



2025:DHC:392-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 786/2025 & CM APPL No.3891/2025****RAJEEV ELECTRICALS**

...Petitioner

Through: Mr. Atul Kr Sinha, Mr. Dayanand
Sharma and Mr. Bharat Bhabota,
Advocates.

versus

GOVT OF NCT OF DELHI & ORS

...Respondents

Through: Mr. Sameer Vashisht, Standing
Counsel (Civil) with Ms. Harshita
Nathrani, Advocate for GNCTD.

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Date of Decision: 22nd January, 2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J : (ORAL)**

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking setting aside of the Office Order dated 24.12.2024 issued by respondent no.2 whereby the Tender No. 59/2024-25/EMD M-351/EE(E) has been cancelled. It further seeks setting aside of the new tender bearing NIT No. 59/2024-25/EMD M-351/EE(E)(2nd Call) dated 06.01.2025.

2. It is stated that on 19.11.2024, the subject Tender bearing NIT No. 59/2024-25/EMD M-351/EE(E) was issued by respondent no.2 for the work of RMO Electrical & Mechanical Services at Vikas Bhawan-II, Delhi



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(SH: Providing & fixing of digital complaint management system). The petitioner claims that the petitioner firm being fully eligible and compliant with the terms of the Notice Inviting Tender (hereafter referred to as 'NIT') submitted its bid, pursuant where to its bid was selected as the lowest bidder (L1). On 09.12.2024, a letter of acceptance of bid of the petitioner was issued after the respondent found the petitioner's bid as fully suitable, technically and financially, and the petitioner was instructed to furnish Performance Guarantee alongwith Original Equipment Manufacturer (OEM) Authorisation.

3. It is the case of the petitioner that the requisites as per the letter of acceptance dated 09.12.2024 were fulfilled by the petitioner and the same was informed to the respondent *vide* letter dated 16.12.2024. The petitioner had submitted the Performance Guarantee amounting to Rs.2,16,200/- by way of FDR and also submitted OEM certificate as per the terms of the NIT. The authorization certificate dated 12.12.2024 issued by RK Technologies in favour of the petitioner was also attached.

4. The respondents *vide* letters dated 17.12.2024 and 20.12.2024 informed the petitioner that complete documents were not submitted by the petitioner firm and a Completion Certificate in favour of proposed Specialised Agency etc. were required to be submitted within two days. The petitioner responded *vide* its letters dated 21.12.2024 and 23.12.2024 clarifying that it submitted its bid on the basis of NIT eligibility criteria to execute the work without associating any Specialised Agency, and hence the requirement of additional documents was not applicable in the case of the petitioner firm. It was also requested that since the petitioner was found compliant of the terms and selected, and has also submitted OEM



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certificate of the given approved make with Performance Guarantee as per the eligibility criteria which too was verified by the department, the petitioner be permitted to commence the work.

5. However, the respondent no.2 issued the impugned order dated 24.12.2024 thereby communicating the petitioner that the Department has decided to cancel the subject Tender on “*technical and administrative reasons*”.

6. It is the case of the petitioner that *vide* letter dated 27.12.2024, it objected to the arbitrary decision of respondent no.2 regarding cancellation of the subject Tender without assigning any reason. However, the respondent no.2 in its reply dated 31.12.2024 cited Condition 14 of the NIT, whereby the tendering authority reserves its right to reject any or all bids without assigning of any reason. It further stated that the OEM authorization submitted by the petitioner is not acceptable as it violates the specified criteria and held the petitioner to be ineligible in terms of the conditions of the NIT.

7. On 02.01.2025, the petitioner again sent a letter explaining its stand. However, the respondent no.2 re-published the NIT on 06.01.2025, terming it as “*2nd Call*”. The petitioner objected to the same *vide* its letter dated 09.01.2025 but to no avail, constraining the petitioner to invoke jurisdiction of this Court under Article 226 of the Constitution of India.

