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

+ W.P. (C) 5580/2020 & C.M. No. 20165/2020 (stay)

JP AVIATION SERVICES PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr. Sarad Kumar Singhania and  
Ms. Rashmi Singhania, Advocates

versus

UOI & ORS.

.... Respondents

Through: Mr. Akshay Makhija, CGSC for respondent  
No.1/UOI.

Mr. Sanjay Jain, ASG with Mr. Sonal Kumar Singh,  
Mr. Anshuman Gupta, Mr. Arkaj Kumar and Mr.  
Aman Singh, Advocates for respondents No.2 &  
3/Airport Authority of India.

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

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**24.08.2020**

**HEARD THROUGH VIDEO CONFERENCING**

1. The petitioner in the instant writ petition seeks a writ of mandamus calling upon the respondents to cancel the communication dated 11.08.2020, rejecting its bid on the ground that the same is not compliant with the technical specification as it had not sent the requisite documents which it had to furnish

to the respondent No.3 under the Notice inviting e-bid for Tender ID : 2020\_AAI\_ 41:228\_1 dated 6.03.2020, for providing concession for Ground Handling Services at Goa and Pune Airports.

2. The respondent No.3/Airport Authority of India had invited tenders to provide ground handling services to various airlines at various airports in India, in January, 2019. The said bidding process was however cancelled and a fresh tender i.e. Tender ID : 2020\_AAI\_ 41:228\_1 dated 6.03.2020 was floated for providing concession for ground handling services at Goa and Pune Airports. The last date of submitting the bid was 30.03.2020. Due to the COVID-19 pandemic, the process got delayed and ultimately started from July, 2020.

3. The petitioner, a company registered under the Companies Act, 1956, and based at Kolkata has averred that it is in the business of providing services and personnel on contract for comprehensive ground handling and allied airport services including cargo handling at various airports. The petitioner had submitted its e-tender on 31.07.2020 at 3:33 pm and the same was duly accepted. Thereafter, the petitioner was required to send the original tender papers along with the security in the form of a demand draft or as a bank guarantee, as per the format, within five working days after the Bid Due Date. The Bid Security and the documents had to reach the respondent No.3 on or before 5:00 pm, on 7.08.2020. However, the documents and the Bid Security did not reach the respondent No.3 before the cut off date and time and resultantly, the petitioner's bid was rejected. It is the communication dated 11.08.2020, rejecting the bid of the petitioner that is under challenge in this writ petition.

4. Mr. Singhania, learned counsel for the petitioner states that the petitioner/company is based in Kolkata, a city which has been severally affected by the COVID-19 pandemic. Regular flights from Kolkata to six cities i.e. Delhi, Mumbai, Ahmedabad, Nagpur, Pune and Goa were suspended from 15.07.2020 and the said flights have not yet been resumed. It is stated that courier services were not accepting any parcel which had to be sent out of Kolkata. The tender documents were submitted through e-submission via the Government e-Procurement System, on 31.07.2020 at about 3.32 pm. 01.08.2020 was a holiday on account of Eid and 02.08.2020 was a Sunday. Learned counsel states that the petitioner had sent the documents by speed post on 3.08.2020, through the Mall Road Post Office and in normal course, the said documents ought to have reached the respondent No.3 by 5.08.2020, but the same did not reach. The petitioner states that due to the COVID-19 pandemic situation, the said documents did not reach the respondent No.3 within the stipulated period. The petitioner then wrote e-mails to the respondent No.3 on 1.08.2020, 4.08.2020 and 7.08.2020 seeking extension of time for submission of the requisite documents but the same have not been considered. It is contended that rejection of the bid of the petitioner is completely arbitrary and has been done without taking into account the ground reality and the fact that the documents did not reach the respondent No.3 for no fault attributable to the petitioner.

