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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16489/2024 & CM APPL. 69559-561/2024**
SHALINI KAPOOR, PROPRIETOR OF SAAR SOLUTIONS

.....Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Ms. Sandeep Sharma, Mr. Anand
Mishra, Ms. Vandita Nain, Ms.
Ayushi Rajput and, Ms. Mehar Anand
Jaitley, Advs.

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Tushar Sannu, Standing Counsel
for MCD with Mr. Manoviras Singh
and Mr. Amar Kumar, AC
(Advertisement Dept. MCD)

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER
28.11.2024

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1. The present writ petition under Article 226 of the Constitution of India, 1950 ('Constitution') has been filed by the Petitioner seeking a mandamus to set aside the 'Short Notice E-Tender' bearing no. CO/Advtt/E-Tender-09/2024-25/MCD/NIT/D-1667 dated 20th November, 2024 ('impugned tender') issued by the Respondent/ Municipal Corporation of Delhi ('MCD') inviting bids for allotment of advertisement rights, for display of advertisement, through clusters of unipoles/individual unipole sites under the jurisdiction of MCD.



2. Learned senior counsel for the Petitioner states that the impugned tender issued by the Respondent is violative of fundamental rights of the Petitioner as the tender conditions are visibly and manifestly arbitrary, unfair and discriminatory.

1.1. He states that the impugned tender was floated vide notice dated 20th November, 2024 and arbitrarily fixes an extremely short period of seven (7) days for submission of bids by the potential bidders, as the last date for bid submission is fixed at 28th November, 2024 upto 16:00 hrs. He states despite this short period Respondent has enlisted a detailed list of mandatory compliances and requirements for the bidder, which are impossible for any new player to fulfill within this short period. He states therefore, the impugned tender violates Article 14 of the Constitution, as it fails to provide a level playing field for all prospective bidders and appears to be designed to favor specific parties and/or existing players.

3. He states that malafide intention of the Respondent can be inferred from the fact that after floating of the impugned tender Respondents issued a corrigendum dated 21st November, 2024 correcting their admitted mistake with regards to the details of display area of the sites/unipoles at serial nos. 2 and 10 of table - 1 of clause 3 and annexure - I of the tender document which erroneously reflected the size of unipole site as 18 sq.mt. instead of 30 sq. mt. He states however, the said corrigendum was inexplicably withdrawn on the same day without assigning any reason.

4. He states that the pre-bid meeting organized on 25th November, 2024 was a mere formality and no concrete clarifications were given at the said meeting. He states in fact, following the advance service of the present writ petition, the reply to the pre-bid queries has been uploaded by the



Respondent on 27th November, 2024. He points out that, in its replies, under serial no. 1, Respondent has once again reverted to the corrigendum clarification issued on 21st November, 2024. He states that these evidences the errors in the impugned tender. He also points out answers given in the reply at serial no. 2 and serial no. 3 to contend that the replies furnished by the Respondent are vague. He states that the impugned tender is silent with respect to the No- Objection Certificate ('NOC') to be obtained by the bidder for displays on unipoles erected on the land falling under the control of National Highways Authority of India ('NHAI'). He states all these ambiguities make it difficult for the bidder such as the Petitioner to take an informed decision to participate in the process.

5. He states that there are past instances where disputes arose between the Respondent/MCD and the third parties (statutory authorities) over the ownership of the allotted sites and the non-issuance of NOC by the said third-parties. He states that such disputes result in loss and harassment to the successful bidders. He states that thus in the absence of the required disclosures and clarifications in the impugned tender, the petitioner is prevented from submitting its bid in the wake of such uncertainties in the tender process.

1.2. He states that the Petitioner has subsisting contracts for unipole sites and is not a stranger to this trade.

6. In reply, learned standing counsel for Respondent/MCD states that the present petition is not bonafide. He states that the Petitioner neither submitted any pre-bid query nor made any representation to the Respondent seeking clarification on the terms of the impugned tender. He states that the Petitioner has no intention to participate in the impugned tender and has



filed the present petition merely to perpetuate the contractual term of the existing contractor. He states that Respondent decided to issue a short tender for the subject clusters due to the impending state elections, as a longer period may fall during the imposition of model code of conduct, which would compel Respondent to extend the term of the existing contractors. He states staying this tender would result in a loss to the public exchequer.

