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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 07.09.2021

Pronounced on: 12.10.2021

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W.P.(C) 5972/2021 & CM APPL. No. 18878/2021

M/S I.S. ENTERPRISES

..... Petitioner

Through: Mr. Kirti Uppal, Senior Advocate
with Ms. Riya Gulati, Advocate.

versus

JAMIA MILLIA ISLAMIA & ANR.

..... Respondents

Through: Mr. Pritish Sabharwal, Advocate for
respondent No.1.

Mr. Shivankur Shukla, Advocate for respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. The present writ petition has been filed by the Petitioner seeking a writ in the nature of *Mandamus* or any other appropriate writs or orders, thereby seeking quashing of the process of evaluation of bids and further to direct the Respondent No.1 to review the Tender Bid of the Petitioner for E-Tender no. JMI/BD/E-NIT/No.28/2020-21, for job work for operation, maintenance and attending the essential services of Jamia Millia Islamia Campus.
2. The Petitioner has also prayed a writ in the nature of *Mandamus* seeking quashing and setting aside of the impugned Notice dated 25.05.2021 and further a direction to Respondent No.1 to open and consider the price bid of the Petitioner.

3. The Petitioner has further sought writ in the nature of *Mandamus* directing Respondent No.1 not to proceed with the tender to the alleged L-1 bidder i.e. Respondent No.2 whose price bid has been wrongly opened by the Respondent No.1.
4. In a nutshell, the facts in the present case are stated below.
5. The Petitioner is a company having its registered office at R-248, Ground Floor, Gali No. 4, Jogabai Extension, Jamia Nagar, Okhla, New Delhi-110025 and is having a valid registration under Micro, Small and Medium Enterprises Development Act, 2006 (“MSME Act”).
6. The Petitioner is engaged in electrical works including civil and mechanical works, operation, maintenance and repair services for electrical equipments for power distribution system, housekeeping services, manpower supply and civil work. Mr. Irfan Ahmad is the sole proprietor of the Petitioner. The Petitioner has been doing the work for which the tender has been issued for last two years at Jamia Millia Islamia University Campus.
7. The Respondent No.1 is a University constituted under Jamia Millia Islamia Act, 1988. The Respondent No.2 is M/s Prime Facility Management having its registered office at 1159, Pocket – 3, Akeshar Dham Apartments, Sector – 19, Dwarka, New Delhi-110075 and was one of the bidders for the tender issued by the Respondent No.1 and was subsequently selected as lowest bidder i.e., L1 in the bidding process.
8. The Respondent No.1 floated E-tender No. JMI/BD/E-NIT/No.28/2020-21 on 02.03.2021 inviting Bids for Job work for

operation, maintenance and attending the essential services of Jamia Millia Islamia Campus.

9. The Petitioner states that he submitted its technical bids along with its financial bids before 15.03.2021 in terms of the Notice Inviting Tender (NIT). The bid was opened on 17.03.2021 at 11:30 AM. The Petitioner submitted its technical bid as per the eligibility criteria. Further, as per the NIT eligibility requirement clause (3), the bidder was liable to submit the following documents which were duly submitted by the Petitioner in its Bid:

Clause no.	Obligation of bidder	Complied by bidder
(i)	PAN number	Submitted
(ii)	Previous three years income tax return/clearance	Submitted
(iii)	TIN Number/GST Registration	Submitted
(iv)	Latest ITR	Submitted
(v)	ESIC Registration	Submitted
(vi)	EPFO Registration	Submitted
(vii)	Valid electrical license	Submitted
(viii)	Power of attorney/authority letter in case person other than the bidder has signed the tender documents	Submitted

10. The Petitioner came to know from reliable sources that the Respondent No.1 technically rejected the bid of the Petitioner on 25.05.2021 on the ground of “*submission of incomplete documents (as required in E-NIT)*”. The respondent No.2 was selected as the lowest bidder after opening of his financial bid on 27.05.2021.
11. The Petitioner wrote several representations to Respondent No.1 and more particularly, on 01.06.2021, 04.06.2021, 11.06.2021 seeking clarifications for the rejection of the bid of the Petitioner and also

highlighting that Respondent No.2 was, in fact, ineligible. No response was received by the Petitioner to any of the representations.

