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

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Date of Decision: 12.10.2023

% **W.P.(C) 10872/2023, CM APPL. 42116-42117/2023**

M/S ALANKIT ASSIGNMENTS LTD

..... Petitioner

Through: Mr. Mohit Garg, Advocate.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly, Advocate for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present writ petition relates to Request for Proposal dated 20.04.2023 (the '**RFP**'), issued by the Embassy of India, Riyadh/Respondent No.2 for '*Outsourcing of Consular-Passport-Visa (CPV)—Misc. Attestation Services At Embassy of India, Riyadh and Consulate General of India, Jeddah*' (the '**Subject Tender**'). The Petitioner herein is aggrieved by a letter issued by Respondent No.2 on 13.08.2023, whereby the Petitioner was excluded from the Subject Tender process (the '**Impugned Letter**').

2. The facts of the case reveal that the Petitioner, M/s. Alankit Assignments Ltd., is a company incorporated under the Companies Act, 1956 which provides e-governance, financial, insurance and healthcare services. After the RFP was issued, the Petitioner Company sent an email to Respondent No. 2 on 29.04.2023 communicating its willingness to

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participate in the Subject Tender along with a copy of its organizational profile. It is pertinent to note that the RFP required bidding companies to immediately submit their organizational profiles so that the same could be forwarded to Respondent No. 1/ Ministry of External Affairs (the ‘MEA’) for pre-verification purposes.

3. The Subject Tender involved a two-stage process for bidding: (i) the technical bid and subject to success thereunder, (ii) the financial bid. The last date of submission for the technical bid was 26.06.2023 and accordingly, the Petitioner Company submitted its technical bid within the prescribed time on 08.06.2023.

4. Thereafter, on 12.07.2023, the Petitioner Company was informed by Respondent No. 2 *via* email that it had qualified in the technical evaluation stage of the Subject Tender with a score of 72.30/100. The email also stated that the financial bid for the Subject Tender would open on 27.07.2023. However, on 24.07.2023, Respondent No. 2 issued a notice extending the date of opening of financial bids without specifying the revised timeline thereunder.

5. In the interregnum, before the opening of the financial bids, the MEA, through its Consular-Passport-Visa (‘CPV’) division, sent an email dated 24.07.2023 to Mr. Ankit Agarwal, the director of the Petitioner Company seeking certain clarifications (the ‘**Clarification 1**’). The relevant portion of Clarification 1 reads as under:



“M/s. Alankit Ltd., New Delhi has participated in the tenders floated by Indian Missions/Posts abroad for outsourcing of consular, passport and visa (CPV) services.

Under Mandatory Eligibility Criteria in the RFPs, the participating companies are required to fulfil certain conditions. In this regard, we have learnt that several cases are pending against M/s. Alankit Ltd. and/or its promoter(s) with law enforcement authorities. Therefore, please provide the full details of these cases i.e. whether cases are still ongoing, what are the charges, updated status, etc.

Please provide the requisite information and any other related information by Friday, the 28th July, 2023.”

(emphasis supplied)

6. In compliance with the aforementioned email, Mr. Ankit Agarwal, on behalf of the Petitioner Company responded to the MEA on 26.07.2023 and provided the following clarifications: (i) the Petitioner Company and M/s. Alankit Ltd. are independent and separate legal entities, and; (ii) the Petitioner Company and Mr. Ankit Agarwal are not named in any FIRs/ ECIRs and there are no pending prosecution proceedings against either party.

7. Being unsatisfied with the information provided, the MEA sent another email to Mr. Ankit Agarwal on 27.07.2023 seeking further clarifications (the ‘**Clarification 2**’). The relevant portion of Clarification 2 reads as follows:

“It is requested to provide details of other promoter(s) of Alankit Group of which Alankit Assignment Ltd. is a part, including Mr. Alok Kumar Agarwal, Chairman of the Group. It is learnt that several cases are pending against them with



law enforcement authorities. Please provide full details of all these cases.”

