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

\+ W.P.(C) 14930/2023 & CM APPL. 59547-59548/2023

AQEEL UR REHMAN ..... Petitioner
Through: Mr. Baban Kumar Sharma, Advocate

versus

JAMIA MILLIA ISLAMIA UNIVERSITY AND ANR . Respondents
Through: Mr. Pritish Sabharwal, Standing Counsel for R-1 & 2

% ***Date of Decision: 20th November, 2023***

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present writ petition has been filed with a prayer for direction to the respondents to open the tender bids in the presence of the petitioner or his authorized representatives as per the tender notice and rules of the university.

2. It is the case of the petitioner that he made a representation to the respondent no.1/ Jamia Millia Islamia University in the year 2007 with a request to allow him to establish a kiosk providing refreshment and some other facilities to the students, staff, faculties and visitors to the University. The request of the petitioner was acceded by the respondent University. Accordingly, the petitioner was allotted an area to construct a kiosk with his own funds. The petitioner, thus, started running a kiosk from the premises of the University in the name and style “Hygienic Mark Cafe”.

3. Subsequently, a License Deed dated 01st January, 2008 was entered between the petitioner and the respondent no.1 University as per which, the petitioner was required to pay a sum of Rs. 500/- per month as license fee to the University commencing from 01st January, 2008.

4. As such, the petitioner has been running the said kiosk for more than 15 years with renewal of the license from time to time.

5. The license agreement dated 01st January, 2008 granted to the petitioner was further extended for a period of 5 years till 01st January, 2013 and subsequently extended further for a period of 3 years till January, 2016.

6. It is the case on behalf of the petitioner that while the license agreement dated 01st January, 2013 was in operation, the respondents asked the petitioner to further execute a License Deed dated 11th September, 2015 with increased license fee @ Rs. 30,000/- per month for a further period of 2 years, which was subsequently renewed upto 2019.

7. Afterwards, the license in favour of the petitioner stood renewed upto 2021 with increased license fee @Rs. 45,000/- per month. Due to onset of pandemic Covid 19, the petitioner was allowed to continue.

8. The University invited tender for bids in respect of allotment of kiosk on 15th December, 2022. Since the said tender process did not yield any results, the license of the petitioner was renewed automatically.

9. Subsequently, the respondent no.1 University issued re-tender notice dated 27th June, 2023. The petitioner participated in the said tender process. However, the petitioner did not succeed and the tender has been allotted to some other party viz. M/s N.K. Enterprises. Pursuant thereto, petitioner was served with a notice dated 11th November, 2023 informing him about the award of tender to a third party and directing the petitioner to vacate and

handover the premises. Thus, the present writ petition has been filed.

10. It is the case on behalf of the petitioner that the respondents were bound to open the bid in the presence of the petitioner or his authorized representatives. The petitioner has relied upon the earlier tender process dated 15th December, 2022 issued on behalf of the respondent University, wherein it was stipulated that the technical bids will be opened in the presence of the bidders or their authorized representatives. However, as per the petitioner, the said stipulation was deleted from the re-tender notice dated 27th June, 2023. Thus, it is contended that the respondents have committed irregularities in opening the bids.

11. Per contra, learned Standing counsel for the respondent University submits that the petitioner failed in the technical bid as he did not file the required documents. It is further submitted that the bids were opened publicly and due process was followed.

12. Having heard learned counsel for the parties and having perused the records, this Court finds no procedural impropriety in the tender process followed by the respondent University. The petitioner has not been able to point out any irregularity in the bidding process for allotment of the kiosk in question.

13. Admittedly, in pursuance of the tender process, the kiosk in question has already been allotted to a third party. Therefore, in the absence of any material on record, this Court will not interfere in the tender process. There is nothing on record that the respondent University has acted arbitrarily or has adopted a procedure meant to favour any one party. Holding that court should follow the principle of restraint where a decision is taken that is manifestly in consonance with the language of the tender document or

subserves the purpose for which the tender is floated, Supreme Court in the case of ***Montecarlo Ltd. Versus NTPC Ltd***[1] has held as follows:

> *"**26.** We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. **Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints**."*
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> *(Emphasis Supplied)*

14. Again, holding that court ordinarily should not interfere in matters relating to tender or contract, Supreme Court in the case of ***Tata Motors***

[1] ***(2016) 15 SCC 272***

Limited Versus Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others[2] has held as follows:

> *"**52.** Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India, reported in (2005) 1 SCC 679.*
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> ***53.** The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. **Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.***
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> ***54.** As observed by this Court in Jagdish Mandal v. State of Orissa, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters**. If the decision relating to award of contract is bona fide and***

[2] ***2023 SCC OnLine SC 671***

<u>is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes</u>."

(Emphasis Supplied)

15. This Court also notes that by his letter dated 14th November, 2023, the petitioner had requested the respondent University to grant him some time to vacate the canteen in view of its allotment to some other vendor. Thus, once having accepted the allotment of tender to a third party, the petitioner cannot approbate and reprobate. The letter dated 14th November, 2023 written by the petitioner reads as under:

"The Offg. Vice Chancellor 14.11.2023
Jamia Millia lslamia
New Delhi - 110025
Subject: Request to grant some more time to vacate the canteen viz Hygienic Mark Cafe-Reg.

Respected Sir,

This is to inform you that I have been running the canteen viz Hygienic Mark Cafe for last several year. Now it has been allotted to some other vendor and I have been directed to vacate the said canteen by 17.11.2023.

Further, it is to mention that it was allotted to me with the permission to construct the kiosk at my own cost and I did the same.

I, therefore, request you to kindly grant me some more time to vacate the canteen and allow me to take the kiosk with me or I may be compensated the cost of constructing the kiosk. I shall be thankful to you for this kind permission.

With regards

Yours faithfully,
(Aqeel-ur-Rahman)
Professional Caterers
Ph. No.9958070207"

16. In view of the aforesaid detailed discussion, this Court finds no merit

in the present petition. The same is accordingly dismissed along with the pending applications.

THE ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 20, 2023/au