12. In the grounds of challenge by the Petitioner, he has submitted that:
- a. The Petitioner submitted entire documents as required by NIT.
 - b. The Respondent No.2 has failed to deposit the earnest money in terms of NIT and is not covered within the Clause 3(iii). The clause (3)(iii) states as under:

“Online bid documents submitted by intending bidders shall be opened only of those bidders, who has scanned and uploaded copy Earnest Money Deposited and tender cost along with bid.”

- c. The Respondent No. 2 did not upload the tender cost and Earnest Money Deposit (EMD) with the bid. The Respondent No.2 has executed a consortium agreement with M/s Aamir Enterprise vide agreement dated 12.03.2021, which makes the Respondent No.2 ineligible to be a bidder in terms of clause (i) of the additional terms & conditions of the NIT which is reproduced below:

“The Contractor must be a legally valid entity in the form of a Public Limited/ Private Limited company registered under the companies Act or Partnership Firm/ Proprietorship Firm/ Society constituted/ Registered under relevant Act.”

- d. The Respondent No.2 has failed to file documents to prove successful completion of work in the last 7 years and additionally, failed to submit some other relevant documents as well-that were specified in the eligibility criteria of the NIT.
- e. The impugned notice dated 25.05.2021 issued by Respondent

No. 1, disqualifying the Bid of the Petitioner is contrary to the office order no. 15/3/05 of the Central Vigilance Commission dated 24.03.2005, *“the tender accepting authority is bound to record clear, logical reasons for any such action of rejection/recall of tenders on the file.”*

13. When the matter came up before this Court, firstly on 21.06.2021, this court issued notice and asked for a reply, but in view of the contested position: as to whether the work under the contract awarded to Respondent No.2, has commenced or not, no interim directions were passed.
14. The Respondent No.1 has filed a counter affidavit and has denied all the allegations of the Petitioner. The Respondent has submitted that the bids were evaluated by a Technical and Financial Evaluating Committee comprising of:
 - (i) Dean, Faculty of Engineering & Technology;
 - (ii) Prof. Shahid Akhtar, Centre for Management Studies;
 - (iii) Professor Incharge, Building & Construction Department;
 - (iv) Executive Engineer, Building & Construction Department; and
 - (v) Internal Audit Officer, JMI.
15. It is submitted that the bid of the Petitioner was rejected on the ground that the Petitioner had failed to submit document establishing Occupational Health and Safety Management Systems (“OHSAS”) registration, because of which the bid of the petitioner failed and has been rejected. It was a requirement under the terms and conditions of the NIT that the said registration certificate be submitted by the bidder; which the Petitioner did not enclose at the time of submission

of bid documents; physically, or even uploaded on the web portal of the Respondent No.1. This was an omission, which made the bid of the Petitioner technically non-responsive. The Respondent No. 1 also submits that the reason of rejection i.e. “incomplete documents submitted” was clearly mentioned in the Technical Bid Evaluation Summary uploaded on the CPP Portal, as well as in the notice. Therefore, the rejection was not in violation of the office order no. 15/3/05 of the Central Vigilance Commission dated 24.03.2005. Rather it was in accordance with the same.

