

\$~

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

Date of Decision: 15.02.2021

+ **W.P.(C) 509/2021**

**INSITUFORM PIPELINE REHABILITATION PRIVATE
LIMITED** Petitioner

Through **Mr. Tarang Agrawal, Adv.**

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through **Mr. Anil Grover, Standing Counsel
for the New Delhi Municipal Council.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner has preferred the present writ petition seeking the following reliefs:

“(a) issue a writ of mandamus and/or certiorari and/or any other appropriate writ/order/direction in the nature thereof quashing the impugned notice dated 04.01.2021 issued by the Respondent in relation to the Project and all acts/actions taken by the Respondent in furtherance thereto;

(b) issue a writ of mandamus and/or any other appropriate writ/ order/direction in the nature thereof directing the Respondent to award the work contract in relation to the Project to the Petitioner in pursuance to the evaluation of Petitioner’s bid on 10.09.2020;

(c) call for complete records pertaining to the impugned notice dated 04.01.2021 and erstwhile NIT dated 20.08.2020 in relation to the Project, including all correspondences/communications/file notings/internal

communications etc. in relation thereto;”

2. We have heard learned counsel for the parties and therefore proceed to dispose of the writ petition.

3. The Sewerage Maintenance Division, Civil Engineering Department of the respondent/New Delhi Municipal Council issued a notice inviting tenders (NIT) on 20.08.2020 in relation to the project in question i.e. *“Rehabilitation of existing 1100-1200 mm Dia Sewer Line at Ashoka Road from Nirvachan Sadan to C-Hexagon”*.

4. As per the NIT, the estimated cost of the project was Rs.16,61,35,617/- with the time of completion being six months. The petitioner and some other bidders submitted their bids in response to the NIT. The petitioner also deposited earnest money of Rs.33,22,712/- in terms of the NIT. After technical evaluation, only two bidders namely the petitioner and one M/s Gypsum Structural were found eligible for opening of their financial bids. Upon opening of the financial bids, the petitioner was found to be the Lowest Bidder (L1). Despite the petitioner being the L1 bidder, the respondent sought to impliedly cancel the tender process by way of notice dated 04.01.2021, inviting fresh bids for the same work and at the same estimated cost. At that stage, the petitioner approached this Court by filing the present writ petition. The grievance of the petitioner was that despite being the L1 bidder and technically qualified, the respondent suddenly, without any communication or reason, decided to drop the ongoing tendering process, and invited fresh bids all over again.

5. On 13.01.2021, this Court, while issuing notice in the petition, had restrained the respondent from proceeding with NIT dated 04.01.2021, and

had also directed the respondent to produce before the Court the original records relating to the NIT in question. On 22.01.2021, which was the next date, we examined the record produced before us and passed the following order:

“In accordance with our directions given in the last order, the original record relating to the tender in question has been circulated.

From a perusal of the same, it appears that the petitioner was found to be qualified in all respects and in fact, its financial bid was also found to be acceptable. The matter was to be placed before the Council as Agenda Item No. 15 (A-11) in its meeting dated 26.12.2020. There is a note by Mr. D. Sengupta, H.A. (CS) dated 21.12.2020 to this effect, which also states that the file may be returned to the office of CE(C-1). Thereafter, the next note of CE(C-1) is of 12.01.2021, stating that “Council’s decision may please be intimated”. The matter was filed and taken up by this Court upon urgent mentioning on the very same day i.e. 13.01.2021. The respondents were aware of the filing of the petition, having been served with an advance copy on 13.01.2021.

