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

Date of Decision: 28.04.2022

+ **W.P.(C) 5348/2022 & CM APPL. 16003/2022**

PRINCE FACILITY MANAGEMENT SERVICES PVT. LTD.

..... Petitioner

Through: Mr.Ujjwal K Jha & Mr.Anshul Misra,
Adv.

versus

CONTAINER CORPORATION OF INDIA LIMITED AND ANR.

..... Respondents

Through: Mr.Rishi K Awasthi, Adv. for R-1.
Mr.Rajesh Gogna, CGSC for R-2
with Ms.Priya Singh, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Tender dated 16.03.2022 floated by the respondent no. 1 for "Cleaning, Sanitation and Disinfection Service – Outcome Based-Office/Commercial/Institutions/Residential; General Cleaning (Sweeping, Mopping, Dusting); Outdoor, Cleaning, Sanitation and Disinfection Service – Outcome Based – Office/Commercial/Institutions/Residential; General Cleaning (Sweeping, Mopping, Dusting); Indoor".
2. The petitioner further prays for a direction to the respondent no. 1 to award the earlier Tender dated 05.11.2021-for the same work to the petitioner, who was declared as the successful bidder by the respondent no. 2 in the said Tender.

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Signing Date:02.05.2022

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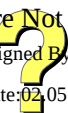
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3. It is the case of the petitioner that the petitioner was awarded the contract for providing Housekeeping and Mechanised conservancy services (Yard) at ICD/TKD by the respondent no. 1, vide Letter of Intent/Work Order dated 03.11.2020, with effect from 10.11.2020, for a period of two years. The petitioner and respondent no. 1 had also executed the required Agreement dated 20.12.2020 for the said purpose. However, the respondent no. 1 issued a Show Cause Notice dated 13.05.2021, directing the petitioner to show the proof of ownership documents of the three skid steers loader machines. The petitioner complied with the same vide communication dated 18.05.2021. However, the respondent no. 1 issued a Letter of Termination dated 27.05.2021, intending to terminate the contract with effect from 31.05.2021, without considering the documents submitted by the petitioner and without giving any reasons.

4. The petitioner challenged the Termination Order dated 27.05.2021 by way of a petition under Section 9 of the Arbitration and Conciliation Act, 1996, being OMP(I)(COMM) 168 of 2021. The learned Single Judge of this Court, by its Order dated 02.06.2021, found *prima facie* merit in the submission of the petitioner that the termination of the contract was not based on valid grounds. The Court also found that the act of the respondent no. 1 awarding the Contract to a third party Contractor “on emergent and *ad hoc* basis” appeared to be lacking in *bona fides*. The Court observed and directed, as under:

“20. Be that as it may, the Court is satisfied, prima facie, that the act of terminating the contract was not justified either on facts or on the anvil of the contractual provisions. The manner in which the contract has later been awarded is also far from satisfactory, despite the justification sought to be



advanced in that regard by Mr. Awasthi.

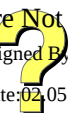
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25. Any work taken from the new contractor before the next date of hearing shall also be subject to the outcome of these proceedings, and shall not be as cited as a ground to urge any equities on behalf of the respondent. The awarding of the contract to the new contractor shall also remain subject to the decision taken by this Court in the present proceedings, and the respondent is directed to intimate the new contractor in writing accordingly.”

5. The respondent, thereafter proceeded to issue the Tender dated 05.11.2021. The petitioner herein filed an application in the pending petition, that is OMP(I)(COMM) 168 of 2021, wherein the learned Single Judge of this Court passed an Order dated 26.11.2021, directing as under:

“2. It is clarified, in accordance with para 25 of the order dated 2nd June, 2021, that any work taken from the new contractor, in the event of any contract being awarded consequent on the tender dated 5th November, 2021, shall remain subject to the outcome of these proceedings and shall not be cited as a ground to urge any equities on behalf of the respondent. The awarding of the contract to the new contractor shall also remain subject to the decision taken by this Court in the present proceedings and the respondent is directed to intimate the new contractor and guide him accordingly.”

6. The petitioner also participated in the said Tender dated 05.11.2021, and qualified in the technical evaluation as well as in the financial evaluation round. The petitioner was, in fact, declared as L-1 and received an e-mail dated 01.01.2022 from respondent no. 2 informing the petitioner of its selection as an L-1 bidder and calling for confirmation from the

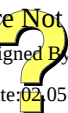


petitioner. The respondent no. 1, however, later issued the Impugned Tender dated 16.03.2022 for the same work, which has been challenged by the petitioner as being in gross violation of the principle of fairness and natural justice and as being *mala fide*, just to oust the petitioner.

7. Notice of this petition was issued by this Court vide order dated 31.03.2022. It was further directed that though the respondents may process the Tender dated 16.03.2022, the same shall not be awarded to any party till the next date. The respondent no. 1 was also directed to produce the original record relating to the Tender dated 05.11.2021.

8. In compliance with our order, the learned counsel for the respondent no. 1 has produced before us a print-out of the e-file relating to the Tender dated 05.11.2021. A perusal of the file shows that a total of twenty-nine vendors had participated in the Tender. By a Note dated 04.12.2021 of the DM (C&O), it was observed that out of twenty-nine vendors, only ten vendors submitted the work experience and turnover of the required amount. For the petitioner, it was recorded that out of twenty-nine vendors only the petitioner had submitted the documents regarding equipment ownership/hiring/lease certificate/declaration.

9. In the subsequent Note of DM (C&O) dated 22.12.2021, it was observed that ten vendors were declared as technically qualified. For the petitioner, it was further observed that no further clarification was asked as the petitioner had submitted all the required documents. It was further observed that only four vendors had completed eligibility criteria, that is, work experience, turnover and equipment-related documents and, therefore, only they be declared as technically qualified for the opening of a financial bid. The petitioner was one of the vendors.



