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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14038/2024 & CM APPL. 58765/2024**
CONTRACTORS COUNCIL OF INDIAPetitioner

Through: Mr. Naveen Chaudhary and Mr. Ankit
Siwach, Advocates.

versus

UNION OF INDIA AND ORSRespondents
Through: Mr. Apoorv Kurup, Mr. Akhil Hasija
and Ms. Gauri Goburdhun, Advocates
for R-1.
Mr. Rajiv Nayar, Senior Advocate
with Mr. Milanka Chaudhury, Ms.
Swet Shikha and Ms. Amishi,
Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
04.11.2024

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1. The Petitioner, Contractors Council of India, a Trust, has approached this Court asserting that Respondent No. 4 – Delhi International Airport Limited¹ is a joint venture comprising of a consortium between GMR Airports Limited (Subsidiary of GMR Airports Infrastructure Limited) (with 64% share), Airports Authority of India (with 26% share), and Fraport AG Frankfurt Airport Services Worldwide (with 10% share). Having regard to this constitutional framework of DIAL, the Petitioner urges that DIAL must follow the mechanism of public tendering issued by Government of India



and established through a unified online procurement platform – i.e., the Government e-Marketplace², which is applicable to all government buyers including Central and State Ministries, Government Bodies, and Public Sector Undertakings. In this regard, the Petitioner places reliance on Rule 149 of the General Financial Rules, 2017³ which stipulates that the procurement of goods and services by all Ministries and Department is mandatorily required to be conducted through the GeM portal.

2. Further, the Petitioner also places reliance on Rule 159 of the GFR which states that it is mandatory for all Ministries and Departments of the Central and State Governments, along with their attached and subordinate offices and autonomous bodies, to publish their tender enquiries, corrigenda thereto, and details of the bid awards on the Central Public Procurement Portal, thus indicating the intent of the government to ensure transparency and compliance with statutory procurement procedures.

3. In light of the above, Mr. Naveen Chaudhary, counsel for the Petitioner urges that since DIAL fails to follow the procedural requirement as per the GFR, judicial intervention is necessary. He states that DIAL cannot be allowed to bypass the prescribed process of floating tenders on the Government public procurement portal by exclusively publishing the tenders on its own website; thereby restricting the scope of competition and limiting participation in such tenders to a narrow pool of contractors. He further urges that DIAL is engaged in the practice of awarding tenders solely to contractors of their choice by avoiding the competitive bidding process required under the GFR. Thus, Mr. Chaudhary submits that DIAL has

¹ “DIAL”

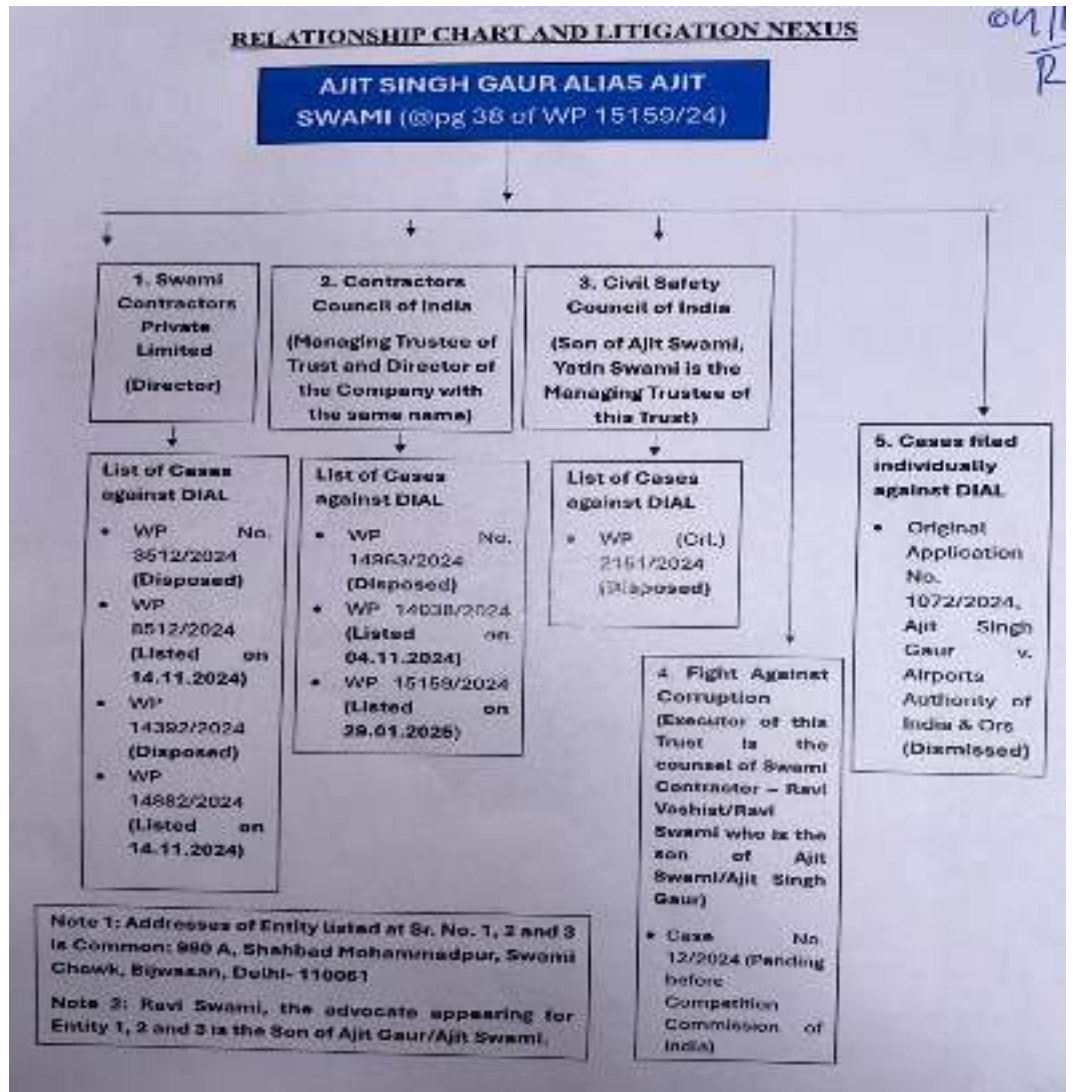
² “GeM”