We may also refer to the note dated 13.01.2021 of Mr. D Sengupta H.A. (CS), which reads as under: -

“As desired by the Deptt., it is stated that the item on the subject : “T/M of sewer line in NDMC area. SH: Rehabilitation of existing 1100-1200 mm dia sewer line at Ashoka Road from Nirvachan Sadan to C Hexagon.” was placed before the Council vide item No. 15 (A-11) in its meeting dated 26.12.2020. The decision taken by the Council, against this item is as under :-

Item No.	Subject	Council’s Decision
15 (A-	T/M of sewer line in NDMC area. SH: Rehabilitation of	After due deliberations it was

11)	existing 1100-1200 mm dia sewer line at Ashoka Road from NirvachanSadan to C Hexagon	decided by the Council to retender the case. It is further resolved by the Council that the Department may initiate further necessary action in the anticipation of confirmation of the Minutes.
-----	--	---

The minutes of the Council Meeting dated 26.12.2020 is being placed before the next meeting of the Council for confirmation thereof.

If approved, we may return the file to Chief Engineer (Civil-1) please.

s/d by

Mr. D. Sengupta

The aforesaid shows that the NDMC purportedly held a meeting on 26.12.2020 and considered the award of the tender vide item No. 15 (A-11). The decision of the Council, as appearing from this note, was not to accept the petitioner's bid and instead retender the work. No reasons for the same are found in the noting sheet. In fact, the recommendation contained in the agenda note was to approve the tender of the petitioner for the work in question. The Agenda also contained a draft resolution which reads: "Resolved by the Council for accord of approval of tender of M/s Insituform Pipe Line Rehabilitation Pvt. Ltd for an amount of Rs. 17,00,43,000/- for the work of rehabilitation of existing 1100-1200 mm dia sewer line at Ashoka Road from NirvachanSadan to C- Hexagon by adopting CIPP (Cured in Place Pipe) technology. It is further resolved by the Council that the department may initiate further necessary action in

anticipation of confirmation of the Minutes of the Council”

The Agenda Item No. 15 (A-11) along with the Council’s decision are placed on record at page 130-132. This document, though signed by Mr. D. Sengupta Secretary, NDMC, does not bear any date. There are several other endorsements made on this document which are all after 13.01.2021, the date when the matter was taken up by this Court. The earliest endorsement is of 15.01.2021 and thereafter there is an endorsement of 18.01.2021.

On the note sheet, at pages 34 and 35, there is a noting of 13.01.2021 prepared by Er. S.S. Sharma, EE(SM). The same is also relevant, and reads as under:

“Name of work: T/M of sewer line in NDMC area during 2020-21.

Sub-Head: Rehabilitation of existing 1100-1200 mm dia sewer line along Ashoka Road from Nirvachan Sadan to C Hexagon.

As per the discussion held during last Council Meeting on 26.12.2020 it was conveyed to undersigned by seniors & subsequently directed to recall the tender of the above captioned project immediately in anticipation of confirmation Council Minutes.

Considering the very poor condition of existing 1100-1200 mm Np-2 Class pipe and prone to the recent settlement of the cited sewer line at Ashoka Road- Man Singh Road Round About, it was directed by the Competent Authority to recall the tender immediately with the condition that the newly called tender will not be approved till the written confirmation from Council is received.

In view of the above, the NIT was again floated on 04.01.2021 with date of opening as 13.01.2021. i.e. today by 3:30 PM. The ASC of Delhi High Court Sh. Anil Grover called the office of CE(C-I) on 13.01.2021 by 1:00 PM informing that the LI agency M/s Insituform Pipeline Rehabilitation Pvt Ltd. Has approached to Delhi High Court against the decision of the Council and on urgent mentioning today that following is decided in the Court.

“the petitioner has challenged the notice inviting Tender dated 04.01.2021 on the ground that the department for the same work had earlier issued NIT dated 20.08.2020 and in which it was the lowest bidder. The department without rejecting the previous NIT and without giving any reasons, issued another NIT for the same work and thus the action of Department is arbitrary and whimsical. The undersigned appeared on behalf of the Department and accepted notice.

The Hon’ble Court after going through the records of writ petition direct the department to produce records pertaining to NIT dated 20.08.2020 and further directed the Department not to go ahead with the NIT dated 04.01.2021 till further orders. The Original record is to be provided to the Hon’ble Court by 20.01.2021 and the matter is listed for arguments of 22.01.2021.

