



2024:DHC:5092



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

Date of decision: 09th JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 7342/2024 & CM APPL. 30666/2024**

M/S YADAV LABOUR CONTRACTOR

..... Petitioner

Through: Ms. Sushila Ram, Ms. Sakshi
Raghuvanshi, Ms. Harini Daliparthi
and Mr. Arjav Jain, Advocates.

versus

GAIL (INDIA) LIMITED & ANR.

..... Respondents

Through: Mr. Nishant Awana, Ms. Rini Badoni,
Ms. Nitya Sharma, Mr. Sahil, Mr.
Mayank Chaudhary and Mr. G.S.
Awana, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court by filing the instant writ petition challenging a communication dated 03.05.2024 issued by the Respondent putting the Petitioner firm on the banning list of the Respondents for a period of six months from the date of the issuance of the banning order.
2. The facts in brief leading to the writ petition are that a tender was issued by the Respondent inviting bids for hiring of services for assisting fire and safety department at the PDH-PP Project, Usar, Maharashtra on 08.08.2023.
3. The Petitioner submitted its bid for the aforesaid tender on the GeM portal. The Petitioner was declared as L-1 and a contract was generated by the GeM portal between the Petitioner as a service provider and Respondent



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No.2 as consignee. The service was to be returned by the Petitioner with effect from 10.01.2024. *Vide* e-mail dated 10.11.2023, a letter of acceptance was issued by Respondent No.2 mentioning as under:-

“i. Contract value (including taxes and duties) is INR 40,438,420.73/-

ii. Duration of contract will be 2 years w.e.f. 10.01.2024

iii. Contract Agreement & CPS amounting to 10% of annualized contract value as per clause 2.13 of the GCC should be paid within 30 days of issuance of LOA and be valid till 10.07.2026”

4. A contract was executed between the Petitioner and Respondent No.2 in furtherance of which a bank guarantee was furnished by the Petitioner in favour of Respondent No.2 for the sum of Rs.18,03,000/- for a period of 32 months.

5. Material on record indicates that complaints were received by Respondent No.2 alleging that two of the qualified bidders, i.e., the Petitioner herein and one YLC Infrastructure Private Limited are related entities and are in a position to influence each other's bid which is in violation of the terms and conditions as given in the Notice Inviting Tender.

6. A termination letter dated 11.01.2024 was issued by Respondent No.2 terminating the contract dated 06.11.2023 on the ground that the Petitioner had submitted false information in Clause 26 and Format F-5 of the Agreed Terms and Conditions regarding 'no conflict of interest with other bidders'. It is stated that this tantamounts to misrepresentation and concealment of facts in order to influence the selection process.

7. A writ petition being W.P.(C) 1918/2024 was filed by the Petitioner



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challenging the said termination letter which was later on withdrawn.

8. A show cause notice dated 11.03.2024 was issued against the Petitioner by Respondent No.2 stating as to why the Petitioner should not be put on the banning list and debarring the Petitioner from being considered in any future business with GAIL. The show cause notice indicated that the information submitted by the Petitioner in Clause 26 of Format F-5 (Agreed Terms and Conditions) regarding 'no conflict of interest with other bidders' was false, which tantamounts to misrepresentation and concealment of facts in relation to the award process for which the Petitioner had applied.

9. The show cause notice indicates that upon the perusal of certain documents, it was found that the ownership of the Petitioner and M/s YLC Infrastructure Private Limited is such that they have direct relationship with each other which enables the Petitioner to have access to information and influence the bid of another bidder. The show cause notice indicated that Mr. Parasu Ram Yadav, the Proprietor of the Petitioner herein, is the father of Director of M/s YLC Infrastructure Private Limited, and this is in violation of Clause 4 of the Tender Document which is 'One Bid Per Bidder'.

10. The show cause notice indicates that the father of Director of M/s YLC Infrastructure Private Limited has carried out transactions with Mr. Parasu Ram Yadav, who is the proprietor of the Petitioner herein. A loan for the sum of Rs.30,45,900/- was granted to M/s YLC Infrastructure Private Limited as long term unsecured loans.

11. Material on record discloses that a reply was given by the Petitioner stating that the Petitioner herein and YLC Infrastructure Private Limited are separate businesses having separate legal entities. It was also stated in the



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reply that the Petitioner quoted the minimum floor price fixed by the GAIL and there is no question of malafide practice to influence bids of any bidder and L-1 was selected randomly and neither the Petitioner nor the YLC Infrastructure Private Limited has any control over the bid. It is stated that mere family relationship between the bidders would not tantamount to conflict of interest and influencing the bids.

12. Not satisfied with the reply, the Order dated 03.05.2024 has been passed by the Respondent banning the Petitioner for a period of six months. It is this order which is under challenge in the present writ petition.

13. Learned Counsel for the Petitioner has reiterated the reply given by the Petitioner to the show cause notice and the contentions raised in the writ petition stating that the Petitioner and YLC Infrastructure Private Limited are completely distinct independent legal entities having no relationship with each other. It is also contended that there is no method by which one could influence the bid and the selection was done through the GeM portal without being influenced by any of the factors.

14. It is stated that the fact that one of the Directors of YLC Infrastructure Private Limited is the son of the Proprietor of the Petitioner company does not mean that both firms were inter-related as there is nothing in the NIT which prohibits that the bidders cannot be related to each other through blood.

15. Heard learned Counsel for the parties and perused the material on record.

16. The Petitioner has not filed the tender documents or the contract which actually amounts to suppression of material facts and documents. However, Clause 4.1 and 4.2 and Clause 2.17.3 and Clause A-2 and A-3 of



the NIT are being reproduced and which are relevant for this case read as under:-

“ONE BID PER BIDDER

4.1 A Bidder shall submit only 'one [01] Bid' in the same Bidding Process either as single entity or as a member of any consortium (wherever, consortium bid is allowed). A Bidder who submits or participates in more than one (01) Bid' will cause all the proposals in which the Bidder has participated to be disqualified.

