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

Date of decision: 03rd NOVEMBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 15192/2022**

MANJU MISHRA AND ORS

..... Petitioners

Through: Mr. Amit Nahata, Advocate

versus

DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT AND
ANR

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with
Mr. R S Ruhil, Deputy Director,
Department of Women & Child
Development

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

CM APPL. 46986/2022 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 15192/2022

1. The instant petition has been filed against the non-consideration of the representations dated 27.09.2022 and 20.10.2022 given by the Petitioners to the Respondents to allow the Petitioners to participate in the tender process and submit their financial bid.

2. Petitioner Nos.1 to 17 represent members of Self Help Groups of women (each group consisting of 10 women) who belong to the

economically weaker class earning their livelihood by providing cooked food under Saksham Anganwadi and Poshan Scheme and supporting their families. Petitioner No.18 is a Non-Governmental Non-Profit Voluntary Social Service Organizations registered under the Society Registration Act and is engaged in social service, and has vast experience of mid-day-meal schemes and ICDS scheme projects.

3. It is stated that since 2011, the Respondents have been issuing work orders to the Petitioners for carrying out the mid-day meal programme. The latest work order dated 30.09.2022 extends the existing agreement/work orders from 01.10.2022 to 31.12.2022, and Petitioner Nos.1 to 18 are still working/providing supplementary nutrition to the beneficiaries in collaboration through the Respondents in Integrated Child Development Services (ICDS) projects of the Respondent.

4. It is stated that a tender dated 21.07.2022 inviting expressions of interest was issued by the Respondents for supply of supplementary nutritional food under Saksham Anganwadi & Poshan 2.0 Scheme to ensure uninterrupted supply of supplementary nutritional food in the form of hot cooked meals and take home ration for at least 300 days in a year for the beneficiaries registered at Anganwadi Centres located in 11 districts of Delhi.

5. It is stated that pursuant to the issuance of tender dated 21.07.2022 inviting expressions of interest, various organizations started giving representations questioning the terms and conditions of the tender.

6. It is stated that two writ petitions bearing W.P. (C) No.11710/2022 titled as "Premwati and Ors vs. Department of Women and Child Development" and W.P.(C) No.11757/2022 titled as "Anmol & Anr,

vs. Govt. of NCT of Delhi" were filed before this Hon'ble Court against the terms and conditions of tender. On 08.08.2022, this Court was informed that the Respondents have constituted a Committee to look into the tender conditions as well as the representations received from various organizations. It was also informed that no final decision has been taken in the matter and it was prayed that the petitions be listed after four weeks and, thereafter, the said petitions were listed for 01.11.2022.

7. It is stated that the Petitioners in W.P. (C) No.11710/2022 moved an early hearing application and the matter was listed on 12.09.2022 which was before the date fixed, i.e. 01.11.2022, wherein it was submitted that the tender conditions had been modified. The Petitioners prayed that the time limit to submit bid be extended for a further period of 10 days which was extended by this Court. It is the contention of the Petitioners that they were under the impression that the petition would be listed on 01.11.2022, and were totally ignorant of the fact that the Petitioners in W.P. (C) 11710/2022 had moved an early hearing application and that matter was listed on 12.09.2022 with the Court having extended the time to submit the bid by 10 days.

8. It is stated that the Petitioners became aware of the fact that the time limit for filing the bid had been extended by 10 days much later and in the short span of time, they were not in a position to obtain the Digital Signature Certificate to register themselves on the website of the Respondents and submit the expression of interest online.

9. It is stated that, thereafter, the Petitioners gave representations dated 27.09.2022 and 20.10.2022 to the Respondents to open the tender process and allow them to submit their bid which expired on 26.09.2022. Since the

representations were not being considered and the Petitioners could not participate in the tender process, the Petitioners have filed the instant petition with the following reliefs:

"(i) To direct the respondent no 1 to consider representations made by petitioners thereby allowing petitioners to participate in the tender process and submit their financial bid;

(ii) To issue a writ of mandamus directing the respondents to open the online tender and to allow the petitioners and other Self Help groups of women to submit their EOI in the interest of justice;

(iii) Order directing respondents to maintain status quo until final disposal of present petition.