5. Mr. Singhania, learned counsel for the petitioner states that the petitioner cannot be blamed for the documents not reaching the respondent No.3 in time; that the e-tender had been accepted on 31.07.2020 and the petitioner had taken

steps by trying to send the requisite documents by speed post; that the mistake is only of the postal authorities of not delivering the documents in time and the petitioner's bid cannot be rejected because of the lapse on the part of the postal authorities. He relies on Clause 2.17.2 of the Tender Documents which provides that in exceptional circumstances, the authority may solicit the bidder's consent to an extension of the period of bid validity.

6. On the other hand, Mr. Sanjay Jain, learned ASG, appearing for the respondents No.2 and 3 states that tender condition required the original documents to be submitted by the bidders in the office of the Executive Director (Operations), Airport Authority of India, within five working days after the Bid Due Date i.e. on or before 07.08.2020, between 1000 hours to 1700 hours. He states that this condition is mandatory and it cannot be waived. Reliance is placed on Clause 2.15.1 of the Tender Documents, which states that bids received by the Authority after the specified time on the Bid Due Date, shall not be eligible for consideration and the said bids shall be summarily rejected. Learned ASG also states that one of the bidders, namely, Indo Thai Airport Management Services Pvt. Ltd. which is also a Kolkata based organisation that had successfully sent the requisite documents, as stipulated under the tender, which were received on 7.08.2020 and there was nothing which prevented the petitioner to depute its officer to drive down to Delhi to submit the original tender documents along with Bid Security because by 1.08.2020, Unlock Phase 3 had commenced and there was no impediment in free movement of vehicles. He further states that the very same petitioner had managed to deliver documents to the respondent No.3 in respect of other

tenders before 7.08.2020 and therefore, it cannot take a plea that it was impossible for it to send the documents to the respondent No.3 in respect of the tender in question.

7. We have heard the arguments advanced by learned counsel for the parties and perused the record.

8. It is well settled that courts are slow to interfere with the Government's freedom of contract, invitation of tender and refusal of any tender which are treated as policy matters. Interference can only be done when a decision or action of the respondents is vitiated by arbitrariness, unfairness, illegality or irrationality. In Reliance Energy Ltd. v. Maharashtra State Road Development Corporation Ltd., (2007) 8 SCC 1, the Supreme Court has observed as under:-

*“38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This “legal certainty” is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of “level playing field”.*

*39. In Reliance Airport Developers (P) Ltd. v. Airports Authority of India [(2006) 10 SCC 1] the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of “judicial review” cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised*

*in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of the rule of law will not arise. **The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors.** One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above “certainty” is an important aspect of the rule of law. In **Reliance Airport Developers [(2006) 10 SCC 1]** the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks at different stages. Objectivity was thus provided.” (emphasis added)*

9. In Ram Gajadhar Nishad v. State of U.P. and Ors., (1990) 2 SCC 486, in the facts of that case, the Supreme Court has observed that:-

*“2. We have considered these submissions of the learned counsel for the appellant and we have also considered the terms and conditions of the tender notice. It is quite clear that the tender form that was submitted by the appellant did not fulfil all the requirements of the tender notice, that is, the solvency certificate which was filed was more than three months old and the new solvency certificate duly granted by the Collector was not filed within the time specified in the*

*tender notice, that is, on August 25, 1987. But it was filed much later on September 2, 1987. The Commissioner has already considered the validity of the tender filed by the appellant in accordance with the direction made by the High Court pursuant to the order made in Writ Petition No. 206 of 1987 and the Commissioner by his order dated May 10, 1988 has held that the appellant did not comply with this mandatory condition, namely, filing of solvency certificate within the last date of submission of the tender as well as character certificate and so the Commissioner did not open the tender form submitted by the appellant on this ground. We do not want to interfere with this order in an application under Article 136 of the Constitution of India. Furthermore, learned counsel, Mr Jain, for respondent 4 states before us that his client is ready and willing to pay a sum of Rs 2,41,000 per annum for leasing out this particular ferry. The appellant will file an undertaking through his counsel, Mr P.K. Jain within two weeks from today to this effect. The appeal is thus dismissed. There will be, however, no order as to costs in the special facts and circumstances of the case.” (emphasis added)*

