



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 6240/2023 & CM APPL. 28066/2023**

M/S NAAGAR INFRASTRUCTURE PVT LTD Petitioner

Through: Dr. Amit George, Mr. Shreeyash, Mr. U. Lalit, Mr. K. Alehay, Mr. Amol Acharya, Mr. A. Bhamik, Mr. R. Bharat, Ms. Piyo Jaiman, Advocates

versus

GOVT OF NCT OF DELHI AND ORS Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Prerna, GP; Mr. Vinay Yadav, Ms. Gurleen Kaur, Mr. Hussain Taqvi, Advocates for UoI
ACP Manoj Pant, SI Hemant, ASI Vijender Singh, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. *Vide* the present petition the Petitioner seeks to challenge the decision of the Respondents herein in not permitting the Petitioner to participate in the Tender Bid No. GEM/2022/B/2792373, issued by the Respondent No.3 herein for upgradation of existing CCTV Camera system and for Supply Installation, Commissioning and Maintenance of additional CCTV cameras in 208 police stations of Delhi Police (*hereinafter referred to as 'the tender in question'*).

2. The Petitioner has sought for the following reliefs in the present Writ Petition:

“(a) Issue a writ in the nature of a mandamus to permit the Petitioner to participate in the Tender Bid No.



GEM/2022/B/2792373; and

(b) Pass any further appropriate order, direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The Petitioner herein is a digital equipment manufacturer and supplier. It is stated that Respondent No.3 issued the tender in question and the Petitioner herein submitted its bid on 22.02.2023 offering the following products:

Description of equipment and model No.	Technical Compliance submitted against tender's technical specifications	Datasheet/Brochure of equipment/model offered in the tender	Registration No., inclusion ID and date of BIS certificate submitted
2 MP CCTV Camera, Model CP-UNC-TC21ZL6C-VMDS	Declared by M/s Aditya	Annexure-A3	Registration/CRS 2018-1567/R-66000299, inclusion ID 58337 dated
	Infotech Pvt. Ltd. on		24/06/2022 (Annexure-A4)
Network Video Recorder (NVR), Model-CP-UVS-6167R	14/02/2023 (Annexure-A2)	Annexure-A5	Registration/CRS 2018-1684/R-66000302, inclusion ID 57218 dated 12/05/2022 (Annexure-A6)
External Storage/NAS Model-CP-UVS-6247		Annexure-A7	Registration/CRS 2018-1684/R-66000302, inclusion ID 57452 dated 20/05/2022 (Annexure-A8)



4. It is stated that along with the bid, the Petitioner had supplied a Bureau of Indian Standard (BIS) certificate dated 12.05.2022, issued to the Original Equipment Manufacturer (*hereinafter referred to as 'the OEM'*). It transpires that the BIS certificate given by the OEM was withdrawn on 31.03.2023 and a fresh BIS certificate was issued to the OEM on 06.04.2023.

5. Material on record discloses that on 01.05.2023 a query was raised by the Respondent No.3 to the Petitioner herein regarding the BIS certificate issued to the OEM and the following clarification was sought for:

Sl. No.	Equipment name & Technical Specifications	Document/clarification required
1	2 MP CCTV Camera:- Point No.14 – Minimum 03 Video Stream Point No.21 – Audio Interface – Built in Mic and External Microphone. Network Video Recorder:- Point No. 16: Bandwidth Throughput:- it should support minimum 1200 Mbps throughput Bandwidth to access, record, storage, play back for 16 channel or 32 Channel and forwarding etc.	The bidders may submit undertaking specifically mentioning that: The offered CCTV Camera (CP-UNC-TC21ZL6C-VMDS) have 'minimum 03 video stream'. Audio Interface for Built-In Mic. and External Microphone as per tender's requirement and the same will be demonstrated in POC. The offered Network Video Recorder model CP-UVS-6167R has Mbps throughput bandwidth to access, record, storage, playback for 16 or 32 Channel and forwarding etc.