(iv) Order directing Respondent no. 1 and no.2 to ensure that Local Mahila Mandals/Self Help Groups are given the work to supply of supplementary nutritional food under Salsham Anganwadi & Poshan 2.0 Scheme in the form of Hot Cooked Meal and Take Home Ration same as before the present EIO dated 21.07.2022.

(v) Pass any such and further order as may be deemed fit and proper in the facts and circumstances of the present case."

10. Heard learned Counsel appearing for the parties, and perused the material on record.

11. Learned Counsel appearing for the Petitioners submits that the Petitioners were not aware of the Order dated 12.09.2022 passed by this Court whereby the writ petition bearing W.P. (C) No.11710/2022 was disposed of by extending the time limit to submit the bid by 10 days. It is

submitted that by the said order the last date to submit the bid was extended from 15.09.2022 to 26.09.2022. He, therefore, submits that as the Petitioners were not aware of the Order dated 12.09.2022 passed by this Court, they were not able to participate in the tender process.

12. *Per contra*, learned Counsel appearing for the Respondents, submits that the Petitioners have taken a contrary stand. He draws attention of this Court towards the representation dated 27.09.2022 given by the Petitioners wherein the reason given in the representation was that all documents required for submitting the bid were prepared but due to unavoidable circumstances in the family, they were not able to prepare the FD within the time frame, and due to this reason they were not able to submit the bids online. He further draws attention of this Court towards representation dated 20.10.2022 filed by the Petitioners wherein an entirely different reason was provided by the Petitioners stating that they were under impression that the cases are going on in the High Court for change in the terms and conditions of the tender and they were hopeful that the conditions of the tender would be altered, and also they were not aware of the last date to participate in the tender, i.e. 26.09.2022.

13. The short question which, therefore, arises is whether this Court should exercise its jurisdiction under Article 226 of the Constitution of India and direct the Respondents to extend the last date of submitting the bid enabling the Petitioners herein to participate in the tender process.

14. It is well settled that the Courts 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"? and

(ii) Whether public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226 of the Constitution of India [Refer: Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517 and Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].

15. Applying the abovementioned parameters to the facts of the present case, the Respondents had issued a tender dated 21.07.2022 inviting expressions of interest for supply of supplementary nutritional food under Saksham Anganwadi & Poshan 2.0 Scheme. The bids had to be submitted on or before 15.09.2022. The writ petitions bearing W.P. (C) No.11710/2022 titled as "Premwati and Ors vs. Department of Women and Child Development" and W.P.(C) No.11757/2022 titled as "Anmol & Anr, vs. Govt. of NCT of Delhi" were filed before this Court challenging the terms and conditions of tender, and *vide* Order dated 12.09.2022 passed by this Court in W.P. (C) No.11710/2022, the said petition was disposed of by extending the time limit to submit the bid for a period of 10 days i.e. on or before 26.09.2022.

16. It is stated by the learned Counsel for the Respondents that a large number of persons have participated in the tender process. As correctly pointed out by the learned Counsel for the Respondents that in the representation dated 27.09.2022 given by the Petitioners, it was stated that all

documents required for submitting the bid had been prepared but due to unavoidable circumstances in the family, they were not able to prepare the FD within the time frame and, therefore, were not able to submit the bids online. In the next representation dated 20.10.2022 given by the Petitioners, it was stated by the Petitioners that as they had come to know that cases were going on in this Court challenging the tender conditions, they were hopeful that this Court would alter the tender conditions.

17. It is well settled that the Courts should not interfere in tender and contractual matters unless the decision is so arbitrary and irrational that it cannot be stated that a responsible authority is acting reasonably and in accordance with law. Several persons have also participated in the tender process. The reasons given by the Petitioners cannot be considered as compelling circumstances which would persuade this Court to extend the last date for submitting the bid in the tender for the Petitioners alone. It cannot be said that the timelines prescribed by the Respondents in the tender are so arbitrary and irrational that it would require interference by this Court under Article 226 of the Constitution of India.

18. With these observations, the petition is disposed of, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2022

S. Zakir