(emphasis supplied)

8. Mr. Ankit Agarwal replied to Clarification 2 *vide* e-mail dated 28.07.2023 reiterating his position and stating as follows:

“I would like to clarify that Alankit Assignments Limited and Alankit Group are entirely separate legal entities and my father, Mr. Alok Kumar Agarwal, is in no way associated with Alankit Assignments Limited and Alankit Group. He is neither a director, shareholder, nor does he have any involvement in any way whatsoever, with Alankit Assignments Limited and Alankit Group.

Furthermore, I would like to reiterate that Mr. Alok Kumar Agarwal is my father, and his personal affairs are entirely separate from the business operations of Alankit Assignments Limited and Alankit Group. He has no connection or affiliation with the Company/Group in any capacity.”

(emphasis supplied)

9. Thereafter, on 31.07.2023, the MEA sent another email to Mr. Ankit Agarwal seeking further clarification on the following questions (the ‘**Clarification 3**’):

“(i) when was Alankit Assignment Ltd. or the new entity constituted?

(ii) whether Alankit Assignment Ltd. or the new entity was carved out of Alankit Group or formed independently;

(iii) what is its shareholding pattern; and

(iv) what is its organisational structure?”



10. Mr. Ankit responded to the aforementioned email on 01.08.2023. The relevant portion of the response reads as follows:

“i.) Alankit Assignments Limited was duly incorporated on 01/01/1991 under the provisions of the Companies Act, 1956.

ii.) Alankit Assignments Limited was formed independently as a separate legal entity and is separate from Alankit Group.

iii.) The Shareholding Pattern of the Company as on 31.07.2023 is as follows:

S. No.	Name of the Shareholder	No. of Shares	% of Shareholding
1.	Aqsetya Agarwal	25684694	80.78%
2.	Avyaan Agarwal	6112306	19.22%
3.	Pratishtha Garg	1000	0.00%
4.	Garima Agarwal	500	0.00%
5.	Ankit Agarwal HUF	100	0.00%
6.	Pratishtha Images Private Limited	900	0.00%
7.	Swift Impex Private Limited	500	0.00%
	Total	31800000	100.00%

”

11. Subsequently, on 13.08.2023, the Petitioner Company received the Impugned Letter which stated that the Competent Authority had decided to exclude the Petitioner Company from the Subject Tender. Being aggrieved, the Petitioner Company immediately sent an email to Respondent No. 2 on 14.08.2023 stating that the arbitrary exclusion of the Petitioner Company, without any justifiable reason, violated the conditions of the RFP.

12. Aggrieved by the lack of response from Respondent No.1, the Petitioner Company preferred the present writ petition seeking the quashing of the Impugned Letter and seeking issuance of directions against Respondent No.1 to include the Petitioner Company in the Subject Tender process and consider the financial bid of the Petitioner Company.



13. Learned Counsel for the Petitioner Company forcefully contends that the Impugned Letter is *ex-facie* arbitrary as it is not grounded in any reasoning. He submits that the Impugned Letter does not make any reference to the terms and conditions of the RFP and therefore gives no indication to the Petitioner Company regarding the reasons for its exclusion despite its qualification at the technical evaluation stage.

14. Learned Counsel further argues that the actions of the Respondents, culminating in the issuance of the Impugned Letter, violates the principle of *audi alteram partem* as the Petitioner Company was not issued any show-cause notice or granted an opportunity of hearing before being excluded from consideration for the Subject Tender.

15. As the clarifications sought by the MEA related to M/s Alankit Ltd and one Mr. Alok Kumar Agarwal, during the course of the hearing, this Court put a question to the Learned Counsel for the Petitioner regarding the relationship between the Petitioner Company and M/s. Alankit Ltd. and the relationship between the Petitioner Company and Mr. Alok Kumar Agarwal.