7. This Court has heard the learned counsels for the parties and perused the record.

8. This Court is of the considered opinion that the impugned tender is ostensibly a short notice tender and as such, prescribing a longer time period for submission of bids will defeat the intent and purpose of issuing a short notice tender. The Petitioner during arguments fairly admits that there is no bar against issuing a short notice tender and infact Respondent could have issued a tender with a notice period of 24 hours as well.

9. The Petitioner has contended that the time period from 20th November to 28th November, 2024 was insufficient for carrying out inspection of the 10 Unipole/Flag-Signs-Clusters/Individual Unipole. The said submission is unpersuasive as the all proposed sites are all located within Delhi and could be easily inspected within the time granted by the Respondent. The inability of the Petitioner to carry out inspection of the sites within a week is a reflection on the Petitioner's capability but it does not make the tender conditions arbitrary. The submission of the Petitioner that he is an existing contractor in the trade and has subsisting contracts would lead to an assumption that she is already aware about the commercial viability of the proposed sites. This submission therefore appears to be a smoke-screen for an ulterior objective to interdict the tender process.



10. The Petitioner has not disputed the submission of the Respondent that the Petitioner did not herself raise any query at the pre-bid meeting or make any representations to the Respondent qua the difficulties alleged in this petition. This fact also leads this Court to believe that objections now sought to be raised by filing the petition at this eleventh hour is nothing but a ruse to stall the tender process.

11. The Petitioner has next contended that there is lack of clarity with respect to ownership/NOC of some of the allotted sites falling under the jurisdiction of NHAI and there have been disputes over the said sites in the past. The Petitioner states that until all doubts of the bidders are clarified tender should not be permitted to proceed. A perusal of the impugned tender shows that the terms and conditions of the allotment have been enclosed at Annexure-8. Clause 5 of the said terms and conditions clearly stipulates that the sites will be taken over by the H-1 bidder on 'as is where is basis'. The NHAI sites referred to by the Petitioner during arguments fall in Cluster 7. The impugned tender pertains to 10 Unipole/Flag Signs Clusters/Individual Unipole sites and bidder has an option to bid for 1 or more or all proposed sites and therefore, if the Petitioner was unsure/unclear with respect to NOC and/or NHAI claims about the unipole sites that fall under Cluster 7, it can elect not to bid for the said Cluster. This therefore would not be a ground for the Petitioner or any other bidder to not submit bids for the remaining sites/clusters.

12. The sum and substance of the argument of the petition is her inability to take a commercial decision to participate in this tender process within the short notice period of seven days. In this regard it would be apposite to refer to the Judgement of Supreme Court in the case of *Balaji Ventures v.*



Maharashtra State Power Generation Company¹ wherein Supreme Court has held that a bidder/tenderer cannot be permitted to challenge the tender conditions merely on the ground that such tender conditions are not convenient to the bidder; the relevant extract of the said Judgement is reproduced below :-

*“9. Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. **The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him.** As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.*

10. In the case of Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489, it is observed in para 20 as under:

*“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,*

¹ 2022 SCC OnLine SC 1967



bias, mala fides or perversity. With this approach in mind we shall deal with the present case.” ”

(Emphasis Supplied)

13. Applying the aforesaid law laid down by the Supreme Court and considering the grounds raised in the petition, this Court is of the considered opinion that the terms of the impugned tender cannot be said to be arbitrary, mala fide and/or tailor made as the same are applicable to all the bidders/tenderers.

14. None of the grounds set out in the petition or the arguments made before this Court justify the Petitioner approaching the Court on 28th November, 2024 i.e., the last date for submission of bids for seeking a stay of the impugned tender. This petition is liable to be rejected on this ground alone.

15. This Court is hereby not satisfied that the Petitioner has any real intent to participate in the tender process. Accordingly, this Court is not persuaded by the merits of this petition and the same is accordingly dismissed.

MANMOHAN, CJ

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 28, 2024/hp/AKT

Click here to check corrigendum, if any