undermined the principles of transparency and fairness in public procurement which necessitates the intervention of other State actors i.e., Respondent Nos. 1 to 3.

4. On this issue, Mr. Rajiv Nayar, Senior Counsel representing DIAL, highlights that the present writ petition is motivated and does not espouse any public interest which is sought to be canvassed by the Petitioner. In fact, Mr. Nayar urges that the Petitioner entity is only the extension of one Mr. Ajit Singh Gaur *alias* Ajit Swami, who has been engaging DIAL in litigation on one ground or the other. In this regard, he places reliance on a chart, which has been handed over across the board, indicating that Mr. Ajit Singh Gaur has interest in all the entities which have filed writ petitions seeking reliefs of a similar nature as those sought in the instant writ petition. The said chart reads as follows:

³ “GFR”



5. That apart, Mr. Nayar urges that even on merits the Petitioner has no case whatsoever. He submits that the public procurement process of DIAL is governed by the Operation, Management and Development Agreement⁴ dated 4th April, 2006, executed between Respondent No. 3 - Airport Authority of India and Respondent No. 4 - DIAL, which prescribes the terms and conditions for operation, management and development of the Delhi Airport.

⁴ "OMDA"



6. Moreover, Mr. Nayar states that this very question regarding the public procurement process of DIAL, has been urged in an earlier writ petition being W.P.(C) 3905/2015 titled as ***Din Bandhu Dass v. Airports Authority of India & Another***, wherein the stand of DIAL was not only supported by the Airport Authority of India but also by the Union of India. Therefore, Mr. Nayar submits that the arguments of the Petitioner urged in the present writ petition have already been scrutinized by this Court and thus, no judicial review is necessary.

7. The Court has considered the aforementioned contentions and finds merit in the submissions advanced by Mr. Nayar. At this juncture, it would be appropriate to extract the affidavit of Union of India filed in the aforementioned W.P.(C) 3905/2015 and presented to this Court today, wherein Union of India has put forth its stand regarding public procurement by DIAL and has also referred to the provisions of OMDA between Airport Authority of India and DIAL. The said affidavit, reads as under:

I, S.V.Ramana, s/o Shri S.V.L. Narayana aged 51 years, presently working as Under Secretary to Government of India in Ministry of Civil Aviation situated at Rajiv Gandhi Bhawan, New Delhi do hereby solemnly affirm and state as under :-

- 1. State that I am authorized in my official capacity to swear and depose to the present affidavit and as such, I am aware of the facts and circumstances based on the records of the case.*
- 2. The present affidavit is being filed on behalf of Respondent – Union of India, in terms of the order dated 11.01.2019 passed by this Hon'ble Court. This Hon'ble Court vide order dated 11.01.2019 was pleased to observe and direct as under :-*

“1. One of the principal questions involved in the present petition is whether respondent no.2 (DIAL) is required to award contracts by open bidding process. It is DIAL's contention that it is not required to follow an open bidding process for contracts with value less than Rs. 50 cores. It is in this view, DIAL states that it



has limited the bidding process by issuing RFP to only bidders as determined by them.

2. In this regard, respondent no.1 (Airport Authority of India - AAI) was called upon to file an affidavit clearly disclosing its stand. The AAI has filed an affidavit affirming that DIAL has carried out a bidding process. However, this affidavit does not answer the question whether the DIAL is required to carry out an open bidding process (and not limited to select bidders called upon to bid by invitation) for all contracts irrespective of whether the value of the contract is less than Rs.50 crores or not. The AAI is directed to file an affidavit, unequivocally placing its stand on the aforesaid question, before this Court.

3. The Union of India is also impleaded as a party to the present petition. Mr Kirtiman Singh, standing counsel for UOI is present and, on request, accepts notice on behalf of the UOI through Secretary, Ministry of Civil Aviation. Let an amended memo of parties be filed within a period of one week from today.

