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

+ **Date of Decision: 03.06.2022**

% **W.P.(C) 5742/2022 & CM APPL. 17169/2022**

A2Z INFRASERVICES LIMITED & ANR. Petitioners

Through: Mr. Sudhir Sharma with Mr. Mohit
Bakshi and Mr. Pranshu Paul, Advs.

versus

CENTRAL WORKS PUBLIC DEPARTMENT
& ORS

..... Respondents

Through: Mr. Chetan Sharma, ASG with
Mr. Vijay Joshi, Mr. Sushil Kumar
Pandey, Mr. Amit Gupta and Mr. R.K.
Rastogi, Advs. for R-1 and R-2.
Mr. Milanka Chaudhary with Ms.
Naina Dubey and Ms. Surbhi Gupta,
Advs. for R-3.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SACHIN DATTA

VIPIN SANGHI, ACJ. (ORAL)

1. The petitioner has preferred the present writ petition to assail the technical disqualification of the petitioner in respect of the tender floated by the respondent Central Public Works Department (CPWD) for 'Automated Housekeeping and Preventive Maintenance of Building & Furniture at



Parliament Library Building, New Delhi' vide NIT 01/CE/PCWZ/CPWD/2021-22.

2. The crux of the matter is that the petitioner has been disqualified on the ground that the petitioner did not meet the quality standards which the bidders were required to meet in respect of their past experience for similar works. The respondents stipulated that the bidders works should have been assessed as “very good” or even higher.

3. In this regard, we may refer to the stipulation in the NIT which required submission of documents, including performance report of works referred in Form C and in Form D.

4. Clause 1 of the Information and Instructions for bidders for e-tendering, forming part of bid document, stipulated that “*the Bidders who fulfill the following requirements shall be eligible to apply*”. Clause ‘b’ of the said Clause stated that “*The grading of quality of similar work shall be minimum “very good”*”.

5. The petitioner submitted Form ‘C’ in respect of works performed by it. The same is as follows:

“ *FORM ‘C’*

DETAILS OF ELIGIBLE SIMILAR NATURE OF WORKS COMPLETED DURING THE LAST SEVEN YEARS ENDING LAST DAY OF THE MONTH PREVIOUS TO THE ONE IN WHICH TENDERS ARE INVITED.



S. No.	Name of work/project and location	Owner or sponsoring organization	Cost of work in crores of rupees	Date of commencement as per contract	Stipulated date of completion	Actual date of completion	Litigation/arbitration cases pending/in progress with details*	Name and address/ telephone number of officer to whom reference may be made	Whether the work was done on back to back basis Yes/ No
1	Mechanized Housekeeping Cleaning Services	Delhi International Airport Limited	Rs. 58.14 Crore	01.10.2010	31.1.2010	31.03.2019	N.A	Subir Hazra 11-47197000	No
2	Mechanized Housekeeping Services at CSMIA, Mumbai	Mumbai International Airport Limited	Rs. 45.67 Cr.	15.11.2013	28.02.2018	28.02.2019	N.A	22-66850900	No
3	Electromechanical and Facility Management	Taj Lands END	Rs. 6.44 Cr.	31.01.2014	31.12.2016	31.12.2016	N.A	General Manager	No

6. The petitioner also provided the certificate issued by Delhi International Airport Limited (DIAL) dated 06.05.2019, in respect of 3 agreements/ purchase orders. This certificate reads as follows;

“TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s. A2Z Infraservices Limited (O-116 First Floor, DLF Shopping Mall, Arjun Marg, DLF City, Phase 1 Gurugram -122002) has been providing Mechanized Housekeeping Cleaning Services at IGI Airport. The details of Agreement/ Contract No. DIAL/2010-11/T-3-Ops/ Proc/06



dated 24 April 2010 awarded and extended from time to time to M/s A2Z Infraservices Limited are as under:

<i>Sl No.</i>	<i>Agreement/ PO No.</i>	<i>Duration</i>	<i>Original Contract Value (Rs.)</i>
<i>1.</i>	<i>DIAL/2010-11/T-3-Ops/ Proc/06 dated 24 Apr 2010 PO No. 5300002829 & 4800042247</i>	<i>1 Oct 2010 to 30 September 2013</i>	<i>15.09 Cr.</i>
<i>2</i>	<i>48000094876</i>	<i>01st Oct 2013 to 30th Sep 2016 & 1st Oct 2016 to 31 Jan 2017</i>	<i>1.86 cr</i>
<i>3.</i>	<i>4800139041</i>	<i>1st Feb 2017 to 31st Jan 2020</i>	<i>20.25 Cr.</i>

The total value of works executed by M/s. A2Z Infraservices Limited including taxes against above orders till 31 March 2019 is Rs.58.14/- Crores (Rupees Fifty Eight Crores Fourteen Lakhs)

The services provided by M/s A2Z at IGI Airport has been good.

This certificate is issued at the request of M/s A2Z Infraservices Limited.

Thanking you,

For Delhi International Airport Limited” (emphasis supplied)

7. The petitioner provided the “Form D” in respect of agreement/ purchase order number 4800094876, wherein the performance report recorded as follows:



“8. *Performance Report*

(1) <i>Quality of Work</i>	<i>Outstanding/ Very Good/Good/Poor</i>
(2) <i>Financial soundness</i>	<i>Outstanding/ Very Good/Good/Poor</i>
(3) <i>Technical Proficiency</i>	<i>Outstanding/ Very Good/Good/Poor</i>
(4) <i>Resourcefulness</i>	<i>Outstanding/ Very Good/Good/Poor</i>
(5) <i>General Behavior</i>	<i>Outstanding/ Very Good/Good/Poor</i> ”

8. This Form ‘D’ certificate was issued by DIAL on 17.01.2021.

9. Pertinently, along with its bid, the petitioner also provided the certificate issued by the DIAL in relation to the aforesaid contract/ purchase order. This certificate recorded that “*the performance of M/s A2Z Infraservices Limited is found satisfactory during the period of work*”. (emphasis supplied)

10. Since the respondent, while evaluating the petitioner’s technical bid, found a discrepancy in the two certificates issued by the DIAL i.e. the certificate issued contemporaneously, assessing the work of the petitioner in respect of agreement/ purchase order No. 4800094876 for the period starting 1st October, 2013 for 3 years and 4 months, as satisfactory, and the Form D issued to the petitioner on 12.01.2021 which described the petitioner’s performance as “very good” on all parameters, the respondents CPWD corresponded with DIAL on the aforesaid aspect. In response to the query raised by the CPWD, DIAL sent an email communication on 19.03.2022. In relation to the aforesaid agreement, the clarification given by the DIAL was that “*the said Purchase Order is for Housekeeping services at Departure (Domestic and International, Check-in-areas, SHA, Retail Areas), Arrival (Meeters & Greeters area + Reclaim Belt) at T3, IGI Airport, New Delhi.*”



The PO has been extended once”. The clarification further stated that in relation to the aforesaid Purchase Order as follows:

“Accordingly, service level under PO# 4800094876 has been assessed as satisfactory and the same under PO# 4800094876 as very good by the concerned DIAL authorities. It is to be noted that the assessment given by Mr. Subir Hazra (as good) is an overall feedback for all assignments completed by the vendor starting from 2010 till the date of the letter.” (emphasis supplied)

11. Founded upon the aforesaid clarification, the respondent rejected the petitioner’s technical bid on 28.03.2022, observing that the petitioner was not found to be eligible for opening of the financial bid, which led to the filing of the present writ petition.

12. Upon issuance of the notice, the respondents have filed their counter affidavit and along with the counter affidavit, the documents above referred too have been placed on record.