10. In the Note dated 04.01.2022 of DM (C&O), it was mentioned that on the opening of the financial bid, it was found that three bidders, including the petitioner, had quoted the same rate and therefore, all three were found to be L-1. It was further mentioned as under:

“Hence a request to select vendor by gem automated system was opted in which M/s. Prince Facility Management Service Private Limited was selected randomly by the Gem automated system.”

11. In the same Note, it was further mentioned, as under:

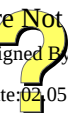
“It is to mention that M/s. Prince Facility Management services was the awardee of previous contract. However due to dubious invoice for paper the contract was terminated and matter is under subjudice. Had the other bidder selected then there would have no need to review the documents submitted by the selected bidder. However in this case it is observed that M/s. Prince Facility has submit same invoice along with a clarification and undertaking from the equipment seller.”

In view of above TAA is requested to consider all the facts and take suitable decision on the consideration of equipment ownership documents submitted by the bidder as the matter is subjudice.”

(Emphasis Supplied)

12. The above Note clearly shows that though the petitioner was found to eligible L1 bidder, a doubt was cast only because of the pending litigation. It was also mentioned that had any of the other two bidders, who had quoted similar price, been selected by the respondent no. 2, the Tender would have been finalised in favour of such bidder. Therefore, the petitioner was singled out only because of past litigation.

13. The SGM (C&O), vide Note dated 07.01.2022, called upon the DM (C&O) to thoroughly verify the documents submitted by the petitioner and



put up the recommendations to the Tender Accepting Authority.

14. The DM (C&O), in his Note dated 19.01.2022, placed the following recommendation before the Tender Accepting Authority:

“In reference to note#140, regarding the genuineness of the document for the tender for conservancy contract for ICD/TKD.

It is to mention here that the genuineness of the same documents of M/s Prince Facility has already been cross verified by Vigilance department in the previous tender. Consequent to vigilance division report tender was terminated. Further the additional document submitted by the bidder is an explanation wherein the reason for error is mentioned is non-implementation of ERP system. However explanation does not seems to be assertive.

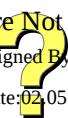
Further in regard to financial bid which was opened through GeM Portal. Out of four pre-qualified parties/bidders, three (3) bidders, namely/s Bhagwati International, M/s Rajput Security Service and M/S Prince Facility management have quoted same rates and in GeM Portal there was no option for re-bidding of the tender. There was option in GeM Portal for automatic selection which was opted as three (3) firms who have quoted same rates. GeM Portal has automatically selected M/s. Prince Facility Management Services.

It is also to mention here that looking at the circumstances of quoting same rates by the three (3) above mentioned parties, it is submitted that the tender may be discharged and fresh tender may be called.

This is without prejudice to accept/reject/amend/modify the minutes of the TEC by the Tender Accepting Authority.”

(Emphasis supplied)

15. The above recommendation was duly accepted by the SGM (C&O) vide Note dated 19.01.2022, and a direction was issued for calling fresh



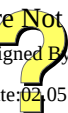
Tender.

16. A perusal of the above noting(s) clearly shows that the petitioner had been duly declared as technically qualified for the Tender and it was further declared that the petitioner had submitted all the required documents in terms of the Tender document. The petitioner was duly declared as L-1 bidder, however, thereafter doubt was cast upon the petitioner only because of the allegation in regard to the previous contract, which, as noted hereinabove, is *sub judice* before the learned Single Judge of this Court in OMP(I)(COMM) 168 of 2021, and with an observation that the “*explanation does not seem to be assertive*”. The file does not reflect any notice being issued to the petitioner calling for any explanation for this change of heart, after having declared the petitioner as technically qualified. The decision, in fact, amounts to blacklisting the petitioner, without affording any opportunity of hearing to the petitioner and without any formal order in that regard.

17. The learned counsel for the respondent no.1 fairly admits that, in fact, the party which had supplied the three subject machines to the petitioner has also vouchsafed for the said supply and confirmed the same.

18. Be that as it may, clearly, the decision to cancel the Tender dated 05.11.2021, and to float a fresh Tender dated 16.03.2022, is motivated by the lone intent of keeping the petitioner out of the Tender. This certainly required compliance with the principles of natural justice, especially where the petitioner had already been declared to be technically qualified, and as having fulfilled all requirements with respect to submissions of documents, and also been declared as L-1 by the respondent no. 2.

19. Though we are aware of the limitation imposed on the Court while



judging the decision of the tender floating authority to cancel the same, as held by the Supreme Court in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr.*, (2016) 16 SCC 818, in the present case, however, we find the decision of the respondent no. 1 to be arbitrary, whimsically and *mala fide*, specifically taking into account the observation of the learned Single Judge in his order dated 02.06.2021. The decision is also in violation of the principles of natural justice.

20. In view of the above, we restrain the respondent no. 1 from proceeding further with the Tender dated 16.03.2022. The respondent no. 1 is further directed to process the Tender dated 05.11.2021 and for this purpose, if it so deems necessary, seek further explanations or documents from the petitioner, and thereafter, take a considered decision with regard to the award of the contract to the petitioner, who has already been declared as L-1. If the respondent no. 1 still decides to cancel the tender, it shall clearly record the reasons for the same. Such reasons must also be communicated to the petitioner within a week of the same being taken. Looking at the past conduct of the respondent no. 1, we direct that in case the decision taken is against the petitioner, the respondent no. 1 shall not take any perceptive action, at least for a period of ten days from the date of actual communication to the petitioner.

21. The petition is disposed of in the above-said terms. There shall be no order as to costs.

NAVIN CHAWLA, J

VIPIN SANGHI, ACJ

APRIL 28, 2022/rv/P

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