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

+ **W.P.(C) 5133/2024& CM APPL. 21013/2024**

MAISUR PROJECTS PVT LTD

.....Petitioner

Through: Mr. Himalaya Singh, Ms. Panchajanya
Batra Singh and Mr. Mahavir Singh,
Advs.

versus

STATE OF NCT OF DELHI AND ORS.

.....Respondents

Through: Mr. Amiet Andlay, Adv. for R-2.
Mr. Anant Dev, Adv. for R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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11.07.2025

1. This petition has been filed seeking quashing of Notice Inviting Tender ('NIT') No.94/2023-24 ('the tender'), issued by office of the Executive Engineer, Delhi Transport Infrastructure Development Corporation Ltd. ('DTIDC') and proceedings emanating, therefrom.
2. The tender was issued for providing '*Security and Sanitation Services*' at *Zonal offices, Head office, 06 Nos. Automated Driving Test Tracks (ADTTs), ISBT, Anand Vihar and ISBT Sarai Kale Khan.*
3. The estimated cost put to the tender was *Rs. 19,68,27,722/-(Rupees Nineteen Crores Sixty-Eight Lakhs Twenty-Seven Thousand Seven Hundred Twenty-Two Only)*; the last date of submission of bid was 01st March 2024.
4. After approval of NIT by Competent Authority of DTIDC and



Transport Department, the said tender was floated on “<http://govtprocurement.delhi.gov>”.

5. A Committee was constituted for tender evaluation *vide* order dated 15th February 2024; five agencies participated in the tender process.

6. It is an admitted position that petitioner did not participate in the tender process.

7. The technical bids were opened and scrutinized on 06th March 2024 and 07th March 2024 and all the bidders were recommended as ‘*technically qualified*’.

8. The financial bids were opened on 08th March 2024 after deliberation by the Committee and the most competitive rate had been quoted by *M/s Well Protect Manpower Services Pvt. Ltd. (respondent no.6)*. The Committee, therefore, recommended that the *work* be awarded to respondent no.6 by virtue of it being the L-1 bidder.

9. Performance Guarantee was submitted on 11th March 2024 and *Letter of Award* was issued on the same day. As per respondent’s counsel, respondent no.6 has since, taken charge of work.

10. The challenge by petitioner is to the effect that the tender was issued in violation of Rule 149 of General Financial Rules, 2017(‘**the Rules**’), as also, Office Memorandum dated 26th April 2017, issued by Finance (Expenditure) Department, GNCTD,

11. It was contended that as per Office Memorandum dated 26th April 2017, procurement of goods and services by Ministries/ Departments will be mandatorily made through the *Government e-Marketplace* (‘**GeM**’) portal for goods and services available, thereon.

12. Petitioners’ contention was that the said services were available under



the head ‘*Manpower Outsourcing Services- Minimum wage*’ on GeM portal and Ministries/Departments are availing such services through the said portal.

13. It was contended that the petitioner could not participate in the tender process since the tender had not been invited through the GeM portal.

14. This aspect was suitably responded to, by respondent no.2, in the Counter Affidavit filed by them. The services which were the subject matter of the tender, were not available on the portal. In this regard, reliance is placed on the *GeM Availability Report & Past Transaction Summary*, appended to the said Counter Affidavit.

15. Further, reference was made to Rule 147 of the Rules, which empowers Ministries/Departments to make their own arrangements for procurement of goods and services, which were not available on the GeM portal.

16. The said tender was therefore published on <http://govtprocurememnt.delhi.gov.in>, after taking approval of the Competent Authority DTIDC and the Transport Department, as also, due evaluation by the Committee set up by the Competent Authority.

17. Upon being queried by the Court, as to how the petitioner had *locus standi* to move this petition (*the petitioner being a non-participant in the tender process*), no satisfactory response was received.

18. In any event, the Court is not inclined to accept the contention of the petitioner, in light of the fact that they did not participate in the tender process.

19. At this juncture, it may be apposite to refer to the decision of the Supreme Court in *NHAI v. Gwalior-Jhansi Expressway Ltd.*¹, wherein the Court opined that a person who does not participate in the tender process, cannot object to the same, especially when the validity of the underlying

¹ (2018) 8 SCC 243



terms of the tender documents has not been challenged:

“20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the



non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

20. The observations made by the Supreme Court in **Gwalior-Jhansi Expressway Ltd.** (*supra*) were subsequently relied upon in, **Primatel Fibcom Ltd. v. Indian Oil Corpn. Ltd.**², **Jai Ambey Emergency Services (I) (P) Ltd. v. Commr.**³ and **Forsta Meditech (P) Ltd. v. State of Maharashtra**⁴.

21. The petitioner did not participate, despite the tender having been listed on the government procurement site and five (5) bidders having had participated in the process.

22. Even otherwise, it was stated in the Counter Affidavit that services were required for, “*Providing security and sanitization services along with the supply of mechanized road sweeping machine, pressure machine, vacuum machine & high pressure jet type cleaning machine.*”

23. As per *GeM Availability Report & Past Transaction Summary*, appended to the Counter Affidavit, the search result was, “*category not available on GeM*”.

² 2024 SCC OnLine Del 4278

³ 2024 SCC OnLine Bom 4000

⁴ 2024 SCC OnLine Bom 2708



24. Accordingly, the petition stands dismissed, as the petitioner did not participate in the tender process, thus, in our opinion, the petitioner will have no locus to challenge the tender document, especially when the entire tender process has been completed, the tender has already been awarded to respondent no.6 on 1st April 2024 and the work has already commenced. For these reasons we are of the opinion that at the instance of the petitioner, this petition cannot be entertained.

25. Pending applications, if any, be rendered infructuous.

26. Order be uploaded on the website of this Court.

DEVENDRA KUMAR UPADHYAYA, CJ

ANISH DAYAL, J

JULY 11, 2025/RK/sp/kp