8. Learned counsel appearing for the petitioner staunchly argues that the respondents arbitrarily and contrary to the trite law, changed the rules of the game midway which is impermissible and the impugned cancellation of Tender ought to be set aside. He forcefully contends that once the petitioner was successful in the bid process; declared L-1; furnished the



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requisite OEM Certificate which was duly verified; furnished the Performance Guarantee as sought by the respondents, there was no way the respondents could have unilaterally cancelled the tender process.

9. Learned counsel for the petitioner vehemently submits that the impugned cancellation order dated 24.12.2024 is bereft of any reasons and falls foul of the ratio laid down by the Supreme Court in ***Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.***, reported in (1979) 3 SCC 489 and ***Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors.***, reported in 2024 SCC OnLine SC 1682. According to him, both the aforementioned authorities unequivocally hold that the State ought to be fair and transparent in contractual matters relating to NITs etc. As per him, even if the respondent was compelled to cancel or annul the bid/tender, it owed a bounden duty to the petitioner to be informed of proper reasons for such drastic action of cancellation, particularly after the entire bid process was successfully completed. According to him, the invocation of Condition 14 of the NIT to cancel or annul the Tender, that too without affording any reasons, is in the teeth of the aforesaid judgements. Moreover, learned counsel for the petitioner states that the respondents came up with lame excuses regarding declaring the petitioner ineligible on non fulfillment of certain specifications regarding OEM Certificate, though the said criteria was correctly fulfilled by the petitioner as per the terms of NIT.

10. Having heard learned counsel for the petitioner, we are not persuaded to interfere with the impugned action taken by the respondents. The reasons are as follows.

11. Since the challenge is predicated on whether the respondents can



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cancel or annul any bid process initiated post NIT, it would be apposite to extract Condition 14 of the NIT. The same reads thus:

“ 14. The competent authority on behalf of the President of India does not bind itself to accept the lowest or any other bid and reserves to itself the authority to reject any or all the bids received without the assignment of any reason. All bids in which any of the prescribed condition is not fulfilled or any condition including that of conditional rebate is put forth by the bidders shall be summarily rejected.”

A plain unambiguous reading would show that Condition 14 contemplates that the respondent is well within its power to cancel or annul the bid/tender at any stage without assigning any reasons. This issue is no more *res integra*, with the judgement of the Supreme Court in **IJM Corporation Berhad vs. NHAI & Anr.**, SLP(C) No.10811/2022 decided on 05.07.2022. We consider it apposite to extract the relevant paragraphs which reads thus:

“ Apart from the reasons recorded by the High Court, this Court finds that a tenderer has no right to question the cancellation of the tender process or the action of the employer not to accept a single tender. Moreover, our attention has been drawn to the tender documents and, in particular, Volume I of the revised RFP, that is, bid documents for International Competitive Bidding under a Single Stage Bidding Process will be precisely for six laning of Kagal – Satara Section of NH-48 under the Bharatmala Pariyojana.

Clause 2.16 provides that notwithstanding anything contained in the RFP, the Authority reserves the right to reject any bid and to annul the bidding process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event the NHAI rejects or annuls all the bids, it may, in its discretion, invite all eligible bidders to submit fresh bids hereunder. Clause 3.8.2 of the Bid document clearly provides that in the event highest bidder withdraws or is not selected for any reason, the authority shall annul the bidding process and invite fresh bids. In the event the authority rejects or annuls all the bids, it may, in its discretion invite all eligible bidders to submit fresh bids.

The NHAI had clearly reserved to itself the right to annul the bidding process. Clause 6.2 provided that the NHAI might have sole discretion and without incurring any obligation or liability, suspend



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and/or cancel the bidding process and/or amend and/or supplement the bidding process or modify the dates or other terms and conditions relating thereto.

The petitioner submitted its tender in terms of the RFP and obviously after going through the terms and conditions of the RFP. It is not open to the petitioner to question the annulment of the tender process.

This Court is also unable to accept the emphatic submission of Mr. Ranjit Kumar, learned senior counsel that the rejection is totally arbitrary and unreasonable. The decision has apparently been taken having regard to the financial interest of the NHAI. However, it is not necessary for this Court to go into the calculations presented by Mr. Parag P. Tripathi, learned senior counsel appearing on behalf of the NHAI since this Court does not sit in appeal over the merits of an administrative decision to annul the tender process, in a Special Leave Petition arising out of an application under Article 226 of the Constitution.”