16. As regards the allegations of the Petitioner against the Respondent No.2, they have been justified by the Respondents as follows:
- a) That as per the public procurement policy for MSES, the Respondent No. 2, as bidder, was considered as exempted from payment of earnest money. Being exempted from payment of earnest money, the Respondent No. 2, as bidder, was not required to upload the tender cost and earnest money details.
 - b) The two agencies, namely ‘M/s Prime Facility Management and Consultancy Services’ (Respondent No. 2) and ‘M/s Aamir Enterprise’ having entered into a bidding consortium. M/s Prime Facility and Consultancy Services was the primary bidder on behalf of the Bidding Consortium.
 - c) The technical and financial evaluation committee evaluated all the bids including that of Respondent No. 2, as bidder, and found technical bid (submitted jointly by the Respondent’s consortium with Aamir Enterprises) as qualified. The Respondent no. 2 has submitted that vide the consortium agreement dated 12.03.2021,

both the legal entities have formed a consortium for limited purpose of execution of work in question for respondent no. 1 which is also a jural person. This consortium can be sued, and can sue as a legal person.

- d) Government of India issued Office Memorandum bearing No. F.9/4/2020-PPD dated 12.11.2020, issuing instructions to all departments to not to insist upon the furnishing of bid security/EMD as a part of eligibility for tender and, instead in terms of Rule 170 of GFR 2017, ask the bidders to submit a bid security declaration in place of bid security. The relevant instruction in the Office Memorandum is reproduced herein below:

"In view of the above, it is reiterated that notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid security Declaration should be kept in the Bid Documents".

Therefore, Respondent no. 2 was exempted from submitting tender cost and EMD as per the Office Memorandum issued by the Govt. of India bearing no. F.9/4/2020-PPD dated 12 November 2020.

17. Additionally, the Respondents state that there is delay in filing the petition. It is submitted that a Technical Bid Evaluation Summary was generated and uploaded on the CPP Portal on 25.05.2021, and the financial bids of the qualified bidders were opened on 27.05.2021.

The information on Accepted/Rejected bids along with the reason for Rejection was mentioned in the Technical Bid Evaluation Summary. This information uploaded on the CPP Portal is available to bidders. Furthermore, the Respondent no. 1 responded to all three representations of the Petitioner dated 01.06.2021, 04.06.2021, and 11.06.2021 vide letter dated 16.06.2021. Most importantly, Respondent no. 2 has commenced work (on 21.06.2021 while salary slips were issued on 11.06.2021). Therefore, the present petition was filed belatedly on 15.06.2021.

18. We have heard learned counsel for the parties and gone through the documents.

ANALYSIS:

19. In our analysis, we are mainly concerned with three questions-
- a) Whether Respondent no. 1 could have held the Petitioner to be “technically non-responsive” for not providing a document, when the additional terms and conditions stated that only “preference” would be given to the bidder who submitted the said document? In view of the terms and conditions, could the submission of the said document be said to be mandatory?
 - b) Whether Respondent no. 2 could have bid as a consortium, when the tender conditions did not expressly permit consortiums to bid?
 - c) Whether the petition filed by the Petitioner is barred due to delay and laches?
20. The requirement of “OHSAS” is part of the additional terms and

conditions of the tender document and reads as under:-

“viii. *Preference will be given to contractor having valid ISO 9001:2005 & OHSAS 18001:2007 registration. Attach relevant copies for the same*”.

21. As per the Petitioner’s pleadings and rejoinder, it is an admitted case of the Petitioner that he does not have ISO 9001:2005 registration or OHSAS 18001:2007. However, the Petitioner states that the OHSAS was not a mandatory document to be submitted. He submits that the new ISO 45001:2018 standard has been developed to replace OHSAS 18001:2007. As per the Petitioner, the OHSAS 18001:2007 certificate expired on 12.03.2021, and now is no longer a valid certificate, and ISO 45001:2018 is valid from 12.03.2018. The Petitioner has filed the latest Certificate i.e. ISO 45001:2018 along with the tender documents.
22. A bare perusal of the additional terms and condition, clause (viii) clearly demonstrates that only, “preference” is to be given to a contractor having valid ISO 9001:2005 & OHSAS 18001:2007 registration. The word “preference” means ‘*a greater interest in or desire for somebody/something than somebody/something else*’ [Oxford Learner’s Dictionaries]. It clearly indicates a greater interest for one thing in relation to some other thing, and cannot, therefore, be a reason for outright/ threshold rejection of one – who/ which does not fall within the “preferred” category. It is not an essential or mandatory condition of the tender, but only an additional/ optional term, and hence the threshold rejection/ disqualification of the Petitioner for not having ISO 9001:2005 & OHSAS 18001:2007 registration is

completely wrong and illegal.

