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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7704/2023 CM APPL. 29796/2023**
M/S ADITYA CONSTRUCTION COMPANYPetitioner
Through: Ms. Shikha Goel, Adv.

versus

PUBLIC WORKS DEPARTMENT & ORS.

.....Respondent
Through: Mr. Avishkar Singhvi, ASC with Mr.
Naved Ahmed, Mr. Vivek Kumar
Singh, Advs. for GNCTD.
Mr. Vidit Gupta, Adv. for R-4.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER
07.01.2025

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1. The petitioner has filed the present petition challenging various notices inviting tenders issued by respondent No.3 for desilting of drains under various sub divisions of SWR-II. A tabular statement setting out the details of the notices inviting tenders (7 in number), as stated in the counter affidavit, is reproduced below:

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S.No.	NIT No.	Name of work	Date of Uploading of Tender
1	12/EE/SWR-II/PWD/2023-24	A/R & M/O Various Roads under PWD Sub Dvn -21, SWR-II, during 2023-24. (SH:-	01.05.2023



		Desilting of drains under sub division -21, Dabri, New Delhi).	
2	13/EE/SWR-II/PWD/2023-24	A/R & M/O to various roads under division SWR-II, PWD Delhi during 2023-24. (SH: Desilting of storm water drain by mechanical Super sucker machines Road under Sub Division-24).	02.05.2023
3	14/EE/SWR-II/PWD/2023-24	A/R & M/O Various Roads under PWD Sub Dvn- 23, SWR-II, during 2023-24. (SH:- Desilting of drains and Providing & Installation of Sewerage Pump at Different Vulnerable Location under sub division-23, Jaffarpur, New Delhi).	01.05.2023.
4	15/EE/SWR-II/PWD/2023-24	A/R & M/O to various roads under division SWR-II, PWD Delhi during 2023-24. (SH: Desilting of storm water drain by mechanical Super sucker machines	02.05.2023



		on Goyla Deenpur Road under Sub Division-25, division SWR-II, PWD Delhi during 2023-24.)	
5	16/EE/SWR-II/PWD/2023-24	A/R & M/O to various roads under division SWR-II, PWD Delhi during 2023-24. (SH: Desilting of storm water drain by mechanical Super sucker machines on Najafgarh-Bijwasan Road under Sub Division-25, division SWR-II, PWD Delhi during 2023-24.)	02.05.2023
6	17/EE/SWR-II/PWD/2023-24	A/R & M/O to various roads under division SW R-II, PWD Delhi dg 2023-24. SH:- Desilting of Storm water Drain by Mechanical Operated Super Sucker Machines (Najafgarh Dhansa Road and Najafgarh Kakrola Road) under Section-I, Sub-Division-II, SWR-II, Najafgarh New Delhi.	02.05.2023



7	18/EE/SWR-II/PWD/2023-24	A/R & M/O to various roads under division SW R-II, PWD Delhi dg 2023-24. SH:- Desilting of Storm water Drain by Mechanical Operated Super Sucker Machines (Najafgarh-Phirni Road, Najafgarh Nangloi Road, Najfgrh Jharoda & Najafgarh Dichaon Road) under Section-II, Sub-Division-II, SWR-II, Najafgarh New Delhi.	02.05.2024
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2. It is the petitioner's case that respondent no.4 (who was declared as successful bidder) had submitted its bids pursuant to the notices and was successfully awarded the contract for executing the work in respect of three (out of seven) tenders.

3. It is stated that respondent no.4's bid was supported by the necessary affidavit that he had '02(Two) Nos. Super Sucker Machines' and '04(Four) Nos. Dump Tanks' which would be deployed exclusively in the divisions of SWR-II till completion of the work/ desilting work.

4. The petitioner contends that the tender conditions are arbitrary inasmuch as it had permitted a bidder to submit multiple bids for works in various sub divisions on the basis of the same machines.



5. The learned counsel for the petitioner submits that if the contracts had been awarded to seven different bidders, then each bidder would necessarily have to deploy the machines in the concerned division till completion of the work/ desilting of work. However, the number of machines deployed would reduce drastically if the same contractor was awarded the work on the basis of the same set of machines.

