OR
- (ii) Two “similar works”** each of value of **Rs.29.08** lakhs*

OR

*(iii) Three “similar works”** each of value of Rs.23.27 lakhs”*

4. Learned counsel for the petitioner in response thereto submits that being an MSME certified contractor, Clause 1.2.2 would not apply to him and in the alternative he submits that such a condition should not have been imposed on MSME registered contractors.

5. Ms. Vibha Mahajan Seth, learned counsel for the respondent submits that the Respondent had mentioned all the terms and conditions in the notice inviting tender. The petitioner was well aware of those conditions and cannot lay a challenge to these conditions at this stage, more particularly, after the tender stands awarded on 06.06.2018.

6. We have heard the learned counsels for the parties.

7. Perusal of clause 1.1.2 of the terms and conditions of the notice inviting tender clearly shows that the only concession that was available to MSME certificate holder was exemption from tender cost and tender security. The tender conditions nowhere stipulate that the minimum eligibility criteria could be waived in the case of a MSME registered company/firm. We quote the relevant clause as under:

“* Tender Cost and Tender Security is exempted for Micro & Small Enterprises (MSEs) registered with District Industries Centre or Khadi & Village Industries Commission or Khadi & Village Industries Board or Coir Board or National Small Industries Corporation or Dte. of Handicraft & Handloom or any other bodies specified by Ministry of Micro, Small & Medium Enterprises for appropriate category
"Installation, Commissioning or annual maintenance of RO plant/

STP/ WTP/ ETP", have valid registration certificate and available capacity to bid as on date of tender submission.”

8. We find that the minimum eligibility criteria which includes the work experience required is mentioned in clause 1.2.2 of the tender conditions, which we have quoted above in para 3 foregoing. We do not agree with the contention of the learned counsel for the petitioner that being registered as an MSME, he is entitled to a waiver/relaxation in the minimum eligibility criteria regarding the work experience as there is no provision in the tender, giving such a relaxation. Even otherwise the tender in question has been awarded on 06.06.2018 and for both these reasons, we find that the present petition cannot be entertained.

9. The scope of interference in tender matters under Article 226 of the Constitution of India is restricted to the decision making process not the decision. The Hon’ble Supreme Court in ***Tata Cellular v. Union of India***, (1994 (6) SCC 651) has held that the Courts can only interfere in the decision making process and not the decision and certainly judicial interference cannot extend to re-writing a tender document. We quote paras 70, 74 and 77 of the judgment in the case of ***Tata Cellular (supra)*** as under:

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the

lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

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74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself.

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77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- (i) Whether a decision making authority exceeded its powers?*
- (ii) Committed an error of law,*
- (iii) Committed a breach of rules of natural justice,*
- (iv) Reached a decision which no reasonable tribunal would have reached or,*
- (v) Abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the

fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality: This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.*
- (ii) Irrationally, namely Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

9. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact in R.V. Secretary of State for the Home Department, ex Brind Lord Diplock (1991) 1 AC 694, Lord Diplock refers specifically to one development namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should “consider whether something has gone wrong of a nature and degree which requires its intervention.”

10. There is no merit in the present writ petition and the same is accordingly dismissed.

C.M. APPL. Nos. 25083/2018 (for stay), 31018/2019 (for impleadment)

11. Since the main writ petition is dismissed, C.Ms. also stand dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 31, 2019

AK/rd