10. Coming to Clauses 1.3.4, 2.15.1 and 2.15.2 of the tender, they read as follows:-

*“Clause 1.3.4: ..... The Bid Security for each Airport is to be submitted in the form of a bank guarantee or Demand draft and the original copy of the Bid Security is to be submitted in an envelope at the office of the Executive Director (Operations), AAI between 1000 hrs to 1700 hrs at the address provided in Clause 1.6, within 5 (five) working days after the Bid Due Date. In the event the Bid Security is not submitted by a Bidder, then the Bid of such Bidder shall be rejected considering it as non-responsive. The Bidder should submit the scan copy of the bank guarantee or*

*Demand draft on the NIC CPP portal.*

*For the avoidance of doubt, it is clarified that if the Bidder uploads a copy of the bank guarantee or Demand Draft in the NIC CPP portal, however, fails to submit the original demand draft or vice versa, the Bid of such Bidder shall be summarily rejected.*

**2.15. Late Bids**

*2.15.1. Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. The Authority will not be responsible for any delay in receipt of Bids.*

*2.15.2. Once the Bid submission date and time is over, the Bidder cannot submit his/her Bid. Bidder has to start the bid submission well in advance so that the submission process passes off smoothly. The Bidder will only be held responsible if his/her Bid is not submitted in time due to any of his/her problems/faults, for whatsoever reason, during Bid submission process."*

11. A perusal of the tender documents shows that the Bidders had to give the Bid Security for each airport in the form of a bank guarantee or demand draft which had to reach the respondent No.3 within five working days after the Bid Due Date which in this case was 7.08.2020.

12. Admittedly, the requisite documents have not reached the respondent No.3. In fact, learned counsel for the petitioner has informed the court that the said documents are still lying with the postal authorities at Kolkata. Clause 2.15.1 states that the bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily

rejected. Clause 2.15.2 goes on to state that once the bid submission date and time is over, the Bidder cannot submit his/her Bid and the Bidder has to start the bid submission well in advance so that the submission process passes off smoothly.

13. In the instant case, the petitioner had uploaded its e-tender on 31.07.2020. Admittedly, service of flights in Kolkata were suspended on 15.07.2020. Thus, the petitioner knew all along that there were no flights connecting Kolkata and Delhi. There was enough time for the petitioner to have taken steps and use alternate modes to ensure that the requisite documents reach the respondent No.3 in time. Another entity also from Kolkata was successful in sending its documents before the last date. Apart from that, tender documents of the petitioner in respect of other tenders issued for other airports had also reached the respondent No.3 before 7.08.2020. In view of the above mentioned facts, it cannot be said that it was impossible for the petitioner to have ensured that the requisite documents reached the respondent No.3 before the last date.

14. We are of the opinion that Clause 2.17.2, as relied upon by the petitioner, does not apply to the facts of this case. The same reads as follows:-

***“2.17. Validity of Bids***

*2.17.1. ....*

*2.17.2. In exceptional circumstances, the Authority may solicit the Bidder's consent to an extension of the period of Bid validity. The request and the response thereto shall be made in writing. A Bidder may refuse the request without forfeiting its Bid security. A Bidder granting the request will not be required nor permitted to modify its Bid.”*

It is apparent that the aforesaid clause only permits the authority to extend the period of the bid validity but not the time limit for acceptance of the bid.

15. The petitioner had to ensure that the requisite documents reached the respondent No.3 within the stipulated period. Once the petitioner failed to comply with the tender conditions, there cannot be any infirmity in the decision taken by the respondent No.3 of rejecting its bid as non-responsive. The writ petition is accordingly dismissed as unmerited along with the pending application.

**HIMA KOHLI, J**

**SUBRAMONIUM PRASAD, J**

**AUGUST 24, 2020**

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