13. The submission of learned counsel for the petitioner is that the petitioner having been issued Form ‘D’ by DIAL – which assessed the petitioner’s work as “very good”, the petitioner had no occasion to doubt its eligibility to participate in the tender in question. The further submission of learned counsel for the petitioner is that in respect of other works undertaken by the petitioner, the petitioner has been assessed as “very good”, However, the petitioner had not provided the Form ‘D’ in respect of the other works. The submission is that the petitioner should, even at this stage, be permitted to be considered by taking into considered the other works performed by the petitioner wherein the assessment of the petitioner is “very good”, though



Form D has not been submitted in respect of those works.

14. Since a controversy arose with regard to the grading of the petitioner's work in relation to the agreement/ purchase order No 4800094876 in respect whereof Form 'D' was submitted by the petitioner, vide order dated 30.05.2022, we directed impleadment of DIAL as party respondent and further directed that DIAL should ensure that it is in a position to answer all questions in relation to the certificates issued to the petitioner for the work covered under Purchase Order No. 4800094876. DIAL has accordingly appeared before us through their counsel, and the counsel has tendered the affidavit of Neeraj Sharma, the head – Estate Management (Airport Operations) with DIAL. In the said affidavit, DIAL has disclosed that the petitioner has provided mechanised housekeeping & cleaning services at IGIA for the period from October 2010 till January 2020 under 3 Purchase Orders, particulars whereof are as follows:

<i>"S. No.</i>	<i>PO Number</i>	<i>Duration</i>
<i>1.</i>	<i>PO Nos. 5300002829 and 4800042247</i>	<i>1st October 2010 to 30th September 2013</i>
<i>2.</i>	<i>PO no. 4800094876 and an extensions</i>	<i>1st October 2013 to 31st January 2017</i>
<i>3.</i>	<i>PO no. 4800139041</i>	<i>1st February 2017 to 31st January 2020"</i>

(Emphasis supplied)

15. The affidavit further disclosed that in respect of the Purchase Order No. 4800094876, DIAL has issued the following certificates:

"1. Certificate issued contemporaneously by Mr. Ashwani Khanna (Vice President – Terminal Management) (Pg. 80 of



*the Writ Petition) only in respect of PO No. 4800094876 – **The work has been stated to be ‘satisfactory’***

2. *Certificate dated 06.05.2019 (pg.181 of the Writ petition) issued by Mr. Subir Hazra – This provides an overall assessment of the petitioner’s work under all the Purchase Orders mentioned in Paragraph 3 above including PO No. 48000094876. **The overall assessment of the Petitioner’s work under all the purchase orders has been stated to be ‘good’.***

3. *Form ‘D’ dated 12.01.2021 (Pg.287 of the Writ Petition) issued at the request of the Petitioner to file along with its bid for a tender issued by Respondent No.1 in the year 2020- 21 for a the work of “automated housekeeping and comprehensive maintenance work in Main Building, RBCC, Museum Phase -1 & 2, Mughal Garden, Fore court at Rashtrapati Bhawan, New Delhi, Ashiyana Dehradun and Rashtrapati Nilayam at Hyderabad” – **The work of the Petitioner under PO No. 4800094876 has been stated to be “very good”.***

4. *Email dated 19.03.2022 issued pursuant to Respondent No.1’s quireies (Annex R/15 – pg. 359 of the Counter Affidavit filed by Respondent No.1) – By this email, CPWD was informed by DIAL about all purchase orders mentioned in Paragraph 3 above executed by the Petitioner whereunder the following was stated:*

“Performance level under each assignment is subject to the scope of work executed at the given time period and has been assessed by the then concerned authority from DIAL”

Accordingly, service level under PO#4800094876 has been assessed as satisfactory and the same under PO#4800139041 as very good by the concerned DIAL authorities. It is to be noted that the assessment given by Mr. Subir Hazra (as good) is an overall feedback of all assignments completed by the vendor starting from 2010 till the date of the letter” (emphasis supplied)

16. The DIAL goes on to state in the said affidavit, in paragraph 6, that the overall performance of the petitioner on the scorecard was found to be