16. Learned Counsel for the Petitioner clarified that the Petitioner Company and M/s. Alankit Ltd. are separate legal entities that are both part of the Alankit Group of Companies. Learned Counsel further stated that while Mr. Ankit Agarwal is presently the director of the Petitioner Company and the managing director of M/s Alankit Ltd., his father i.e., Mr. Alok Kumar Agarwal, was previously a director of the Petitioner Company but is no longer a director nor occupies any leadership position in the Petitioner Company. Learned Counsel reiterated that there are no pending criminal



proceedings against the Petitioner Company or its director, Mr. Ankit Agarwal. In light of the aforesaid, Learned Counsel argues that the pendency of any prosecution proceedings against either M/s Alankit Ltd. or Mr. Alok Kumar Agarwal cannot therefore justify the exclusion of the Petitioner Company from the Subject Tender.

17. *Per Contra*, Learned Counsel for the MEA submits that the Petitioner Company was rightfully excluded from consideration for the Subject Tender, in accordance with the terms stipulated in the RFP. In this regard, Learned Counsel brings the attention of the Court to the relevant provisions of the RFP which read as follows:

“Chapter III: Instructions to Bidders

(ii) *The Organisation profile (Annex-I) in soft copy, as required in Chapter IV (below), should be sent immediately to the Mission at email ID: <consl.riyadh@mea.gov.in> or <counsellor.riyadh@mea.gov.in>, for onward transmission to the Ministry of External Affairs, New Delhi for pre-verification purposes, without waiting for finalization/submission of completed tender documents by the bidding companies to the Mission. **Bidding companies not cleared from security angle as decided by the Ministry of External Affairs, New Delhi (hereinafter referred to as 'MEA') will not be eligible to participate in this tender or award of contract.***

(iv) **Bidding companies not fulfilling the Mandatory Eligibility Criteria (Annex D) will be disqualified.**

Chapter V: Mandatory Eligibility Criteria

(iv) **The Bidding Company must certify that the company and its subsidiaries/partners are not involved in any unlawful or illegal activity including but not limited to human trafficking, anti-Indian activities, hawala, tax evasion, financial fraud,**



corporate malpractices, etc. *The bidder must certify that it has no outstanding criminal or civil liabilities in Saudi Arabia or elsewhere and provide information on any previous and current law enforcement cases or any other legal cases against them.*”

(emphasis supplied)

18. Learned Counsel submits that in accordance with the aforesaid terms of the RFP, on receipt of organisational profiles of the bidding companies, a comprehensive pre-verification exercise lasting 2-3 months was undertaken by the MEA which continued simultaneously with the tender process. As a result of the pre-verification exercise undertaken by the MEA, a report in this regard was received by the MEA from the concerned authorities which indicated that there were cases pending against M/s. Alankit Ltd., and/or its directors with law enforcement authorities.

19. Learned Counsel explains that despite finding incriminating charges, before initiating any action against the Petitioner Company, the MEA sought clarifications from the Petitioner Company by way of Clarifications 1-3. He submits that upon receiving responses from the Petitioner Company, the CPV division of the MEA arrived at a conclusion that the Petitioner Company was suppressing material information from the MEA. Thereafter, this finding was communicated by the MEA to Respondent No. 2 and it was decided that the Petitioner Company should be excluded from the Subject Tender.

20. Learned Counsel for the MEA further submits that the MEA also sought additional confirmation of the pending cases against the Petitioner Company and/or its directors from the Directorate of Enforcement (the



‘ED’). In this regard, Learned Counsel highlights letter dated 18.09.2023 received from the ED which reads as under:

“2. In this regard, it is informed that **the Prosecution Complaint dated 30.07.2021 against Alok Agarwal, Ex-Director of Alankit limited and Alankit Assignments Limited has been filed before the Hon’ble Special Court for PMLA cases under the Prevention of Money Laundering Act (PMLA), 2002 at New Delhi and Hon’ble Court has taken cognizance of the same.**

3. **It is further informed that Alok Kumar Agarwal, Alankit Limited and AlankitAssignments Limited DMCC among others are accused in the said Prosecution Complaint.**

4. **Investigation vis-a-vis Ankit Agrawal, present director in Alankit limited and Alankit Assignments Limited is underway.**”

(emphasis supplied)

21. Given this context, Learned Counsel for the MEA vehemently argues that the Respondents acted strictly in accordance with the terms laid out in the RFP. He submits that due to the sensitive nature of the Subject Tender, a security clearance from the MEA was mandatory as specified by the RFP and in the absence of such clearance, the Petitioner Company was rightfully excluded from the Subject Tender *vide* the Impugned Letter.