	<i>Point No.25: Certification – BIS</i> <i>Point No.23 – Protocols *****</i>	<i>On checking the registrations of offered NVR model CP-UVS-6167R on BIS sites, it has been observed that the model has been withdrawn by Manufacturer on 31.03.2023 which was found registered on 12.05.2022 against R.number R-60000302 for which BIS certificate submitted in compliance (printout enclosed). Therefore, the bidder asked to submit the clarifications/reply of OEM duly certified bidder along with BIS test report in this regard.</i> <i>As per pre-qualification criteria {clause 13(a) (g)}, the offered product must be ONVIF compliant but on verification on the ONVIF site, it has been observed that the offered NVR model CP-UVS-6167R is not available in the list of conformant products (Printout enclosed). Therefore, bidders asked to submit the clarification/reply of OEM duly certified by bidder along with ONVIF certificate in this regard.</i>
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6. On 02.05.2023, the Petitioner herein replied to the query raised by the Respondent No.3 informing about the fresh BIS certificate which had been issued by the BIS to the OEM on 06.04.2023. The reply of the Petitioner reads as under:



“Name of Work: “Up-gradation of existing CCTV Camera System and supply, installation, commissioning and maintenance of additional CCTV Camera System in 208 Police Stations of Delhi.”

Bid No. - GEM/2022/B/2792373 Dated: 28-11-2022

Sub: Bidder Reply against the observations/query marked during the meeting via Technical Committee dtd. 25.04.2023 at Conference Hall, Room no. 216, Tower 2, Police headquarter, Jai Singh Rd., New Delhi

Dear Sir,

Refer the above-mentioned subject, we would like to request you to find the documents/undertaking authenticated with seal & sign by OEMs (CP Plus for Camera, NVR & Mic) & Bidder as per the observations marked by your end to check the compliance of the tender's technical specs. of the offered equipment for further examining by Technical Committee.

We hereby undertake and confirm that all the proposed items against the observations marked by your end will be as per the desired technical parameters mentioned in the technical specifications of RFP which are as follows: -

Sl. No.	Equipment Name & Technical Specifications	Bidder Reply/ Compliance (Yes/No)
1	2MP Bullet Camera	
1.1	Point No. 14 - Minimum 03 Video Stream	Yes
1.2	Point No. 21 - Audio Interface: - Built-in Mic and External Microphone	Yes
2	Network Video Recorder (NVR)	
2.1	Point No. 16: Bandwidth Throughput: - it should support	Yes



	minimum 1200 Mbps throughput Bandwidth to access, record, storage, play back for 16 channel or 32 Channel and forwarding etc.	
2.2	Point No. 25: Certification - BIS	Yes
2.3	Point No. 23 - Protocols- ONVIF S/G/T	Yes

This is for your kind perusal and necessary action at the earliest.

In case of any query, please contact us & looking towards your positive response.

Thanking You,

For Naagar Infrastructure Pvt Ltd”

7. Material on record shows that the Petitioner has not been permitted to participate in the tender in question only because the Petitioner had filed the BIS certificate dated 12.05.2022 along with its bid which had been withdrawn by the BIS on the date the committee scrutinizing the tender evaluated the bid participants.

8. The Petitioner has, therefore, challenged the decision of the Respondents herein in not permitting it to participate in the tender in question.

9. Heard the Counsels and perused the material on record.

10. Learned Counsel appearing for the Petitioner contends that the decision of the Respondents in not permitting the Petitioner to participate in the tender in question is completely arbitrary. He states that the Petitioner had given all the requisite documents along with its bid document. He states that along with the bid documents, the Petitioner had submitted a BIS certificate dated 12.05.2022 for the equipments offered by it. He states that the said certificate was valid on the date when the bid was submitted. He



further states that the said BIS certificate was withdrawn only on 31.03.2023 and in any event a new BIS certificate dated 06.04.2023 for the very same equipment with the very same specification was issued by the BIS within six days of withdrawal of BIS certificate dated 12.05.2022. He, therefore, states that the decision of the Respondent in not permitting the Petitioner to participate in the tender in question is arbitrary and the Petitioner must be permitted to participate in the tender in question as it satisfies all the terms of the tender in question.