23. It is settled proposition of law, and repeatedly held by Courts, that the words of the tender are to be assigned their natural meaning and “*that the words used in the tender documents cannot be ignored or treated as redundant or superfluous – they must be given meaning and their necessary significance.*”[***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr.***¹]. The fulfilment of the ‘preference’ clause cannot be read as a condition precedent nor the absence of the preference qualification can result in threshold rejection of a bid. Had the intention of the Respondent no. 1 been that ISO 9001:2005 & OHSAS 18001:2007 should be compulsory, and non-submission should lead to rejection, the word “preference” would not have been used in Additional Terms and Conditions. Under no circumstance, the word “preference” can mean “compulsory” or “condition precedent”.
24. Hence, we have no hesitation in holding that the impugned rejection dated 25.05.2021 on the ground of the Petitioner not having ISO 9001:2005 & OHSAS 18001:2007 registration is bad in law, and also contrary to the terms of the tender.
25. After perusing the documents filed by both - the Petitioner and the Respondents, what is borne out from the records is that the Respondent No.2 participated as a consortium between M/s Prime Facility Management and Consultancy Services (Respondent No. 2) and M/s Aamir Enterprise. It is M/s Aamir Enterprise who had OHSAS 18001:2007 registration. Since the consortium partner of the Respondent No.2 had OHSAS 18001:2007 registration, the bid of

Respondent No.2 was held responsive, as it had the OHSAS 18001:2007 registration.

26. The Petitioner has sought to argue before us that the tender conditions do not permit participation by a consortium. On our pointed query to Respondent No. 1, whether the tender permits bidding by a consortium, the answer is that the terms and conditions of the Tender do not expressly prohibit it. Hence, the position that emerges is that the terms of the tender neither permit, nor prohibit participation by a consortium. It is important to note that bidders are obligated to abide by the conditions of the tender. Therefore, each bidder is bound to adhere to the Rules, lest, it be disqualified.
27. In this view of the matter, the stand of Respondent No.1 that they have permitted and entertained bids by consortium would be unreasonable. We have to keep in mind the principle of '*privilege of participation*' while deciding whether Respondent no. 2 can be permitted to participate as a consortium.
28. Clause (i). of the Additional Terms & Conditions states that '*The Contractor must be a legally valid entity in the form of a Public Limited/ Private Limited company registered under the companies Act or a Partnership Firm/Proprietorship Firm / Society constituted / registered under relevant Act.*' A consortium means '*a group of companies, organizations, etc. that have joined together to work on a particular project*' [Cambridge Dictionary]. In South African High Court Judgment in the case *Southern Value Consortium v. Tresso*

¹ (2016) 16 SCC 818.

*Trading 102 (Pty.) Ltd.*², a consortium has been defined as follows:

“Legally a consortium is not a separate entity. It refers in general to two or more persons or entities acting jointly. As such it is not unlike an unincorporated association.”

29. It is clear from the above definitions of consortium, that a consortium would not fall within the definition of *"legally valid entity.....registered under relevant Act"*. In fact, the language and in Clause (i.) of the Additional Terms and Conditions contra-indicates the participation of a bidder as a Consortium. Our experience shows that wherever in a public tender, a bidder is permitted to participate as a Consortium, it is so specifically stated, and the tender conditions require all the members of the Consortium to give their undertakings/ declaration to be bound by the terms and conditions of the tender and, if the contract is awarded to such a bidder, to be bound by the terms and conditions of the contract. In the present case, since Consortiums have not been expressly permitted to participate, such conditions are conspicuous by their absence. We are not perturbed by the relaxation offered by the Respondent no. 1 to Respondent no. 2. We are, however, concerned with the fact that the said relaxation was only offered to Respondent no. 2 post the closure of the tender. Thus, others who could have similarly formed Consortiums to gain eligibility and to participate in the tendering process have been denied that opportunity. We have to keep in mind the principle of *privilege of participation*, which is, that if other potential bidders - who were not aware that this relaxation, would be given a chance, they too would

