

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 04<sup>th</sup> MAY, 2023

IN THE MATTER OF:

+ W.P.(C) 5823/2023

ANIL KUMAR VOHRA

..... Petitioner

Through: Mr. Ambareen and Mr. Anmol  
Mehta, Advocates.

versus

MCD

..... Respondent

Through:

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**CM APPL. 22842/2023 (Exemption)**

Allowed, subject to all just exceptions.

**W.P.(C) 5823/2023 & CM APPL. 22841/2023**

1. The Petitioner seeks to challenge the Notice Inviting Tender (*hereinafter referred to as 'NIT'*) bearing No. MCD/EE(PR)-I/SH.(S)/2023-24/01 dated 21.04.2023 issued by the Respondent/MCD and more specifically the eligibility condition No.3 of the tender which defines the eligibility criteria of the bidders.

2. It is stated that the Petitioner is a civil contractor duly registered with the MCD and other various agencies such as Delhi Development Authority (DDA), PWD etc. It is stated that the Petitioner is a class-I contractor and he has been into this business for more than 40 years, and has carried out various works for MCD, including construction of roads, hospitals, school

building etc. It is also stated that the Petitioner has also carried out certain works during the Common Wealth Games (CWG).

3. The Respondent/MCD issued a Notice Inviting Tender (NIT) bearing No. MCD/EE(PR)-I/SH.(S)/2023-24/01 dated 21.04.2023 for the following works:

***“Name of work:***

*(1) Imp. Dev. of roads from H No. 11/1 to H No.13/311, Geeta Colony by pdg. RMC in AC-60 Shahdara South Zone.*

*(2) Imp. Dev. of roads from H No. F-46 to H No. F-67, H No. F-34 to H No. F-83, H No. F-49 to H. No. F-52, H No. F-23 to H No. F-97, H. No. G-123 to H. No. G-145 and link in Jagatpuri by pdg. RMC in AC-60 Shahdara South Zone.*

*(3) Imp. Dev. of roads from H No. :20 Kabila Chowk to H No. 123, H No. 112/3 to H No.261, Ram Nagar, H No. 131 Ram Nagar to H No. 212, Gopal Park, H No. 103 Ram Nagar to H No. D-114 by pdg. RMC in AC-60 Shahdara South Zone.*

*(4) Imp. Dev. of roads from H No. G-5 to H No. G-114/1, Jagatpuri & H No. 13/311 to H No.1 3/379, Geeta Colony by pdg. RMC in AC-60 Shahdara South Zone.*

*(5) Imp. Dev. of roads from H. No. E-15/18A to H No. E-15/29, H No. F-11/3 to H No. F-12/9, H No. E-13/1 to H No. 6/11, H. No. E-16/1 to H. No. E-16/8, H. No. E-15/1 to H No. E-15/18A, H No. E-7/1 to E-7/21, Links in Krishna Nagar and H. No. 449 to H. No. 450, Jheel Kureji by pdg. RMC in AC-60 Shahdara South Zone.*

*(6) Imp. Dev. of roads from H No. 9/174 to MCD*

*Court Office, H No. 9/18 to Radha Soami Satsang Bhawan, H No. 9/1128 to H. No. 9/1 , H. No. 9/1 to H. No. 9/45, H No. 9/1 to H. No. 9/96 and link in Geeta Colony by pdg. RMC in AC-60 Shahdara South Zone.*

*(7) Imp. Dev. of roads from H No. F-70 Jagatpuri to H No.26/1 Khureji Khas, Main Patparganj Road by pdg. RMC in AC-60 Shahdara South Zone. ”*

4. The Petitioner wanted to apply for the abovementioned works and was shocked to see the condition No.3 of the eligibility criteria for works which is under challenge herein. Condition No.3 of the eligibility criteria for works reads as under:

**“3. Experience in similar class of works:**

*(i) Experience of having successfully completed works during the last 7 years ending previous day of last date of submission of tenders  
Three similar completed works costing not less than the amount equal to 40% of the tender amount put to tender*

*Or*

*Two similar completed works, costing not less than the amount equal to 60% of the tender amount put to tender*

*Or*

*One similar completed works costing not less than the amount equal to 80% of the tender amount put to tender*

*And*

*(ii) One completed work of similar nature (either part of (I) or a separate one) costing not less than the amount equal to 40% of the estimated cost put to tender with some Central Government Department/ State Government Department/ Central Autonomous body/ Central Public Sector Undertaking / State public sector undertaking / City Development :luthority /*

*Municipal Corporation of city formed under any Act by Central / State Government and published in Central/ State Gazette.”*

5. According to the Petitioner the abovementioned condition No.3 has been brought out only to favour some of the contractors and the same has been brought out for the first time by the Respondent/MCD. It is stated that earlier also such conditions were brought out but withdrawn later by the Respondent/MCD to ensure more number of bidders.

6. Learned Counsel appearing for the Petitioner submits that all the works relate to improvement and development of roads by providing RMC which do not involve any specialised work as it comes in a ready mix. He further submits that laying down of ready mix concrete is only a civil work and it can be carried out by any civil contractor. He further submits that the Petitioner is a class-I civil contractor and despite having more than 40 years of experience, the Petitioner is not in a position to participate in the tender as the definition of similar work includes only construction and development of concrete roads which is violative of Article 14 of the Constitution of India as it excludes other similar contractors.

7. Heard learned Counsel appearing for the Petitioner and perused the material on record.

8. The tender includes seven road building contracts. The experience sought for in the tender by restricting the tender to only those contractors who are specialised in construction and development of concrete roads cannot be said to be arbitrary. It cannot be said that the choice of the MCD to accept the bid from only those persons/contractors who have experience in construction and development of concrete roads is unjustified. The Apex Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.,

(2016) 16 SCC 818 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.”*

9. The abovementioned Judgment has been further quoted and followed by the Apex Court in Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers vs. New J.K. Roadways, Fleet Owners and Transport Contractors and Others, **2020 SCC OnLine SC 1035** wherein the Apex Court reiterated that the authority that author the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings

10. The Judgment Afcons Infrastructure Ltd. (supra) has also been followed by the Apex Court in N.G. Projects Ltd. v. Vinod Kumar Jain, **(2022) 6 SCC 127** wherein it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

11. A perusal of the abovementioned Judgments shows that the Apex Court has time and again held that the author of the tender is the best person to understand and appreciate the requirements, and to interpret the tender documents. The Courts, while exercising jurisdiction under Article 226 of the Constitution of India, cannot sit as an Appellate Authority unless the requirements in the tender are tailor made only to favour any particular entity. The argument of the learned Counsel for the Petitioner that laying down of ready mix concrete is only a civil work as it comes in a ready mix which is the full form of RMC i.e., ready mix concrete and the contractor only lays down the concrete which does not involve any specialised work cannot be accepted more so in view of the fact that the intention of the Respondent/MCD to restrict the tender to only those contractors who are specialised in construction and development of concrete roads.

12. In view of the above, this Court does not find any reason to interfere with the tender in question.

13. Resultantly, the petition is dismissed, along with pending application(s), if any.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**MAY 04, 2023**

*S. Zakir*