6. Mr. Avishkar Singhvi, learned counsel appearing for the respondents submits that the only requirement in the tender was that the machines deployed by the bidder would not be removed from a particular division. The same would be used to complete the work assigned to the work contractor till the same was complete. He has drawn the attention of this court to the Instructions to Contractors which are set out below:

“IX Scanned copies of RCs of owning of 02(Two) Nos. Super Sucker Machine alongwith 04(Four) Nos. Dump Tanks, 02(Two) Nos. JCB and 01(One) No. Truck Duber.

XI An affidavit submitting undertaking that the 02 Nos. Super Sucker machines and 04 Nos. Dump Tanks will be deployed continuously and only in Division SWR-II till completion of work/ Desilting work”

7. He submits that the tender conditions cannot be faulted.

8. We consider it apposite to set out the relevant extracts of the counter affidavit, which sets out the reasons for placing the said condition. The same are set out below:

“3. As the main condition of all the NIT is 02 no Super sucker machines and 04 dump tanks that would have to be deployed continuously and only in division SWR-II till completion of work. It is pertinent to note here that there are very few contractors who have their own super sucker machines. Super sucker machine is the main equipment for Desilting drains and that is why the PWD wanted to make sure that work must be awarded to the agency whose super sucker



machine are not deployed in any other Division or department.

4. It is further stated that as far as 02 no. super sucker and 04 no. Dump tank Deach for 07 separate NITs are concerned it is submitted that it is clearly mentioned in the condition that 02 Nos. Super Sucker machine and 04 no dump tank will be deployed continuously in the entire Division, but did not restrict the bidders to keep these machines in the sub-division office.

5. It is stated that the agreement is made between the bidder and the Executive Engineer SWR-II Division. Further, the entire drains of all the 07 No NIT comes under the Jurisdiction of this division, i.e. South-West Road-II and all drains are divided into seven parts so that the work could run smoothly and all the five Assistant Engineers could be engaged in supervision of desilting work. It is stated that if such conditions were not kept in the tender, then many such agencies would have participated in the tendering process, which are already using the same super sucker machines in some other department/division. The main objective of imposing this condition is to only seek bids from bidders that can deploy and keep these super sucker machines in the division pertaining to the answering respondent and that those bidders should put their machine on desilting work only in this division.

6. It is stated that if Super Sucker machines are deployed in more than one division or department then, it would not be in direct control of the concerned agency. Furthermore, super sucker machines are continuously required to in case any flooding situation arises then the Respondents would need these machine to deal with it. Keeping emergency conditions in mind, 02 super sucker machines and 04 dump tanks are used regularly for desilting and it is kept at centrally location for tackling any emergent condition within the division jurisdiction.

7. It is stated that if different agencies come forward in all the 7 Nos. tenders and they all have two super sucker machines then the respondents are not averse to the same, but the idea behind the NITs was to keep at least 2 super sucker machines for the entire division, because the entire desilting work to be done in 7 different zones was not to be done at once simultaneously, but at separate times in a phased manner.



8. It is stated that the bidders that bids the lowest in more than one tender and they have only two super sucker machines even then, it is acceptable to the PWD, provided that their machines are not being used in any other division because according to the PWD's conditions both machines will remain standing in the division office till completion of work. That is why, it is not necessary that a bidder which applies in all seven no. of tenders, then they would have to provide 14 super suckers and 28 dump tanks in the division office."

9. We are not persuaded to accept that the tender conditions are arbitrary, unreasonable or warrant any interference in these proceedings.

10. It is apparent that the bidder furnishing its bid in respect of one or more of the tenders floated would necessarily have to commit two number of Super Sucker Machines and four Dump Tanks for executing of the works in the same division – SWR-II. He would not be permitted to remove the machines from the said division till the completion of the works.

11. It is also important to note that the contracts have already been executed by respondent no.4 and the learned counsel appearing for respondent no.4 submits that the payments for the same have been released to it. The contracts in question are thus complete.

12. In view of the above, this court is not persuaded to accept that any orders are required to be passed in this petition. The same is, accordingly, disposed of. Pending applications are also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 07, 2025

N.Khanna