You are therefore requested not to go ahead with the NIT dated 04.01.2021 and further requested to provide the original records pertaining to NIT dated 20.08.2020 to the undersigned at the earliest so that the same can be provided to the court master of Hon’ble Mr. Justice Vipin Sanghi.

Copy of writ petition is enclosed herewith and order dated 13.01.2021 will be provided as soon as available. This is for your necessary and immediate action.”

and as per the direction of Higher Authorities the NIT dated 04.01.2021 is cancelled immediately.

The decision of the Council is received today as under :-

Item No.	Subject	Council’s Decision
15 (A-11)	<i>T/M of sewer line in NDMC area. SH: Rehabilitation of existing 1100-1200 mm dia sewer line at Ashoka Road from Nirvachan Sadan to C Hexagon</i>	<i>After due deliberations it was decided by the Council to retender the case. It is further resolved</i>

		by the Council that the Department may initiate further necessary action in the anticipation of confirmation of the Minutes.
--	--	--

The previously called tender is still not rejected online. All the relevant documents in original are called by the High Court by 20.01.2021 and the next date of hearing is 22.01.2021.

Submitted for kind information of Competent Authority please.

s/d by

*(Er. S.S. Sharma)
EE(SM) ”*

Pertinently, even this note is also of 13.01.2021 itself. The aforesaid clearly shows that there are absolutely no reasons to be found on the record as to why the tender was not awarded to the petitioner, despite the NDMC itself proposing the award of the work in its favour.

Secondly, what raises doubts in our mind is the fact that on the date when the petition was filed and listed, i.e. on 13.01.2021, there are several file notings which refer to the decision of the Council taken as early as on 26.12.2020; however, between 26.12.2020 and 13.01.2021, there is nothing placed on record to say that such a decision was indeed taken by Council in its meeting on 26.12.2020.

We, therefore, direct the respondent to file a comprehensive affidavit in the matter, which affidavit should bring on record the express reasons for cancellation, if any, as were placed before the Council. As noticed hereinabove, the decision of the Council itself is completely bereft of reasons, and it may not be permissible to now offer reasons not forming the basis for the decision taken.

The respondent should also place on record the

relevant records relating to the holding of the Council Meeting on 26.12.2020, which should disclose as to how and when the said meeting was called; how notices were issued to the members of Council for holding the said meeting; the complete log of all such notices and circulation of agenda of the meeting; and the relevant extracts of the minute book of the Council in relation to Agenda Item No. 15 (A-11). It should be disclosed whether the meeting was held physically, or virtually and, if held physically, when and where the same was held and who all attended the meeting. It should be disclosed when the decision of the Council was communicated and how it was communicated. It should also be disclosed as to why the same was not communicated till 13.01.2021.

Mr. Grover states that the original records would be required by the respondents for filing a detailed counter affidavit. We direct the Court-Master to make copies of the complete record handed over by the respondent. The copies should be arranged in the same manner in which the original file is arranged. Copies shall be circulated to the Bench as well as counsel for the petitioner and thereafter, the original record shall be returned to Mr. Grover by 27.01.2021.

Counter Affidavit be filed within two weeks. Rejoinder, if any, be filed before the next date of hearing.

Interim orders to continue.

List on 15.02.2021.” (emphasis supplied)

6. In pursuance of the directions issued by us, the respondent/NDMC has placed its counter affidavit on record. The case of the respondent, as emerging from its counter affidavit, is that a meeting of the Council was scheduled to be held on 01.12.2020, but was postponed to 26.12.2020 due to administrative reasons. The said meeting was presided over by the Hon'ble Chief Minister of Delhi. Alongwith its counter affidavit, the respondent has also placed on record the agenda as well as the minutes of the Council's

meeting held on 26.12.2020.

7. The agenda item circulated for the meeting held on 26.12.2020 placed before the Council is relevant and the same reads as follows:

“ITEM NO. 15 (A-11)

1. Name of the subject/ Project:

Name of the Project: -T/M of sewer line in NDMC area.