11. *Per contra*, learned Counsel appearing for the Respondent contends that after the letter was received by the Petitioner on 02.05.2023, Respondent No.3 approached the BIS for verification/authentication of the BIS certificate issued by it to the Petitioner and the BIS has informed them that the certificate dated 06.04.2023 was for a model with different specification than what has been offered by the Petitioner in its bid document and, therefore, the bid of the Petitioner could not be considered.

12. Paragraphs No. 22 and 23 of the counter affidavit, which is the crux of the reasoning given by the Respondent No.3 for rejecting the Petitioner's tender, reads as under:

“xxii) On 03.05.2023, Ms. Deepti Budiya, Scientist C/Deputy Director, Registration Department, Bureau of India Standards through e-mail dated 03/05/2023 had informed the Respondent No. 3 that the BIS Certificate for the CCTV Model No. CP-UVS-6178R had been withdrawn by the OEM on 31.03.2023 and the model had been re-registered on 06.04.2023 with different specification. It is pertinent to note here that this email from the Bureau of Indian Standards reveals that the Petitioner has deliberately concealed material information from the Answering Respondent and has acted blatantly in disregard to the general terms and conditions of the Tender Document.



The relevant portion of the email dated 03.05.2023 is reproduced herein for the sake of convenience.

"...The Model No. CP-UVS-6178R, which had inclusion ID N57218 dated 12.05.2022, has been withdrawn by the firm. The same model has been registered on 06.04.2023 with different specifications. The other models mentioned in the letter are registered with BIS, as stated in your letter." A copy of the email dated 03.05.2023 sent by the Bureau of Indian Standards to the Respondent No. 3 is annexed hereto and marked as ANNEXURE-A20.

xxiii) That thereafter, on 04.05.2023, the Technical Committee discussed the status/findings of evaluation of the datasheets/catalogues, as well as the response/comments submitted by bidders/OEM and the email received from Bureau of Indian Standards. It was observed that the Network Video Recorder model No. CP-UVS-6167R (CP Plus make) registered with BIS vide Reg. No. R-66000302 inclusion ID 6721814 dated 12.05.2022 offered by the 4 bidders including the Petitioner, has been withdrawn by OEM (manufacturer) on 31.03.2023, which has also been confirmed in the reply received from BIS. The BIS reply also reveals that OEM (M/s Aditya Infotech Ltd. CP Plus) has got the same product registered on 06.04.2023 with "different specifications".

13. Material on record shows that while submitting its bid, the Petitioner had submitted a BIS certificate dated 12.05.2022 for the model which was to be manufactured by the OEM and supplied by the Petitioner herein. The said certificate reads as under:



Our Ref: REGISTRATION/CRS 2018-1684/E-66000302

Date: 12-05-2022

Inclusion Id: 57218

Subject :Inclusion of Additional Model(s)

MANUFACTURING UNIT :	Ail Dixon Technologies Private Limited SHED NO. 1, EMC-II, VIKRUTHMALA VILLAGE, VERPEDEI MANDAL, CHITTOOR ANDHRA PRADESH, India- 517526 www.ganbho@divoxinfo.com 8860602341	
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Dear Sir,

1. This has reference to your request for inclusion of models of "CCTV Camera/CCTV Recorders" as per IS 13252(Part 1):2010/ IEC 60950-1 : 2005 in Licence No. R-66000302 already granted to you which is valid upto 20-05-2024.

2. It is intimated that the additional Models as per details given below have been agreed to be included in your scope of Licence. R-66000302 w.e.f. 12-05-2022:

Product Category	CCTV Camera/CCTV Recorder
Product Name	CCTV Recorder
IS No.	IS 13252(Part 1):2010/ IEC 60950-1 : 2005
Brand (As Declared by Manufacturer):	device with CP PLUS logo
Inclusion of Additional Models (w.e.f. 12-05-2022)	CP-LVS-6167R
Factory Address	SHED NO. 1, EMC-II, VIKRUTHMALA VILLAGE, VERPEDEI MANDAL, CHITTOOR ANDHRA PRADESH, India-517526

3. Other terms and conditions of the licence shall remain same.

4. This letter is being issued with the approval of competent authority.

Kindly acknowledge receipt of this letter.