² 2015 SCC OnLine ZAWCHC 160.

have also meaningfully participated in the tender. We are supported in our view by the judgment of the Supreme Court in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*³, wherein it was observed:

“35. It was further held that if others (such as the appellant in Ramana Dayaram Shetty case [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]) were aware that non-fulfilment of the eligibility condition of being a registered Hind class hotelier would not be a bar for consideration, they too would have submitted a tender, but were prevented from doing so due to the eligibility condition, which was relaxed in the case of Respondent 4. This resulted in unequal treatment in favour of Respondent 4 — treatment that was constitutionally impermissible. Expounding on this, it was held: (SCC p. 504, para 10)

“10. ... It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.”

(emphasis supplied)

36. Applying this principle to the present appeals, other bidders and those who had not bid could very well contend that if they had known that the prescribed format of the bank guarantee was not mandatory or that some other term(s) of NIT or GTC were not mandatory for compliance, they too would have meaningfully participated in the bidding process. In other words,

³ (2016) 8 SCC 622.

by rearranging the goalposts, they were denied the “privilege” of participation.

38. In G.J. Fernandez v. State of Karnataka [G.J. Fernandez v. State of Karnataka, (1990) 2 SCC 488] both the principles laid down in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) “has the right to punctiliously and rigidly” enforce the terms of the tender. If a party approaches a court for an order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the “changes affected all intending applicants alike and were not objectionable”. Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] sense.

43. Continuing in the vein of accepting the inherent authority of an employer to deviate from the terms and conditions of an NIT, and reintroducing the privilege-of-participation principle and the level playing field concept, this Court laid emphasis on the decision-making process, particularly in respect of a commercial contract.....”(emphasis supplied)

30. It is important that the courts should maintain the sanctity of the process of the tender and award of contract. The same has been observed in *W.B. SEB v. Patel Engg. Co. Ltd.*⁴, wherein it was stated:

“24.It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical

⁴ (2001) 2 SCC 451.

experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest.”

(emphasis supplied)

31. We have no hesitation in holding that, had the Respondent no. 1 made it known to the public that consortiums were permitted to participate and eligibility conditions of any of the consortium partners could be seen as substantial compliance of the eligibility condition of the tender by the consortium, there would have been numerous other consortiums who would/could have participated.
32. We may again go back to the purpose/ objective of inviting a public

tender. The Supreme Court observed in *NHAI v. Gwalior-Jhansi Expressway Ltd.*⁵ as under:

“20.The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money.....”

33. This purpose/ objective has been defeated by the conduct of Respondent No.1 in entertaining the bid of a Consortium, without expressly permitting it in the Terms and Conditions on which the Tender was invited.
34. Additionally, it has also been stated in *Kamala Sarmah v. State of Assam*⁶ that “A notice inviting tender must indicate the terms and conditions without any ambiguity and in clear terms.” Therefore, the aim of tender authority should be to encourage maximum participation and competition and not stomp the bidders. This would result in getting a value for money.
35. As far as relaxation offered by Respondent no. 1 to Respondent no. 2 in respect of deposit of EMD is concerned, it appears that it was in consonance with the office memorandum bearing no. F.9/4/2020-PPD dated 12.11.2020, and we see no infirmity in the grant of that relaxation.
36. We are conscious of the limitations in the scope of judicial scrutiny of tender matters. It is also settled principle that the employer is the best person to interpret the terms of a tender, but the interpretation cannot be in a manner that would favour a particular bidder. It is important to

⁵ (2018) 8 SCC 243.

ensure that there is transparency and accountability in the decision-making process, to ensure that there is no discrimination or arbitrariness in the process. As stated above, the level playing field has to be maintained for all the bidders. Therefore, in our view the Respondent No. 1 could not have offered relaxation to only Respondent no. 2. Respondent no. 2 was not a valid legal entity as per clause (i.) – being a Consortium, and the relaxation offered to Respondent no, 2 fails to maintain a level playing field and would amount to discriminatory conduct on part of Respondent no. 1.