Sub-Head:- Rehabilitation of existing 1100-1200 mm dia sewer line at Ashoka Road from Nirvachan Sadan to C Hexagon.

2. Name of the Department / departments concerned:

Civil Engineering, Public Health Circle, Sewer Maintenance Division.

3. Brief History of the subject/ Project:

The sewer line from Bhai Veer Singh Marg (Kali Bah Marg) is of 600-838 mm dia line which has already been rehabilitated till Nirvachan Sadan in the year 2011. The same line 1100 mm 1150 mm - 1200 mm dia is continuing from Nirvachan Sadan to C-Hexagon, which is approximately 1.936 km and is under consideration for rehabilitation. This line was laid around 1977 and more than 40 years old and being NP2 Class RCC pipe, it has already outlived the prescribed life of about 30 years and hence getting damaged at several places as had also been technically studied /examined by IIT Delhi in the year 2011 and recommended for its rehabilitation with CIPP Liner on dated 14.02.2011. Accordingly M/s TTI Consulting Engineers (I) Pvt. Ltd. i.e. Consultant already appointed for seeking pre and post consultancy for this project has submitted the detailed estimate and draft NIT amounting, to Rs.17,44,33,872/- and Rs. 16,60,80,046/-, respectively at NP-01 vide their Letter No. TT1/NDMC/EE(5P)/SBS/ 05082020a

dated 05.08.2020.

Considering the frequent collapse of about 40 years old NP2 Class RCC sewer pipes, it was proposed by the department to get it rehabilitated urgently to avoid, any further collapse or mishap. Due to emergent condition, it was approved by the Council vide Resolution No.35(A-06) dt,04.08.2020 for Approval In Principle for rehabilitation work of sewer line along Ashoka Road, from Nirvachan Sadan to C Hexagon, Council has approved the proposal for Rs. 20.00 crores against the aforesaid item no. for cited project and directed to call Short Notice Inviting Tender, it has also decided to expedite tendering process and award of work.

*Therefore Detailed Estimate amounting to Rs. 17,11,20,000/- and draft NIT amounting to Rs. 16,61,35,617/- has been Technically Sanctioned and approved from the competent authority on dt. 20.08.2020 at NP-07. Accordingly tender, was invited through e-procurement system on dt. 20.08.2020 with date of opening as 04.09.2020 at NP-08. **Three bidders participated in the tender i.e. M/s Gypsum Structural India Pvt. Ltd., M/s Onsite India Pvt. Ltd. and M/s Insituform Pipe; Line Rehabilitation Pvt. Ltd. Scanned tender documents of all the bidders submitted to Consultant on dt. 04.09.2020 and Technical Comparative Statement was subsequently prepared and submitted by the consultant. Technical Evaluation Sub- Committee was held on 07.09.2020 and 08.09.2020 & two bidder i.e. M/s Gypsum Structural India Pvt. Ltd. and M/s Insituform Pipe Line Rehabilitation Pvt. Ltd. were found technically eligible for opening of financial bid at NP-15. Financial bids were opened on dt. 10.09.2020 and M/s Insituform Pipe Line Rehabilitation Pvt. Ltd., emerged the lowest quoted bidder with quoted rate @ 2.35% above with quoted amount as Rs.17,00,43,000/- at NP-16.***

Justification checked by Main Planning @ 0.01% above EC i.e. Rs. 16,61,52,231/- with 5% of tendered cost over

justified cost as 2.34% above & case recommended for acceptance of L-1 offer @ 2.35% above (within variation of 5% over justified rates) by Main Planning on dt. 25.09.2020 at NP-20. Finance had observed the case on 08.10.2020 which have been replied by the department concurred the proposal on dt. 09.10.2020 with remarks "Keeping in view the position as brought out at NP-26, F.D. concurs in the proposed award to L-1 i.e. M/s Instuform Pipe Line Rehabilitation Pvt. Ltd. At proposed award to tendered cost of Rs. 17,00,43,000/- which is above EC of Rs. 16,61,35,617/- & 2.34% above justified cost (of Rs. 16,61,52,231/-) worked out at 0.01% above EC". (at NP-27)

4. **Detailed Proposal of the Subject/ Project :-**

Proposal consisting of rehabilitation of 1100-1200 mm dia sewer line of length 1936 cm by CIPP Liner Method including, site survey, plugging and flow diversion, de-sitting pre-lining CCTV survey, rehabilitation of manholes, rectified settled / sunken sewer including construction of manhole, testing & commissioning and restoration of road complete.