22. We have heard the learned counsels for both parties and have carefully perused the record.

23. The issue for consideration herein is whether the issuance of the Impugned Letter by Respondent No. 2 was arbitrary and unjustified thereby warranting interference by this Court. At the outset, it is pertinent to reiterate



that the scope of judicial review in contractual matters, particularly *vis a vis* interference in tender processes is limited and characterised by the exercise of judicial restraint. The settled position of law in this regard has been aptly summarised by the Apex Court in *Silppi Constructions Contractors vs. Union of India*, (2020) 16 SCC 489, as under:

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.



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.”

(emphasis supplied)

24. In light of this position, it must be remembered that the Petitioner Company herein has the burden of establishing a clear-cut case of arbitrariness or irrationality in the issuance of the Impugned Letter to persuade this Court to interfere in the Subject Tender. To that extent, the case of the Petitioner Company is that the Impugned Letter is arbitrary as it lacks reason and was issued in violation of principles of natural justice. Relevant portions of the Impugned Letter reads as follows:

“Please refer to the bid documents submitted by Mis Alankit Assignments Ltd. in response to the tender for outsourcing of consular, passport, and visa (CPV) services published by the Embassy.

2. The Competent Authority has decided to exclude Mis Alankit Assignments Limited from the tender process in



Embassy of India, Riyadh and consulate General of India, Jeddah.

3. Therefore, it is requested to collect the financial bids and other documents submitted by your company, in person or through your authorised representative on any working day between 09:30 to 12:30 hrs.

4. Kindly acknowledge receipt of the mail. ”

(emphasis supplied)

25. The first prong of the Petitioner’s challenge is that the Impugned Letter is unreasoned and therefore bad in law. While a *prima facie* perusal of the Impugned Letter supports the contention of the Petitioner Company, a complete examination of the terms of the RFP and the communications between the Petitioner Company and the Respondents as extracted above reveals otherwise. The terms of the RFP as highlighted by the MEA clearly specify that bidding companies who are not granted a security clearance by the MEA will be ineligible to participate in the tender process or for award of contract. This must be read with Clause (iv) of the Mandatory Eligibility Criteria in the RFP which directs participating bidders to not only certify that they have no outstanding criminal and civil liabilities anywhere but to also provide information to Respondent No. 2 about any previous or current legal cases pending against them, their subsidiaries or their partners.

26. In accordance with these terms, a pre-verification exercise was conducted by the MEA and the report in this regard indicated that there were cases pending against M/s. Alankit Ltd. and/or its promoters with law enforcement agencies. Subsequently, when these findings were put to the Petitioner Company by way of Clarification 1 and 2 and responses were



collected from the Petitioner Company, the MEA arrived at an opinion that the Petitioner Company was suppressing relevant information. It was on this basis that the MEA denied security clearance to the Petitioner Company and therefore, the Petitioner Company was excluded from the Subject Tender. It is relevant to reiterate that the Apex Court in *Silppi Constructions* (supra) has held that the tendering authority is the best judge of the requirements of the tender and therefore courts must defer to their understanding in the absence of irrationality or perversity. In the considered opinion of this Court, this principle of deference to expert opinion must be heightened in cases like the present where the Subject Tender is of a sensitive nature and the public interest considerations are substantial. As the Respondents have established that their decision to exclude the Petitioner Company is based on a justified finding, this Court cannot sit in appeal over that decision. At any rate, such an exercise would be futile as the MEA has also brought on record the letter from the ED dated 18.09.2023 which confirms that criminal proceedings are pending against the Petitioner Company under the Prevention of Corruption Act, 2002 and investigation in this regard is underway against Mr. Ankit Agarwal.