67% in respect of the aforesaid purchase order. The DIAL has also placed on record, the Vendor Performance Evaluation Scorecard dated 15.02.2016 as annexure A-1. A perusal of the Annexure A-1 shows that on quality aspects, the petitioner was awarded 50% marks on 3 parameters i.e. Inspection performance as per SLA, Quality of consumables, Tools and Tackles and skilled manpower. The overall score of the petitioner was 67%. In relation to Form D issued by DIAL, the affidavit states as follows:

“Form ‘D’ issued by Respondent No.1, did not provide any assessment criteria and neither is any method provided therein to grade the performance. It is noteworthy that DIAL’s method of assessment does not prescribe the grades as prescribed by Respondent No.1 in its Form ‘D’. Rather, it evaluates the performance as based on objective assessment i.e. the percentage score achieved in each parameter of performance. Therefore, in Form D, DIAL, based on its subjective assessment, and in the absence of any rating criteria in the said Form D graded the Petitioner’s work as ‘very good’ in terms of the grades provided in the said Form.”

17. Learned counsel for respondent No.3 DIAL submits that since it does not make assessment in terms of poor/ good/ very good/ satisfactory, Form ‘D’ issued to the petitioner recorded the performance of the petitioner as very good. It is stated in Form ‘D’, was based on subjective assessment, and in the absence of any rating criteria in the said Form ‘D’, the officer graded the petitioner’s work as “very good”.

18. Having heard learned counsels, we do not find this justification provided by the DIAL to be acceptable. If the explanation now offered by DIAL were correct, the petitioner’s work would not have been described as “satisfactory” when the contemporaneous certificate was issued by Mr.



Ashwani Khanna (Vice President Terminal Management). Similarly, the certificate dated 06.05.2019 issued by Mr. Subir Hazra, also in relation to the same Purchase Order, would not have assessed the overall assessment of the petitioner's work as "good". Most certainly, a score rating of 67% done by the respondent No.3 contemporaneously in the year 2016 would not translate to "very good". It appears to us that, for whatever consideration, the officer who has issued the Form 'D' has not correctly issued the same.

19. At this stage, we would like to emphasize that whenever a tender inviting authority requires a bidder to provide performance certificates in respect of other similar works undertaken by the bidder, and assesses the eligibility of the bidder on the basis of such certificate, which may be issued by other agencies for whom the bidder may have done similar works, it is the solemn duty of the agency who is issuing a performance certificate, to provide a truthful and correct certificate, since that agency is being trusted and relied upon by the Tender Inviting Authority to provide its true and correct assessment. By issuing Form 'D', as done by respondent No.3, in the present case, that responsibility was not duly discharged by DIAL. Issuance of such like certificates irresponsibly, if done repeatedly, would erode the credibility of DIAL as an institution to issue experience certificates.

20. In the light of the aforesaid, we are of the view that no fault can be found with the respondent CPWD in rejecting the petitioner's technical bid, since the work in respect whereof Form 'D' was issued, was only found to be "satisfactory", and not "very good".



21. The submission of the petitioner that the petitioner should be permitted to be considered by taking into account the other works in respect whereof the petitioner has been assessed as “very good”, cannot be accepted, for the reason, that the Form ‘D’ has not been submitted by the petitioner in respect of other works. The Form ‘D’ required the assessment to be made on several parameters, which has not been provided by the petitioner in respect of the work which the petitioner has been graded as “very good” on overall basis. Even though, in respect of Purchase Order No. 4800094876, the petitioner had contemporaneously been assessed as only “satisfactory”, the petitioner proceeded to obtain Form ‘D’ wherein the assessment was shown as “very good”. The petitioner, therefore, acted at its own peril, while doing so.

22. For the aforesaid reason, we find no merit in this petition and dismiss the same, leaving the parties to bear their respective costs.

VIPIN SANGHI, ACJ.

SACHIN DATTA, J.

JUNE 03, 2022

N.Khanna