5. **Financial Implication of proposed Subject/Project :-**

The expenditure for rehabilitation of 1100-1200 mm dia sewer line is Rs. 17,00,43,000/- The expenditure will be charged to Chart of Account 52-20-35-006 under T/M of sewer lines in NDMC area.

6. **Implementation Schedule with timeliness for each stage including Internal processing:-**

Detailed Estimate	:	Approved on 20 August 2020
NIT	:	Approved on 20 August 2020
Call of Tender	:	Called on 04 September 2020
Award of Work	:	October 2020
Completion Period	:	6 months after award of work.

7. **Final Comments of the Finance Department on the Subject with diary no. & date:-**

The Finance Dept.vide diary No.2289/Finance, dt. 09.10.2020 concurred with the proposed award in r/o execution of subject work to L-1 agency, i.e., M/s Insituform Pipe Line Rehabilitation Pvt. Ltd. at their quoted rates of Rs. 17,00,43,000/- which is 2.35% above the estimated cost of Rs. 16,61,35,617/- and 2.34% above the justified cost of Rs. 16,61,52,231/- worked out at 0.01% above estimated cost. The department may submit the proposal for consideration of competent authority i.e. Council and further details of the Finance concurrence placed at Annexure-A (See pages 83-85).

8. Legal Implication of the subject/ project:-

NIL

9. Details of previous Council Resolutions, Existing law of Parliament and Assembly on the subject:-

Administrative approval and expenditure sanction for Rs. 20 Crores was accorded by the council vide Resolution No. 35(A-06) dated 04.08.2020 and subsequently Detailed Estimate amounting to Rs.17,11,20,000/- technically sanctioned on dt. 20.08.2020.

10. Final Comments of the Law Department on the subject/project:-

No legal issue involved in the agenda item as such no comments.

11. Certification by the department that all central vigilance commissions (CVC) guidelines have been followed while processing the case.

It is certified that all the CVC guidelines have been followed while processing the case.

12. Recommendations:-

The case is placed before the Council for the consideration and accord of approval of tender of M/s Insituform Pipe Line Rehabilitation Pvt. Ltd for an amount of Rs.17,00,43,000/- for the work of rehabilitation of existing 1100-1200mm dia sewerline at Ashoka Road from Nirvachan Sadan to C Hexagon with the provision to award the work in anticipation of confirmation of minutes by the Council.

13. Draft Resolution

Resolved by the Council for accord of approval of tender of M/s Insituform Pipe Line Rehabilitation Pvt. Ltd for an amount of Rs.17,00,43,000/- for the work of rehabilitation of existing 1100-1200 mm dia sewer line at Ashoka Road from Nirvachan Sadan to C-Hexagon by adopting CIPP (Cured in Place Pipe) technology. It is further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the Minutes of the Council.” (emphasis supplied)

8. The relevant extract of the minutes recorded in relation to the said NIT reads as follows:

“COUNCIL SECRETARIAT
PALIKA KENDRA : NEW DELHI

MINUTES OF The COUNCIL'S MEETING NO. 03/2020-01
HELD ON 26.12.2020 AT 11-00 A.M.

IN THE COUNCIL ROOM. PALIKA KENDRA. NEW DELHI

MEETING NO.	:	03/2020-21
DATE	:	26.12.2020 (SATURDAY) .
TIME	:	11-00 A.M.

