

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

Date of decision: 08th FEBRUARY, 2023

IN THE MATTER OF:

+ **W.P.(C) 677/2023 and C.M. Nos.2660-2661/2023**

JK CONSTRUCTION CO.
THROUGH JASWANT KUMAR

..... Petitioner

Through: Mr. Amit Bhagat, Mr. Amit Dwivedi
and Mr. Mohit Yadav, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI
AND ORS.

..... Respondents

Through: Mr. Siddhant Nath, Standing Counsel
for Respondent/MCD.

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

JUDGMENT

SATISH CHANDRA SHARMA, C. J.

1. The instant petition under Article 226 of the Constitution of India has been filed by the Petitioner seeking quashing of the decision dated 27.12.2022 of the Respondents whereby the bid of the Petitioner was rejected which had been submitted in response to the tender floated by the Respondents for hiring of 11 No. of MMVs or equivalent to TATA 407 (CNG) SFC Pickup with driver and three beldars for lifting of Slit/Mix Garbage under foul condition for 210 days in Ward No.(1) 103, 1 Nos. (2) 105, 1 Nos. (3) 108, 1 Nos. (4) 109, 1 Nos. (5) 110, 1 Nos. (6) 111, 1 Nos. (7) 112, 1 Nos. (8) 113, 1 Nos. (9) 114, 1 Nos. (10) 115, 1 Nos.(11) 116, 1 Nos. in West Zone.

2. The Petitioner, by way of the present petition, has prayed for the following reliefs:

“(I) Set aside the non-admission dated 27.12.2022 of the Petitioner's bid;

(II) Direct the Respondent to re-consider the bid of Petitioner afresh;

(III) Direct the Respondent to pass a speaking order in response to representation given by Petitioner on 28.12.2022;

(IV) Pass any other orders which it deems fit and proper.”

3. The Petitioner is a registered contractor of the Respondents. On 19.12.2022, a tender was floated Respondent No.3/MCD calling for hiring of 11 No. of MMVs or equivalent to TATA 407 (CNG) SFC Pickup with driver and Three beldars for lifting of Slit/Mix Garbage under foul condition for 210 days in Ward No.(1) 103, 1 Nos. (2) 105, 1 Nos. (3) 108, 1 Nos. (4) 109, 1 Nos. (5) 110, 1 Nos. (6) 111, 1 Nos. (7) 112, 1 Nos. (8) 113, 1 Nos. (9) 114, 1 Nos. (10) 115, 1 Nos.(11) 116, 1 Nos. in West Zone.

4. In response to the aforesaid tender, the Petitioner submitted 12 RCs of necessary MMVs of required specification. It is stated that the bid of the Petitioner was not admitted by the Respondents without giving any specific reasons. It is stated that the reason for not admitting the bid of the Petitioner was given much later in which it was stated that the bid of the Petitioner was not admitted because two vehicles having RC DL1LX0996 and RC DL1AA2284 are in the form of open body (without auto lifting arrangement) and RC DL1X0996 is older than 6 years. Since these two

vehicles were rejected, the total number of eligible vehicles fall below the number of vehicles required, i.e. 11 nos. for which the bid had to be made.

5. The Petitioner gave a representation dated 28.12.2022 stating that open body can be changed within two days from Transport Department, and therefore, reason given by the Respondents is arbitrary and unreasonable.

6. Since the representation of the Petitioner was not being considered by the Respondents, the Petitioner has approached this Court by filing the instant petition.

7. The material on record shows description of work as follows:

*Hiring of MMV with driver, **including auto lifting arrangement**, T & P, fuel lubricant etc. for collecting and lifting of MSW/Garbage/Malba/Drain/Silt etc. up to the full loading capacity and dumping of the same at designated site /SLF for travelling distance up to 40 km per day for 8 hours working. The make of vehicle should not be older than 6 years. MMV of capacity of GVW 4450KG (+_5%) equivalent to TATA SFC 407 pickup (CNG). Under foul condition (11x210=2310 days).*

(emphasis supplied)

8. Admittedly, two of the vehicles bearing RC DL1LX0996 and RC DL1AA2284 are in the form of open body (without auto lifting arrangement). These two vehicles do not fulfil the requirements as per the tender document, and therefore, the number of vehicles offered by the Petitioner fall below the number of vehicles required i.e., 11 Nos. as per the tender.

9. It is well settled that the tenderer knows the requirements of the project. It is further well settled that the decision taken by the tenderer should not normally be interfered with by Courts in exercise of the

jurisdiction under Article 226 of the Constitution of India unless the decision taken by the tenderer is so arbitrary and unreasonable that no man of prudence would have come to that conclusion.

10. In Agmatel India (P) Ltd. v. Resoursys Telecom, (2022) 5 SCC 362, the Apex Court has held as under:

“26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.

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31. The High Court has even proceeded to find the elements of similarity between “smartphones” and “Tablets” (vide para 30 of the impugned order [Resoursys Telecom v. Navodaya Vidyalaya Samiti, 2021 SCC OnLine Del 4532]). The writ petitioner has also made elaborate submissions to suggest that “smartphones” and “Tablets” are of similar category. The respondents, per contra, have also made detailed submissions that these two products are neither the same nor of similar category. In our view, an elaborate and in-depth analysis of the features and categorisation of these two products is not called for but, for the reason that the High Court has adopted such a course, a few comments on this aspect would also be apposite.”

11. In Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489, the Apex Court has held as under:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

12. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818, the Apex Court has held as under:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

13. The contention of the Petitioner that open body can be changed within two days from the Transport Department which would make the vehicle conducive for being used for the purposes for which the tender has been issued is no ground for quashing the decision of the Respondents for not admitting the bid of the Petitioner. Two of the vehicles which were offered by the Petitioner do not fulfil the criteria prescribed in the tender document, and the fact that the vehicle could be later altered is of no consequence. Since the Petitioner has offered less than 11 vehicles, the tenderer was well within its right not to admit the bid of the Petitioner. This Court does not find any infirmity in the decision taken by the Respondents.

14. In view of the above, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 08, 2023

S. Zakir