4.2 A. bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices. The bidder found to have a conflict o) interest shall be disqualified A bidder shall be considered to have a conflict of interest with one or more bidders in this bidding process, if

... ..

b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or evict

... ..

d) they have relationship with each other, directly or through common third parties, that pull them in a position to have access to information about or influence on the bid of another Bidder; ”

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“GCC Clause no. 2.17.3 - TERMINATION OF CONTRACT FOR CORRUPT / FRADULENT / COLLUSIVE/ COERCIVE PRACTICES AND NON-PERFORMANCE If the Bidder/Service Provider is found to have indulged in Corrupt/ Fraudulent , /Collusive/Coercive practices, the Contract shall be



terminated and the Bidder/Service Provider shall be banned for future business with GAIL. The detailed procedure for banning including suspension in this regard may be referred as enclosed as Appendix 1.”

“A2 "Fraudulent Practice" means and include any act or omission committed by a agency or with his connivance or by his agent by misrepresenting/ submitting false documents and/ or false information or concealment of facts or to deceive in order to influence a selection process or during execution of Contract/ order. A3 "Collusive Practice amongst bidders (prior to or after bid submission)" means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

A3 "Collusive Practice amongst bidders (prior to or after bid submission)" means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits office and open competition.”

17. The impugned order indicates that the financial statements of YLC Infrastructure Private Limited for the year 2020, 2021 and 2022 shows that the proprietor of the Petitioner held 50% shares in YLC Infrastructure Private Limited as on 31.03.2020 and YLC Infrastructure Private Limited has outstanding non-current liability of Rs. 29,45,900/- from the proprietor of the Petitioner company as on 31.03.2021. Further the YLC Infrastructure Private Limited had a long term unsecured loan from the proprietor of the Petitioner of Rs.30,45,900/- as on 31.03.2022. This shows that the Petitioner and the YLC Infrastructure Private Ltd. have relations with each other which



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puts them in a position to have access to information about each other and influence the bid of each other which was not permitted.

18. This Court does not find any reason to interfere with the findings of the Respondent that the proprietor of the Petitioner had sufficient financial stake in YLC Infrastructure Private Limited and the YLC Infrastructure Private Limited had taken long term unsecured loan from the proprietor of the Petitioner. The conclusion of the Respondent that there was a conflict of interest between the two cannot be found fault with as the Petitioner had given wrong information that the Petitioner has no relationship with any of the bidders. Clause 4.2(d) of the bid document indicates that there is only One Bid Per Bidder. In view of the fact that there is a deep nexus and direct relationship between the Petitioner and the YLC Infrastructure Private Limited, the conclusion of the Respondent that the Petitioner was in a position to influence the bid of YLC Infrastructure Private Limited and *vice-versa* cannot be found fault with.

19. The conclusion of the Respondent that the Petitioner and YLC Infrastructure Private Limited has placed the same bid with other two contractors raising the chances of the selection of the Petitioner in tie breaker system “Run L-1 selection” available on the GeM portal from 25% to 33% and the Petitioner acted in collusion with YLC Infrastructure Private Limited cannot be found fault with.

20. It is well settled that the scope of judicial review of administrative actions has been well settled by a catena of judgments of the Apex Court. In Tata Cellular v Union of India, **1994 (6) SCC 651**, the Apex Court has held that the modern trend points to judicial restraint in administrative action and that the court does not sit as a court of appeal but merely reviews the manner



in which the decision has been made. It also held that court does not have the expertise to correct the administrative decision and if review of the administrative decision is permitted, it will be substituting its own decision without necessary expertise which itself may be fallible.

21. In Raunaq International Private Limited v. IVR Construction Limited, (1999) 1 SCC 492, the Apex Court reiterated that writ court would not be justified in interfering with commercial transactions in which the State is one of the parties except where there is substantial public interest involved and in cases where the transaction is malafide.

22. In Union of India v. International Trading Company, (2003) 5 SCC 437, the Apex Court observed as under:-

“15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. 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. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so,



does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

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22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are



concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority [AIR 1960 SC 801 : 62 Bom LR 521] , Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468 : AIR 1974 SC 366] , Hari Chand Sarda v. Mizo District Council [AIR 1967 SC 829] and Krishnan Kakkanth v. Govt. of Kerala [(1997) 9 SCC 495 : AIR 1997 SC 128] .)”

23. In Jagdish Mandal v. State of Orrisa, (2007) 14 SCC 517, the Apex Court observed as under:-

“22. 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”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final,



may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

24. The Apex Court in Michigan Rubber (India) Limited v. State of Karnataka & Ors., (2012) 8 SCC 216, after analysing all the judgments on the point has culled out the following principles:-

“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.

24. *Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*

(i) Whether the process adopted or decision made by



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the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

25. Applying the said principles to the facts in hand, this Court does not find any infirmity in the decision making process. The decision arrived at by the Respondents on the facts of the case does not show that there was any malice to terminate the contract of the Petitioner or that the action is any way treated as malafide. The decision to terminate the contract has not been to favour any other party.

26. In any event, the impugned order itself states that in case the Petitioner is aggrieved by the impugned order, an appeal can be filed within a period of one month to the Appellate Authority, i.e., Committee of Director (Projects) & Director (Finance). The Petitioner chose to file the present writ petition without taking recourse to the remedy of appeal, and therefore, this Court is also not willing to entertain this writ petition on that ground also.

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

SUBRAMONIUM PRASAD, J

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