

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

Date of decision: 03rd NOVEMBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 15154/2021 & CM APPLs. 47744/2021, 47745/2021, 4907/2022, 5205/2022**

SYNERGY WASTE MANAGEMENT PVT LTD. Petitioner

Through: Mr. Ajay Bansal, Mr. Gaurav Yadav,
Ms. Veena Bansal and Mr. Sourav
Jindal, Advocates

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Mr. Sameer Vashisht, ASC for
GNCTD with Ms. Sanjana Nangia,
Advocate

Mr. B.B. Gupta, Sr. Advocate with
Mr. Balendu Shekhar, Advocate and
Mr. Dinesh Jindal, L.O. for DPCC.

Mr. Yogesh Tiwari, Mr. Vikrant
Singh Bais, Ms. Neema, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
JUDGMENT

1. The Petitioner seeks to challenge the rejection of its bid in Tender ID 2021_DPCC_206783_1 and 2 having reference No.DPCC/WMC-I/ACBWTF/2021/Tender which was issued by Respondent No.4/Delhi Pollution Control Committee (DPCC) to set up common biomedical waste

treatment and disposal facility in Northeast and Shahdara districts of New Delhi.

2. The facts leading to the instant writ petition are as under: -

- i. It is stated that the National Green Tribunal *vide* Order dated 18.01.2021 in O.A. 215/2020 directed setting up of new bio medical treatment facilities in Delhi.
- ii. Pursuant to the said Order, Respondent No.4/DPCC floated two tenders for setting up an operation of two 'Common Bio Medical Treatment Facilities' (CBWTF) in Delhi, on 20.01.2021 and 22.03.2021 respectively. However, both of these were cancelled by DPCC.
- iii. On 09.08.2021, Respondent No.4/DPCC issued a third tender for setting up an operation of two 'Common Bio Medical Treatment Facilities' (CBWTF). The relevant minimum eligibility conditions in the tender document have been reproduced as under:-

"7. The Bidder should have the land of 0.5 acre or more (either owned/ on registered lease) for setting up of a CBWTF in an approved industrial area. The Bidder should ensure that the land for the proposed facility should be able to meet the environmental safeguards as per EIA notification 2006.

8. Bidder shall submit the documentary evidence along with the tender showing proof of possession (i.e. ownership / registered lease) in the name of the Bidder/ any JV member. Alternatively, a MoU with land owner / declaration on letter head by the Bidder to acquire land within 2 weeks of issue of letter of award of work may also be considered. However, address and specifications of land

identified are to be provided with the Tender Document as per details sought in Annexure B. In case the Bidder fails to acquire land within stipulated time, the letter of award and concessionaire agreement deemed to be cancelled and the bidding amount shall be forfeited. In addition, a penalty of 10% of the project value shall be recovered in the form of Bank Guarantee from the Bidder. In that case, the work shall be awarded to next qualifying Bidder.

xxx

10. Land details provided at the Tender stage cannot be altered at later stage barring the exception that an alternate land fulfilling complete requirement can be permitted only in case EAC/ SEAC so warrants during appraisal under EIA Notification 2006 while obtaining EC.

11. The land identified during the Tender stage should be free from any dispute / litigation in any form.”

- iv. On 24.09.2021, the Petitioner submitted its technical bid for the Tender dated 09.08.2021.
 - v. However, *vide* the letter dated 09.12.2021, the Respondent No.4 rejected the bid of the Petitioner, on the ground that it is non-responsive (**‘Impugned Letter’**).
 - vi. Aggrieved by the action of the Respondent No. 4 in cancelling the bid of the Petitioner, the Petitioner has filed the present writ petition.
3. The Petitioner herein has prayed for directions to the Respondents to produce records relating to Tender 2021_DPCC_206783_1 and 2 having

reference No. DPCC/WMC-I/ACBWTF/2021/Tender and to ascertain whether the Respondents indulged in favouritism.

4. This Court issued notice on 24.12.2021. Counter affidavits have been filed by Respondent No.4/DPCC. In the counter affidavit, it is stated that the land offered by the Petitioner herein does not conform to condition No. 7 of the eligibility requirement insofar as the minimum area of land required for setting up the 'Common Bio Medical Treatment Facilities' (CBWTF) should be 0.5 acres.

5. The sole question involved in the present case is whether the land offered by the Petitioner along with the tender confirm to condition No. 7 of the Terms and Conditions of the Tender Document i.e. whether it is 0.5 acres or not, and whether the decision taken by Respondent No. 4/ BPCC rejecting the Petitioner's bid as non-responsive can be interfered by this Court in exercising jurisdiction under Article 226 of the Constitution of India.

6. Heard Learned Counsel for the Parties at length and perused the record, the matter has been disposed of at the admission stage itself with the consent of the parties.