27. In this context, the mere absence of reasons in the text of the Impugned Letter cannot lead to the conclusion that the same is unreasoned and unjustified. The Apex Court in *Silppi Constructions* (supra) has held that Courts, in their exercise of judicial review of tender matters, should not use a magnifying glass to make every small mistake appear to be a big blunder. The Respondents herein have been able to establish that their decision to exclude the Petitioner Company is fully supported by the terms



of the RFP and therefore, this Court finds no fault on the part of the Respondents in issuing the Impugned Letter.

28. The Petitioner Company also contends that it cannot be excluded from the Subject Tender as it was already declared technically qualified. In this regard, it is pertinent to note that the RFP clearly stated that the exercise conducted by the MEA constitutes *pre-verification* for the *purpose of participation* in the tender process. The relevant clause of the RFP reads as follows:

*“Bidding companies not cleared from security angle as decided by the Ministry of External Affairs, New Delhi (hereinafter referred to as 'MEA') **will not be eligible to participate in this tender or award of contract.**”*

29. The afore-extracted clause clearly states that a bidder not cleared by the MEA will not be eligible to participate in the tender *or for the award of contract*. Thus, it is evident from a reading of the clause that the stage of the tender would not impact the ouster of a bidder that fails to obtain security clearance. The MEA has stated that the process of verifying security credentials of the bidders required a significant amount of time and was therefore undertaken parallelly with the tender process. In this context, the contention furthered by the Petitioner Company is not only contrary to a plain reading of the RFP but would also entirely defeat the purpose of the clearance exercise and hence, is not acceptable to this Court.

30. The second prong of the Petitioner's challenge is that the Impugned Letter was issued in violation of the maxim of *audi alteram partem*. Firstly, it must be noted that the Petitioner Company, being a bidder participating in



the Subject Tender was well aware of the terms of the RFP including Clause (iv) of the Mandatory Eligibility Criteria which *inter alia* mandated disclosure of any pending criminal proceedings against the bidder. Despite this mandate, the Petitioner Company failed to provide such disclosure during submission of the technical bid.

31. Thereafter, by way of Clarification 1, the Petitioner Company was given explicit notice of the fact that the Respondent No. 2 had learnt of several cases pending M/s. Alankit Ltd. and/or its promoters i.e., a violation of Clause (iv) of the Mandatory Eligibility Criteria of the RFP. It is an admitted fact that Petitioner Company and M/s. Alankit Ltd are sister concerns, part of the Alankit Group of companies and that Mr. Ankit Agarwal serves as a Director for both the companies. However, in its response to Clarification 1, the Petitioner Company suppressed information about the relationship between the two companies and furthermore, contrary to the factual position, stated that there are no cases/criminal proceedings pending against the Petitioner and Mr. Ankit Agarwal.

32. Subsequently, by way of Clarification 2, the Petitioner Company was asked to provide information about any cases pending against the promoters of the Alankit Group. In response, the Petitioner Company continued to suppress relevant information and failed to provide the clarifications sought by the Respondents. Therefore, on an examination of the totality of circumstances, it is evident that the Petitioner Company was given notice of their violation of the RFP and was subsequently given two opportunities to defend/explain itself on that charge. However, the Petitioner Company deliberately suppressed relevant information regarding the cases/criminal



proceedings pending against it and Mr. Ankit Agarwal and by way of the present petition, the Petitioner Company now seeks assistance of the Court to benefit from its own wrong.

33. In light of the above, the Petitioner Company has failed to establish any arbitrariness or irrationality in the issuance of the Impugned Letter. At this stage, it is also important to emphasize the sensitive nature of the Subject Tender due to its considerable security implications. It must be remembered that judicial restraint while interfering with contract/tender matters involving State instrumentalities is premised on the paramount need to preserve the larger public interest. In this case, while an examination of the contentions raised by the Petitioner Company has shown that the Respondents have acted strictly in accordance with the terms of the RFP, the actions of the Respondents is also justified on grounds of overwhelming public interest. The Respondents have established that there are criminal proceedings pending against the Petitioner Company and in these circumstances, the Respondents cannot be faulted for excluding the Petitioner Company from the Subject Tender. Therefore, in considered opinion of this Court, no case of interference with the Impugned Letter is made out.

34. Accordingly, the writ petition is dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

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