Thanking you,

14. The said certificate was withdrawn on 31.03.2023, i.e. after the tender was submitted by the Petitioner and within six days of withdrawal, a fresh BIS certificate dated 06.04.2023 had been issued by the BIS. Certificate dated 06.04.2023 reads as under:

Our Ref: REGISTRATION/CRS 2018-1684/E-66000302

Date: 06-04-2023

Inclusion Id: 67347

Subject :Inclusion of Additional Model(s)

MANUFACTURING UNIT :	Ail Dixon Technologies Private Limited SHED NO. 1, EMC-II, VIKRUTHMALA VILLAGE, VERPEDEI MANDAL, CHITTOOR ANDHRA PRADESH, India-517526 www.ganbho@divoxinfo.com 8860602341	
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Dear Sir,

1. This has reference to your request for inclusion of models of "CCTV Camera/CCTV Recorders" as per IS 13252(Part 1):2010/ IEC 60950-1 : 2005 in Licence No. R-66000302 already granted to you which is valid upto 20-05-2024.

2. It is intimated that the additional Models as per details given below have been agreed to be included in your scope of Licence. R-66000302 w.e.f. 06-04-2023:

Product Category	CCTV Camera/CCTV Recorder
Product Name	CCTV Recorder
IS No.	IS 13252(Part 1):2010/ IEC 60950-1 : 2005
Brand (As Declared by Manufacturer):	CP PLUS
Inclusion of Additional Models (w.e.f. 06-04-2023)	CP-LVS-6167R
Factory Address	SHED NO. 1, EMC-II, VIKRUTHMALA VILLAGE, VERPEDEI MANDAL, CHITTOOR ANDHRA PRADESH, India-517526

3. Other terms and conditions of the licence shall remain same.

4. This letter is being issued with the approval of competent authority.

Kindly acknowledge receipt of this letter.

Thanking you,



15. A perusal of both the certificates shows that in the certificate dated 12.05.2022, in the column of 'brand' it is mentioned as 'device with CP PLUS logo' and in the certificate dated 06.04.2023 it is shown as 'CP PLUS'. The certificates are for the very same product model and they bear the same registration number and there is no difference in the products for which the two certificates have been issued. Viewed in this light, the reasoning given by the Respondent No.3 in not permitting the Petitioner to participate in the tender in question with the new BIS certificate dated 06.04.2023 on the ground that the new BIS certificate is for a different product, cannot be accepted. The difference in the name of brand alone cannot make the products different. The BIS certificate dated 12.05.2022 was valid on the date of submission of bids by the Petitioner herein and the subsequent certificate is also for the very same product model and, therefore, the reasoning given by the Respondent No.3 that the second certificate is for a different specification, cannot be accepted.

16. The law regarding judicial review in administrative action that too in matters of tenders has now been crystallized and judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound” and interference is permissible only if the decision-making process is mala fide or is intended to favour someone. It is settled that the decision of the tendering authority should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached [refer: Jagdish Mandal v. State of Orissa and Ors., (2007) 14 SCC 517 & Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Anr., (2016) 16 SCC 818].



17. In Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216, the Apex Court 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.”

(emphasis supplied)



18. It is settled that 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 and if the State acts within the bounds of reasonableness then the Courts will not interfere but at the same time, if the States do not act reasonably and fairly and with public interest in the matters of contract, then the Courts will have no other option but to interfere with the tender process. The facts in the present case cry loud that the State has not acted in a fair manner while evaluating the bid of the Petitioner.

19. As stated above, in the facts of the present case, the reasoning given by Respondent No.3 in not considering the tender of the Petitioner herein, is violative of Article 14 of the Constitution of India. The BIS certificate dated 06.04.2023 is for the very same equipment which the Petitioner intends to supply and, therefore, the Respondents are wrong to say that a different certificate for a different product specification has been issued by the BIS and, therefore, the bid of the Petitioner cannot be accepted.

20. Accordingly, the Writ Petition is allowed. The Respondents are directed to consider the financial bid of the Petitioner herein.

21. The Writ Petition is disposed of, along with the pending applications.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023

Rahul