7. The undisputed facts of the case reveal that as per the terms and conditions of the NIT – to be more specific Condition No. 7, the bidder was required to offer a land of 0.5 acres as a owned/ on registered lease for setting up the Common Bio Medical Treatment Facilities (CBWTF) in an approved industrial area. The Condition No. 7 of the NIT is reproduced hereunder:

“7. The Bidder should have the land of 0.5 acre or more (either owned/ on registered lease) for setting up of a CBWTF in an approved industrial area. The Bidder should ensure that

the land for the proposed facility should be able to meet the environment safeguards as per EIA notification 2006.”

8. The material on records indicates that the land in question i.e. Plot No. B-24, Okhla Industrial Area, Phase-1, New Delhi was leased out by the Delhi Development Authority (DDA) in favour of M/s Kumar Bros Metal Sheet & Matel Works through its Parters Gurudev Raj Kumar & Hardeep Kumar S/o Banarsi Lal Kumar. The Conveyance Deed dated 13.07.2011 has been placed on record.

9. The Conveyance Deed dated 13.07.2011 indicated that the total area of land measures 4807 sq. yds. The Petitioner before this Court has been leased out half of the land of the total area which comes to 2403.5 sq.yds. The lease deed executed by the Petitioner dated 12.04.2021 is on record and the same reflects that half of the total land i.e. 4807 sq.yds. has been leased out by the Petitioner. It is an undisputed fact that the total land of the Plot is 4807 sq. yds. and half of the same comes to 2403.5 sq. yds. Which is certainly less than 0.5 acres. 0.5 acres is equivalent to 2420 sq. yards., and, therefore, the Petitioner vide lease deed dated 12.04.2021 was leased out 2403 sq. yds. only.

10. The undisputed facts of the case also reveal that the person who was the owner of half of the land admeasuring 4807 sq. yards has leased out half of the portion owned by him which certainly comes to 2403.05 sq. yds. The Petitioner cannot have possession of a land more than the land owned by the title holder of the property. The Petitioner has also produced the site plan issued by DDA in respect of Plot No. B-24, Okhla Industrial Area, Phase I, New Delhi, which categorically shows that the area of the land is 4807 sq. yds.

11. The material on record reflects that during the previous round, the Petitioner produced a lease deed pertaining to the same property which shows the area of land as 2440 sq. yds.

12. The lease deed dated 12.04.2021 categorically reflects the land having area of 2403 sq. yds. However, at the time of filing of the bid for instant tender, the Petitioner filed a fresh lease deed dated 03.09.2021, wherein, the land was shown as 2440 sq. yds.

13. In the considered opinion of this Court, once the lease deed executed by the DDA in favour of Gurdev Raj Kumar and Hardeep Kumar was in respect of land measuring 4807 sq. yds, and Gurudev Raj Kumar and Hardeep Kumar were jointly the owner of the property owning half of the share of the total land, the person who has executed the lease deed in favour of the Petitioner, has rightly executed a lease deed in respect of half of the land which comes to 2403.5 sq. yds. which is certainly less than 0.5 acres i.e. 2420 sq. yards.

14. In the considered opinion of this Court, the land offered by the Petitioner was less than 0.5 acres, and the Respondent was justified in treating the bid of the Petitioner as non-responsive.

15. This Court on 25.05.2022 has passed the following order:

“1. The petitioner has been disqualified on technical examination of the petitioner’s bid on the ground that the petitioner did not meet the minimum eligibility criteria of having 0.5 acre land.

2. Along with its bid, the petitioner provided a registered lease in respect of an area admeasuring 2440 Sq. Yards. This is more than 0.5 acres.

3. However, the respondent, without even putting the petitioner to notice, proceeded on the assumption that the area available with the petitioner is only 2403 Sq. Yards. This assumption is

premised on the respondent's calculation that the total area of the plot conveyed by the DDA – which is owned by two brothers, including the lessor of the petitioner, is 4807 Sq. Yards, and, therefore, the lessor of the petitioner would own 2403 Sq. Yards.

4. The respondent, however, did not put the petitioner through a process of clarification despite petitioner's lease deed depicting an area of 2440 Sq. Yards – which is certainly more than 0.5 acres.

5. In our view, the least that the respondent could and should have done was to put the petitioner to notice, and call for an explanation, and also, undertake a physical verification of the area in possession of the petitioner.

6. Mr. Gupta submits, and we agree with this submission, that only the area which has been conveyed by the DDA can be considered and, if either the petitioner or petitioner's lessor has encroached on public land, the same would be liable to be excluded.

7. Mr. Gupta submits that the respondent is even now willing to undertake the exercise of determining the actual area in occupation of the petitioner, which falls within the land conveyed in favour of the petitioner's lessor and brother.

8. Let this exercise be conducted on 30.05.2022 at 11:00 AM. The petitioner shall also be associated with the process of measurement. Petitioner and his lessor should also remain present. The respondent shall also put the brother of the petitioner's lessor – Mr. Gurdev Raj Kumar to notice of the joint inspection.

