

\$~29 & 32

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

+ W.P.(C) 1113/2020

+ W.P.(C) 1132/2020

M/S AARVANSS BUILDWELL AND INFRACON LLP

..... Petitioner

Through: Mr. Arvind Kumar Shukla,
Ms. Neena Shukla, Mr. Nehal
Ahmad, Mr. Kshama & Mr. Kunal
Yadav, Advs.

versus

DELHI METRO RAIL CORPORATION AND ANR.

..... Respondents

Through: Ms. Vibha Mahajan, Adv. with
Mr. Sushant Tripathi, Legal
Assistant for R-1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **29.01.2020**

CM APPL. No. 3704/2020 (exemption) in W.P.(C) 1113/2020

CM APPL. No. 3740/2020 (exemption) in W.P.(C) 1132/2020

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 1113/2020 & CM APPL. No. 3703/2020 (stay)

W.P.(C) 1132/2020 & CM APPL. No. 3739/2020 (stay)

This is a second round of litigation. Earlier, two connected writ petitions were dismissed as withdrawn on 20.01.2020 ; and the following order was passed :

" After some hearing in the matter, learned counsel for the petitioner, wishes to withdraw these petitions since, considering the response given by respondent No.1, he is satisfied that the certificate dated 13.11.2019, filed at page No.66 and 93 of the paper books in W.P.(C) 677/2020 and W.P.(C) 696/2020 respectively, were in compliance with the tender conditions No.2(a) and (b).

However, he submits that his bid has been wrongfully cancelled, for which he would seek appropriate remedy as available in accordance with law, for which the petitioner seeks liberty.

The petitions are accordingly dismissed as withdrawn. Liberty, as prayed, is granted.

CM.APPL 1896/2020 and 1986/2020 also stand dismissed as withdrawn.

A copy of the order be given dasti to the parties under the signatures of Court Master."

2. Mr. Arvind Kumar Shukla, learned counsel for the petitioner submits that after withdrawal of the writ petitions, he has come across a very vital document which shows that the successful tenderer was in fact not eligible ; and his bid ought to have been declared 'non-responsive' as he had not completed his tenure of minimum two years of satisfactory operation. He relies on document dated 31.12.2019 in support of this contention alongwith a corrigendum dated 14.11.2019 issued by the UPPTCL and the copy of log-book reflecting the date of energization of said project ('DMRC'contract no. CEUD-11).

3. Learned counsel for the respondents however submits that although the dates of these documents are prior to the date of filing of the earlier

writ petitions, these were neither brought to the notice of the court in the first round of litigation nor were copies provided to DMRC. Counsel submits that accordingly the present writ petition ought not to be entertained. She however submits that once these documents are received by DMRC, they would certainly be examined ; and a decision would be taken within two weeks as to the future action, if any, irrespective of the fact that respondent No. 2 has already been awarded the tender.

4. We are of the view that the present writ petitions are not maintainable since there is no explanation as to why these documents were not brought to the notice of the DMRC earlier ; not did they form part of the earlier writ petitions. However, we do expect DMRC to examine the representation of the petitioner and the documents in the context of the awarding of the tender to respondent No. 2. This exercise would be completed within two weeks.

5. The writ petition is disposed of with the above directions.

6. Order be given *dasti*.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 29, 2020/uj