[Emphasis supplied]

12. In the present case, though the petitioner was declared as successful L-1 bidder; he was directed to furnish the OEM Certificate and the Performance Guarantee which it did, yet, no contract was executed between the parties to contemplate that valuable and enforceable rights within such contractual terms have arisen. In that view of the matter, it cannot be countenanced that the respondents, in such circumstances, were precluded from taking appropriate decision under Condition 14. Read otherwise, the language of Condition 14 would be rendered *otiose*.

13. Having said that, it is necessary to examine the judgement of the Supreme Court in ***Subodh Kumar Singh Rathour*** (*supra*) and the facts obtaining therein leading to the ratio laid down. This issue was examined by a learned Coordinate Bench of this Court in ***VRC Construction (India) Private Limited vs. NHAI***, 2024 SCC OnLine Del 8447 in somewhat similar situation. In that case too, the petitioner therein had challenged the annulment/cancellation of the Tender raising similar grounds. In the



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context of reliance upon **Subodh Kumar Singh Rathour** (*supra*), it was held in para 28 of **VRC Construction** (*supra*) as under:

*“28. So far as the ratio laid down by the Supreme Court in Subodh Kumar (*supra*) relied upon by the petitioner is concerned, it is apparent that in that case, the appellant therein had already been issued work orders which were being executed by it. In the interregnum, the respondent therein had canceled the Tender on account of technical fault. The Supreme Court after perusing the records and the internal notings of the files maintained by the respondent therein, found that there was nothing to suggest that there was technical fault in the Tender resulting in financial loss nor there is possibility of fetching higher License Fee. In fact it was observed by the Supreme Court that the respondent therein was of the opinion that the Tender was financially beneficial to it. Finally, the Supreme Court held that even if it was assumed that there was a technical fault, which if rectified, would possibly generate more revenue, the same could not be said to be a cogent reason for cancelling an already existing Tender. It was in those peculiar circumstances, the Supreme Court interfered with the cancellation of the Tender. In fact it was observed by the Supreme Court that since the Government of West Bengal had merely transferred the operation and maintenance of the underpasses including the right to receive the revenue from KMDA (Kolkata Metropolitan Development Authority) to KMC (Kolkata Municipal Corporation) and therefore, there will be no effect on any rights that accrued in favour of the appellant. Resultantly, the notice of cancellation was quashed. However, in the present case, this Court has already found the action of annulment of Tender justifiable. Besides, it was only at the stage of the petitioner having been declared L-1, that such annulment took place which did not prejudice it. That apart, the petitioner was afforded an opportunity to submit its bid in the freshly issued Notice Inviting Bid. Thus, the ratio could not be made applicable to the facts of this case.”*

Thus, it is clear that the ratio in **Subodh Kumar Singh Rathour** (*supra*) is in a very different context in the fact situation obtaining therein and cannot be applied to the facts in the present case.

14. In so far as the judgement in **Ramana Dayaram Shetty** (*supra*) is concerned, the Supreme Court in that case was examining an issue where the standard of eligibility was relaxed after the Tender was opened, at a later stage, and the ratio laid down and relied upon by the petitioner was in



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that context. However, there is nothing on record, neither has it been pleaded or argued on behalf of the petitioner to remotely suggest that there was any change in the tender conditions unilaterally by the respondents which would tantamount to ‘*changing rules of the game midway*’. Thus, the said judgement is distinguishable and not applicable to the facts of the present case.

15. Hence, the ratio laid down in ***Subodh Kumar Singh Rathour*** (*supra*) as well as ***Ramana Dayaram Shetty*** (*supra*) would not enure to the benefit of the petitioner. The action taken by the respondent in the impugned order of cancellation cannot be interdicted or set aside for the aforesaid reasons.

16. As an upshot of the aforesaid analysis, we are not persuaded to interfere in the impugned action taken by the respondents and thus, we dismiss the present writ petition alongwith the pending applications, if any.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 22, 2025/rl