37. Additionally, it is abundantly clear to us that the Petitioner could not have been rejected as technically non-responsive for not having ISO 9001:2005 & OHSAS 18001:2007 registration. However, we agree that during selection of successful bidder, the preference could be given to a bidder which has the said registration.
38. The Respondents have also contended delay in filing of the petition. We are not in agreement with the said contention of the Respondents.
39. Firstly, the impugned notice dated 25.05.2021 only mentioned that the Petitioner had been disqualified due to “*submission of incomplete documents*”. Since the Petitioner had abided by all the mandatory conditions, this was not sufficient reason for disqualification. It was vague, and the Petitioner could not have responded without knowing the reasons for disqualification. Thereafter, the Petitioner wrote several representations dated 01.06.2021, 04.06.2021 and 15.06.2021. The Respondent no. 1 only replied to the Petitioner on 16.06.2021, wherein, it was finally conveyed to the Petitioner that it was

⁶ 2018 SCC OnLine Gau 2152.

disqualified due to non-submission of the OHSAS certificate. It is important to note that the Petition was filed on 15.06.2021 and listed before the court on 21.06.2021. We do not think that there was delay in filing the petition as we have to take into account the time taken to file representations to the Respondent no. 1 and also, for administrative exigencies for filing the petition during the Court vacations.

40. We are helped in our opinion by *Vetindia Pharmaceuticals Ltd. v. State of U.P.*⁷, wherein the Supreme Court observed the following:

“15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in Basanti Prasad v. Bihar School Examination Board [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , after referring to Moon Mills Ltd. v. M.R. Meher [Moon Mills Ltd. v. M.R. Meher, AIR 1967 SC 1450] , Maharashtra SRTC v. Balwant Regular Motor

⁷ (2021) 1 SCC 804.

Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] and State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] , held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows: (Basanti Prasad case [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , SCC p. 796, para 18)

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”” (emphasis supplied)

41. Additionally, the Supreme Court in ***Roots Industries India Ltd. v. Airports Authority of India and others***⁸, remitted the matter back to the High Court for deciding the matter on merits even when the subject tender had already been finalized and the purchase order had been issued to the successful bidder. The High Court of Delhi had initially dismissed the matter by stating that it was belated, however, the Supreme Court remitted the matter to the High Court to be considered on merits.
42. Firstly, the Respondent no. 1 non-suited the Petitioner relying on

⁸ (2016) 3 SCC 569.

additional terms under which only a “Preference” was to be given. Secondly, Respondent No.1 provided relaxations to Respondent no. 2 which were of such a nature that upset a level playing field for all the bidders. Thirdly, Respondent No.1 acted against the essence and purpose of a tender that is to get maximum participation. The aforesaid unreasonable and discriminatory action of Respondent no. 1 weighs in our mind.

43. Hence, we allow this petition and direct the Respondent no. 1 to review the bid of the Petitioner and open the price bid submitted by it. Additionally, we hold that the evaluation of the bid of Respondent No.2 – as a Consortium is illegal, and it should be reassessed while ignoring the qualification claimed by Respondent No.2 on the strength of its Consortium Partner i.e. Aamir Enterprises. Further steps be taken to award the tender in accordance with law, if necessary by terminating the contract awarded to Respondent No.2.

JASMEET SINGH, J

VIPIN SANGHI, J

OCTOBER 12,2021/ ‘ms’