9. Services of a qualified draftsman shall be engaged by the respondent for carrying out the aforesaid exercise. The report that may be prepared, shall be jointly signed by all those present. 10. List 01.06.2022."

16. The aforesaid order does not help the Petitioner in any manner as by no stretch of imagination, it can be said that the Petitioner has been leased out land admeasuring to 0.5 acres.

17. The person who has executed the lease in favour of the Petitioner was the owner in respect of half of the total land i.e. land admeasuring to 4807 sq. yds., and, therefore, the Respondent was justified in treating the bid of the Petitioner as non-responsive bid.

18. The scope of interference under Article 226 of the Constitution of India in matters of tender is well settled. In Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492, the Apex Court has observed as under:-

“9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:

(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;...

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element

of public law or public interest involved even in such a commercial transaction.” (emphasis supplied)

19. The Apex Court in Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216, after relying on various judgments has observed as under:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be

malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”

20. In Uflex Ltd. v. State of T.N., (2022) 1 SCC 165, the Apex Court has observed as under:-

*“2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. **The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.** [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517].”*
(emphasis supplied)

21. The Apex Court in a number of judgments has crystallized the tests to be taken into account by the Courts before interfering in tender matters which reads as under:-

“A court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

[Refer: Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517; Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216; Ranaq International Ltd. v. I.V.R. Construction Ltd. & Ors., (1999) 1 SCC 492 etc.]

22. In view of the above, it is well settled that the scope of interference by the High Court while exercising its jurisdiction under Article 226 of the Constitution of India is extremely narrow. This Court ought not to interfere unless it is established that the process adopted by the decision-making

authority is *malafide*, intended to favor someone, or is arbitrary or irrational. The decision taken by the Respondents cannot be said to be vitiated any of the aforesaid criteria.

23. In the facts of the present case, the original Lease Deed shows that the land allotted by the DDA was 4807 sq. yds. and the Lease Deed produced by the Petitioner shows that the Petitioner got only half of the area, hence it can be reasonably presumed that the land which was offered by the Petitioner is less than 0.5 acres. Therefore, it cannot be said that the decision taken by Respondent No.4/DPCC is so arbitrary that no reasonable person could have come to the said conclusion.

24. The other argument raised by the Petitioner that no reasons have been assigned in the order holding that the Petitioner's bid is non-responsive, and reasons had to be assigned is no longer *res judicata*.

25. In Silppi Constructions Contractors v. Union of India & Anr., (2020) 16 SCC 489, the Apex Court has observed as under:-

“25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.” (emphasis supplied)

26. In Ghanshyam Das Aggarwal v. Delhi Development Authority, 1996 37 DRJ 485 (DB), has observed as under:-

“15. The observation made by the Supreme Court is binding on us, but we do not think it is going to make any difference in the case at hand. Firstly, the Rules and the Terms and Conditions of the Public Auction did not contemplate reasons for rejection of highest bid being communicated to the concerned bidders. There is a distinction between existence of reasons and assigning of reasons (see Shrilekha Vidyarthi AIR 1991 SC 537 Pr. 13 and Liberty Oil Mills AIR 1984 SC 1271) The former is a requirement of natural justice, the later is a dictate of law. Reasons need not be assigned in the sense of being communicated to a party unless required to be so done by any Rule having force of law. Secondly, the reasons could have been made available if asked for. Thirdly, the reasons for rejection though not communicated and though not asked for by the petitioners before filing the petitions have been made available in the Court in response to the show cause notice issued and it would serve no useful purpose if we may dispose of the petitions merely by directing the respondents-DDA to communicate the reasons to the petitioner. The reasons now having been made known to the petitioners, they have been heard thereon. Whatever they had to say on such reasons they have said and we have also tested the validity of the reasons and have found nothing unreasonable therewith. That is an end of the matter.”

27. Further, this Court is not taking into consideration the Joint Inspection Report and the area in actual possession of the Petitioner as these are contrary to the documents on record. These documents are unimpeachable in nature and categorically show that the land given by the DDA to the purchaser was less than 0.5 acres of land. The fact that the Petitioner might

be in actual physical possession of the land, which might also include encroached land, is a question of fact which need not be dealt with by this Court under Article 226 of the Constitution of India.

28. As is evident, the State is not mandated to provide reasons while rejecting a bid. In the present case, the Respondent No.4/DPCC has assigned reasons in their counter affidavit. Further, a perusal of documents on record shows that the DPCC was well within its right to conclude that the land offered by the Petitioner is less than 0.5 acres, which makes the bid of the Petitioner non-responsive to the tender.

29. This Court is of the opinion that the reasons assigned by Respondent No.4 do not require any interference by this Court while exercising its jurisdiction under Article 226 of the Constitution of India.

30. Accordingly, the petition is dismissed, along with the pending applications, if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2022

hsk/sh/aks