

\$~3

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

+ **W.P.(C) 5788/2020**

AARVANSS BUILDWELL & INFRACON, LLP Petitioner
Through: Mr. Arvind Kumar Shukla,
Adv. With Ms. Ziya Ahmad and Ms. Neena
Shukla, Adv.

versus

**NATIONAL CAPITAL REGION TRANSPORT CORPORATION
LTD. & OTHERS** Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv.
With Ms. Parina Katyal, Adv. For R-1 & 4.
Mr. Ghanshyam Joshi, Adv. with
Mr. Chirag Joshi, Adv. for R-3.
Ms. Vibha Mahajan Seth, Adv. for R-5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **31.08.2020**

HEARD THROUGH VIDEO CONFERENCING

CM No. /2020 (Exemption) (to be numbered)

Allowed, subject to all just exceptions.

W.P.(C) 5788/2020 & CM 20908/2020 (Stay)

1. The petitioner in the instant writ petition has prayed for quashing and setting aside of the bidding process in respect of tender No.DM/UD/COR-OF/114 dated 29.05.2020. The petitioner has also prayed for quashing the technical evaluation and for declaring the entire bidding process of the above mentioned tender as null and void and for issuance of a fresh tender.

2. As per the averments made in the petition, the respondent No.1/National Capital Region Transport Corporation (in short, 'NCRTC') had floated a tender No.DM/UD/COR-OF/114 dated 29.05.2020 for shifting/modification work of 220 KV double circuit, ETH Transmission Line of Delhi Transco Ltd., including supply, erection, testing and commissioning near Sarai Kale Khan, infringing Delhi, Ghaziabad, Meerut, RRTS Corridor. The petitioner is aggrieved by Condition No.2.4.3.4. mentioned in the PQR along with the bid which reads as follows:-

“2.4.3.4. The pole manufacturers must have successful Type Test Report of tension type of 28 Mtr. (or higher) of Bottom Cross Arm 220kV and above voltage level monopoles from CPRI or any other third party Govt. Accredited laboratory. This successful type test report shall be submitted by the bidder at the time of bid submission for technical evaluation.”

3. According to the petitioner, the aforesaid condition has been introduced only to favour and select a few participants. The petitioner states that it had written a letter dated 18.06.2020 to the respondent No.1/NCRTC complaining about the same. Records reveal that the respondent No.1/NCRTC gave its clarification to the said letter sent by the petitioner stating that the condition has been approved by the Competent authority. Records also show that vide letter dated 29.06.2020, the petitioner had sought for extension of the tender date by a period of 15 days. The petitioner has now approached the court challenging the entire tender and the bidding process.

4. We have heard Mr. Arvind Kumar Shukla, learned counsel for the petitioner and Mr. Sudhir Nandrajog, learned Senior counsel appearing for

the respondents No.1 and 4/NCRTC.

5. A perusal of the material placed on record shows that the bids were invited on 29.05.2020. The last date of the submission of bids was 10.06.2020. The Technical and Financial bids were opened on 25.07.2020 and the Letter of Acceptance has been issued to the respondent No.5 on 1.08.2020, whereas the instant writ petition has been filed on 28.08.2020.

6. Other than stating that the petitioner has been corresponding with the respondent No.1, there is no explanation as to why did the petitioner not approach the court before the bids were opened. Further, it can be seen that after the clarification given by the respondent No.1/NCRTC on 24.06.2020, on 29.06.2020, the petitioner had only sought extension of the tender date by 15 days. The said letter dated 29.06.2020, is reproduced below for ready reference:-

“Subject: Extension of Tender Date Due for 15 days

Tender No.DM/UD/COR-OF/114, Work: Shifting/ modification work of 220KV Double Circuit, EHT Transmission Line of Delhi Transco Limited including Supply, Erection, Testing and Commissioning near Sarai Kale Khan infringing Delhi-Ghaziabad-Meerut RRTS Corridor.

Dear Sir,

We AARVANSS BUILDWELL AND INFRACON (ABI) is registered “A” Grade contractor in Electrical Safety department of Uttar Pradesh and one of the front ending Indian EPC companies in the country, with wide experience and proven expertise in the execution of height raising and utility shifting of major infrastructure projects with an Established track record of successful

execution of projects across sectors.

“ABI” executed much prestigious Power transmission and very keen to associates with National Capital Region Transport Corporation Ltd. and interest to participate on floated Transmission Tender.

It is requested to kindly extended the tender date at least for 15 days as our team is gone through the specific technical requirement of Type Test “The pole manufacturers must have successful type test report of Tension Type of 28 Mtr. (or higher) of bottom cross arm 220kV and above voltage level monopoles from CPRI or any other third-party Govt. Accredited laboratory and required more time for Manufacturer Authorisation as NCRTC demanded the specific Bottom Cross arm type test.”

7. In view of the above, there is no plausible reason offered by learned counsel for the petitioner for explaining the delay in approaching the court for relief and that too in a tender matter, which is time bound. It is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and in the exercise of its discretion, the High Court does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic more so when rights of third parties have intervened. It is also settled that when writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile, is an important factor which always weighs with the court in deciding as to whether or not to exercise such jurisdiction. [Refer: State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566].

8. The courts have also held in a catena of decisions that courts generally do not interfere in questions relating to technical evaluation of conditions prescribed in tender documents. In the instant case, a perusal of the tender document, the objections raised by the petitioner and the reply given thereto by the respondent No.1/NCRTC would show that it involves highly complex and technical questions which can be appreciated only by the experts. In Montecarlo Limited vs. National Thermal Power Corporation Limited, reported as (2016) 15 SCC 272, the Supreme Court has observed as under:-

"26. --- In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to

favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints." (emphasis added)

9. In the instant case, admittedly, the bids were issued on 29.05.2020 and the same were opened on 25.07.2020. The Letter of Acceptance has been issued on 1.08.2020. Thus, third party rights have already been created. There is no good reason as to why this court must interfere at this belated stage and that too when the petitioner had accepted the reasons given by the respondent No.1/NCRTC and had only sought extension of the tender date by 15 days.

10. This is not a fit case where this court ought to exercise its discretion under Article 226 of the Constitution of India. The petition is accordingly dismissed *in limine* not only as belated, but also being meritless along with the pending application.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 31, 2020/Jitender