4. The newly impleaded respondent (UOI) shall file an affidavit clearly stating its stand on the aforesaid question. The UOI is also directed to file copies of relevant extract of any report or observations made by the CAG in this regard.

5. Let the affidavits along with the said documents be filed within a period of two weeks from today.

6. List on 13.02.2019.

7. Order dasti under signatures of the Court Master."

3. The answering Respondent respectfully submits that the relevant provisions of the OMDA between AAI and DIAL are Articles 8.5.7(i)(c)(aa) and 8.5.7(d). Relevant portion of the OMDA has been annexed herewith and marked as ANNEXURE - A.

4. It is respectfully submitted that Article 8.5.7(i)(c)(aa) of the OMDA provides as under:-

"8.5.7 Contracts, Leases and Licenses

*(i) **Sub-Contracting, Sub-leasing and Licensing***

.....

(c) Before entering into contracts or granting any sub-lease or license, the JVC will:

(aa) comply with Applicable Laws including without



limitation (where applicable) the procedures for competitive bidding in the field of public works concessions and in any case for every contract whose value exceeds Rs. 50,00,00,000/- (Rupees Fifty Crores Only) the JVC shall ensure that the selection of the counter party is by way of a competitive bidding procedure; and”

5. The answering Respondent respectfully submits that in terms of Article 8.5.7(i)(c)(aa), competitive bidding is required to be carried out (A) In the field of public works concessions; and (B) and in any case, for every contract whose value exceeds Rs. 50 crores.
 6. The answering Respondent respectfully submits that there are no specific observations of the C&AG with reference to Article 8.5.7(i)(c)(aa) of the OMDA.”
8. Apart from that, Airport Authority of India has also put forth its stand through an Affidavit in W.P.(C) 3905/2015, as follow:

“I, ARUN KUMAR Son of Late sh. K. Gulab Rao aged about 58 years, and presently working as Jt. GM (Fin) with the Airports Authority of India, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi 110 003, do hereby solemnly affirm and declare as under:

1. That I, the deponent am presently working as Jt. GM (Fin) with the Airports Authority of India and as such am familiar with the facts and circumstances of the case and also authorized to depose the instant affidavit.
2. That this Hon’ble Court vide Order dated 11.01.2019 directed the Airports Authority of India to file an affidavit placing its stand on the issue whether DIAL is required to carry out an open bidding process (and not limited to select bidders called upon to bid by invitation) for all contracts irrespective of whether the value of the contract is less than Rs.50 Crores or not.
3. That It is submitted that as per Clause 8.5.7 of the OMDA dated 04.04.2006 executed between Airports Authority of India and DIAL, DIAL is required to comply with the procedure for competitive bidding in:
 - (i) the field of public works concessions; and
 - (ii) for every contract whose value exceeds Rs. 50,00,00,000/- (Rs. Fifty Crores Only).
4. That DIAL is required to comply with the procedures for



competitive bidding in the above two cases and consequently, in the case of contracts (other than public works contracts), whose value is below. Rs.50,00,00,000/- (Rs. Fifty Crores Only), there is no requirement to carry out a procedure for competitive bidding.

5. *It is submitted that the contract in issue is not a public works concession. It is further submitted that Public Works Concession is not defined in the OMDA, however it generally relates to construction, alteration, demolition, installation, or repair work done under contract. Accordingly the present contract is a contract for canteen and is also for a value of Rs. 76,08,000/- for a period of two years and hence there is no requirement to carry out competitive bidding as per the provisions of OMDA.”*

9. The affidavits submitted by the Union of India and the Airports Authority of India make it clear that DIAL’s obligations concerning competitive bidding are governed exclusively by the terms of the OMDA. Specifically, Article 8.5.7(i)(c)(aa) of the OMDA mandates competitive bidding in two scenarios: (a) for contracts related to public works concessions and (b) for any contract exceeding the threshold value of INR 50 crores. The OMDA, therefore, limits the applicability of competitive bidding requirements to these specified cases. Contrary to the Petitioner’s assertion, there is no indication that DIAL is mandated to follow the broader public procurement norms applicable to government bodies under the GFR.

10. This Court cannot disregard the fact that the OMDA represents a binding agreement, outlining the procurement obligations mutually agreed upon by the parties. The scope and limitations within Article 8.5.7(i)(c)(aa) have also been examined by this Court in ***Din Bandhu Dass v. Airports Authority of India & Another*** (W.P.(C) 3905/2015), where both the Union of India and the Airports Authority of India supported DIAL’s position. Therefore, extending the GFR requirements to DIAL would effectively alter



the terms agreed upon in the OMDA, a step that falls beyond the judicial purview of this Court.

11. In light of the above, in the opinion of the Court, the present writ petition seeking a direction to DIAL to float all tenders as per the GFR, is therefore completely devoid of merit.

12. Accordingly, the present writ petition is dismissed along with pending applications.

SANJEEV NARULA, J

NOVEMBER 4, 2024

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