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

Date of Decision: 01st September, 2023

+ **LPA 606/2023 and C.M. Nos. 44013/2023 & 44014/2023**

M/S GREENTECH ENVIRON MANAGEMENT PVT LTD - M/S
HP Appellant

Through: Mr. Zain Ahmed Khan, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. Respondent

Through: Mr. Sanjay Vashishtha, Standing
Counsel with Mr. Vishal Kumar,
Advocate for Respondent/ MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. On 03rd November, 2022, the Appellant secured a contract from the Municipal Corporation of Delhi ["MCD"] for disposal of 30 lakh mega tonnes of legacy waste by bio-remediation and bio-mining at the Okhla Dumpsite, Delhi. This contract necessitated segregation and processing of inert material from the dumpsite and its subsequent supply to the National Highways Authority of India ["NHAI"].
2. During subsistence of the contract duration, invoking Clause 7.4.7 of the Contract Agreement, a penalty of approximately Rs. 8.5 crores has been imposed on the Appellant for transportation of inert material containing



unprocessed substance, signifying poor quality control measures.¹ Appellant's representation to the Commissioner, MCD against the levy of penalty did not garner a favorable response. Meanwhile, on 07th June, 2023, MCD rolled out a Request for Proposal ["RFP"] for a parallel project at Ghazipur dumpsite. A subsequent addendum dated 03rd July, 2023 to the RFP impacted Appellant's eligibility to participate, leading to initiation of a writ petition [W.P.(C) 9487/2023] contesting the addendum. This petition was concluded without redressal of Appellant's grievances. In the present appeal, the Appellant suggests a potential connection between the penalty and the RFP conditions, though the latter is not the focal point of the present proceedings.

3. The Appellant then filed writ petition [W.P.(C) 10308/2023] assailing the imposition of this penalty. After considering the entire conspectus of the case, the learned Single Judge, *vide* judgment dated 04th August, 2023, declined the relief, observing that the case presented by the Appellant brimmed with highly disputed facts and contentions, extending beyond mere contract interpretation. As factual disputes cannot be adjudicated while exercising writ jurisdiction, the learned Single Judge opined that appropriate remedy for the Appellant laid in pursuing civil remedies available in law.

4. The Appellant assails the afore-noted decision of the learned Single Judge, contending that their grievance could have been easily resolved in a writ petition on the basis of affidavits of the parties. The counsel for Appellant argues that the letter dated 23rd January, 2023 imposing the penalty, is entirely misconceived. He refutes the allegations of sub-standard performance and relies on a certificate of an independent agency appointed

¹ *Vide* communication dated 23rd January, 2023.



by NHAI, certifying the weighment for the quantity of supplied material. He further submits that for the sake of argument, assuming that Respondent's allegations were correct, yet, in terms of Clause 7.4.1 (penalty clause) of the contract, the maximum amount that could have been levied was Rs. 20,000/- per incident per day, till the achievement of compliance. Clause 7.4.7, invoked by the Respondents, applies in the event of "*(t)ampering of records at weighbridge or submission of manipulated records or any malpractice which will affect the quantity and quality of work done*". Appellant's alleged default can, under no circumstance, fall under Clause 7.4.7 and thus, they could not have been saddled with a penalty of Rs. 8,50,09,505/-. Further, under the RFP for the Ghazipur site, any bidder who has been subjected to penalty under existing contracts for tampering/ manipulation of records or *malafide* practices/ quality, would be technically disqualified. The Respondents have maliciously levied such severe penalty on Appellant, with the intent to render them ineligible for participation in the bid for Ghazipur dumpsite.

5. We have reflected on the contentions urged by the Appellant, however, remain unpersuaded to interfere with the view taken by the learned Single Judge. The Appellant, in the writ petition, challenged the imposition of a penalty by the Respondents amounting to Rs. 8,50,09,505/-, which was communicated on 23rd January 2023. Respondents' reliance on Clause 7.4.7 for impugned action is heavily contested by the Appellant. This clause is applicable in instances of tampering of records at the weighbridge, submission of manipulated records, or any malpractice that affects the quantity and quality of the work executed. In the event bidder is found to have indulged in any of the aforesaid practices, a penalty equivalent to 50%



of the value of bills certified for the three months leading up to the month when the incidence was observed, is to be collected. As per the Appellant, the purported breach falls under Clause 7.4.1, which provides for a reduced punishment (as noted above). Whether the penalty should have been under Clause 7.4.1 or should have adhered to stipulation of 7.4.7 is, in this Court's view, a matter contingent on factual nuances. The Court believes that these specifics need to be ascertained based on the evidence presented by the parties involved. Respondents' allegations of malpractice, if proven, can warrant a levy under Clause 7.4.7. Thus, bearing in mind the existing factual ambiguities and discrepancies, we concur with the observation of the Learned Single Judge. The certification dated 20th January 2023 of an independent agency cannot serve as a basis to nullify the imposed penalty.

6. The learned Single Judge correctly acknowledged that writ jurisdiction can be exercised in contractual disputes and that the Court is well-equipped to address such matters. We too, understand that the Court is not powerless to embark upon an enquiry into disputed questions of fact, where such inquiry can be made and resolved on the basis of documents and affidavits filed in Court. Thus, while the writ jurisdiction is not precluded, having regard to the controversy noted above, in our view, evidentiary assessment is necessary in the facts of the present case. The dispute cannot be resolved by directing the parties to establish their respective cases by filing further affidavits.

7. Thus, in light of the facts noticed by the learned Single Judge, we find that the view taken in the impugned order for relegating the parties to avail civil remedies aligns with the settled law on this proposition, as laid down by the Supreme Court in the precedents referred to in the impugned



judgment.

8. Dismissed along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 1, 2023

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