PLACE	:	PALIKA KENDRA, NEW DELHI
-------	---	--------------------------

PRESENT:

- | | | |
|-------------------------------|---|-------------------|
| 1. - Sh. Arvind Kejriwal | - | Presiding Officer |
| 2. Smt. Meenakshi Lekhi | - | Member |
| 3. Sh. Dharmendra | - | Chairperson |
| 4. Sh. Virender Singh Kadiyan | - | Member |
| 5. Ms. D. Thara | - | Member |
| 6. Sh. Vikas Anand | - | Member |
| 7. Dr. B. M. Mishra | - | Secretary |

X X X X X X X X X X X X X X X

ITEM NO.	SUBJECT	DECISION
15 (A-11)	T/M of sewer line in NDMC area. SH: Rehabilitation, of existing 1100-1200 mm dia sewer line at Ashoka Road from Nirvachan Sadah to C Hexagon.	After due-deliberations it was decided ,by "the Council to retender the case. It is further resolved by the Council that the Department may initiate further necessary action in anticipation of confirmation of the Minutes.

9. Thus, it would be seen that the Council decided to re-tender the work without recording any reason as to why the bid of the petitioner, who was the L1 bidder, was not considered worthy of acceptance by the Council.

10. The agenda would show that the petitioner's bid was found to be completely acceptable in all respects. In fact, the Finance Department in its note dated 09.10.2020, which also forms part of the agenda item, had observed that *"it is proposed to award the tender in question to L1 i.e. M/s Insituform Pipeline Rehabilitation Pvt. Ltd. at tendered cost of Rs.17,00,43,000/- which is 2.35% above estimated cost of Rs.16,61,35,617/- and 2.34% above justified cost (of Rs.16,61,52,231/- worked out at 0.01% above estimated cost). The department may submit the proposal for consideration of Competent Authority i.e. Council."*

11. The submission of Mr. Grover, the learned counsel for the respondent is that under Clause 13 of the NIT, the respondent Council was not bound to accept the lowest or any other bid, and it reserved its authority to reject any or all bids without assigning any reason. He further submits that the minutes of the Council's meeting dated 26.12.2020 show that there were due deliberations amongst the members before taking the decision to re-tender the work. However, at the same time, he does not dispute the position that there are no reasons found on the record as to why the petitioner's bid was not accepted despite the recommendation *inter alia* by the Finance Department.

12. We have considered the rival submissions of the parties. There can be no quarrel with the proposition that the respondent is not bound to accept any bid and the lowest/highest bidder, as the case may be, has no vested right to award of the contract merely because its bid is found to be otherwise in order.

13. It is one thing to say that the employer/respondent may not give reasons for rejection of the lowest/highest bid, as the case may be, it is, however, another thing to say that the respondent was not even obliged to have any reason for coming to such a decision. Every decision of the State has to be implied with reasons. The same cannot be arbitrary, whimsical or capricious. It is well settled in law that the validity of any administrative decision must be judged on the basis of reasons existing on record, and the authority cannot provide new/additional reasons when the Court calls for them as they must necessarily exist on the record when the decision is made. In this regard, reference may be made to the decision of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner*, [1978] 1 SCC 405).

14. In the present case, admittedly, the resolution passed by the Council is completely unreasoned. If the recommendation on the file itself had been to reject the petitioner's bid, the absence of reasons in the resolution passed by the Council may not have been necessary, since the reasons recorded on the file itself could be attributed to the Council, and that could explain the non-recording of further reasons in the Council's resolutions; however, in a case where the recommendation on the file was for acceptance of the petitioner's bid, and contrary to the said recommendation, the Council decides not to accept the bid and re-tender the work instead, the Council was certainly expected to record its reasons for its said decision.

15. In the light of the aforesaid, the decision of the Council to re-tender the work in its meeting held on 26.12.2020 appears to be arbitrary and cannot be sustained. The same is, accordingly, set aside.

16. The rejection of the petitioner's bid on that premise, and the re-tendering of the work vide fresh tender notice dated 04.01.2021 is, consequently, liable to be quashed and the same are, hereby, quashed. We, however, leave it open to the respondent to take further decision in the matter in accordance with law.

17. The petition stands disposed of in the above terms.



VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 15, 2021
acm