



2025:DHC:4357-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 7022/2025, CM APPL. 31604/2025, CM APPL. 31605/2025 & CM APPL. 31606/202

SCIENTIFIC ENGINEERING HOUSE PVT LTDPetitioner

Through: Mr. Kailash Pandey and Mr. Ranjeet Singh, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Shoumendu Mukherji, SPC with Ms. Megha Sharma, Mr. Aniruddha Ghosh, Mr. Anshuman Mohanty, Advocates, Mr. Vedansh Anand, GP and Major Anish Muralidhar for UOI.

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Date of Decision: 22.05.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J: (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India, 1950, seeking quashing of the Tender Summary Reports dated 21.02.2025, whereby the bid of the petitioner was rejected by the respondent no.1 on the ground of “non-compliance of the technical specifications”. The petitioner further seeks direction to the respondent no.1 to not to finalize the work order/commencement of supply of material or act arising out from the Bid/Request For Proposal (RFP) No.:A/17863/Proc/24-25/V5/Sight Dial/1386/OS-16B/Proc ‘A’/1386 dated

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 26.05.2025
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30.10.2024 for the supply of 'V5/1240-002055, Sight Dial and Mount Cased-104A', in favour of the respondent no.2/India Optel Limited (IOL) and to start the process of bid/RFP de novo.

2. It is the case of the petitioner that on 30.10.2024, the Ministry of Defence (Army) invited bids for the supply of Sight Dial and Mount Cased -104A for total quantity of 1386 numbers in two bid system. The said bid was online under Open Tender Enquiry (Two Bid System) and the said bid/RFP was divided into 5 parts. In terms of the said technical bid requirement, the petitioner had submitted all the required documents online on 25.11.2024.

3. Thereafter, *vide* a Tender Summary Report dated 21.02.2025, the petitioner came to know that for the tender in question, only one bid out of 9 bids which had been submitted was accepted by the tendering authority/respondent no.1, whereas, remaining 8 bids were rejected on the ground of "non complied with technical specification" including the bid of the petitioner. Subsequently, the petitioner wrote a letter dated 23.02.2025 to Additional Director General (QA), Ministry of Defence requesting for issuance of Board of Officers' Report in respect of the said tender to review the findings and to understand the specific reasons as to why the bid of the petitioner was deemed non-compliant with the technical specifications.

4. Being aggrieved by the said action of the respondent no.1, the petitioner preferred the present writ petition.

5. On a query by this Court as to the reasons why the petitioner is approaching this Court belatedly while it was technically disqualified on 21.02.2025 on the basis of Tender Summary Report of the same date, learned counsel was unable to give a satisfactory response. It is significant to note that the present dispute revolves around the Defence procurement



for Armed Forces which is of a crucial and urgent nature and cannot brook any delay. That apart, from the averments made in para 27 of the petition, it is apparent that the petitioner is aware that not only was the financial bid opened in the interregnum, a letter of award has already been issued to respondent no.2, who is the successful bidder. For clarity and convenience, para 27 is extracted hereunder:

“27. The Petitioner respectfully submits that in the present tender, only one bid submitted by Indian Optel Limited (IOL), has been technically qualified and price bid of the said bidder has been opened and Supply Order issued to India Optel Ltd.. The Respondent No.2 - IOL is a defence PSU and was part of the erstwhile Ordinance Factory Board, which was dissolved in the year of 2021-22. It is further submitted that the awarding a supply order to the Respondent No.2 by eliminating the bid of the petitioner, and particularly the petitioner's bid on the spurious grounds (for non-meeting of technical specification) is, being challenged by the present petitioner.

[Emphasis supplied]

It is clear from the above that the tender under challenge has already been awarded to the successful bidder who appears to be proceeding to execute the contract. In such circumstances and keeping in view the extremely crucial nature of defence procurement, each day's delay would be fatal to the case of the petitioner. Furthermore, as noted above, learned counsel for the petitioner has been unable to give any satisfactory or cogent reasons as to why the petitioner did not approach this Court from 21.02.2025 when the technical bid of the petitioner was held to be disqualified.

6. It is trite that Constitutional Courts while exercising powers of judicial review under Article 226 of the Constitution of India ought to be loathe in interfering in tender matters of such sensitive and crucial nature particularly in regard to defence procurement, especially at the behest and



instance of a party which is not vigilant and sleeps over its rights, if any, since valuable vested rights get conferred upon third parties in the interregnum. In ***Siemens Public Communication Networks (P) Ltd. v. Union of India, (2008) 16 SCC 215***, the Hon'ble Supreme Court has observed as under:

“40. On examining the facts and circumstances of the present case, we are of the view that none of the criteria has been satisfied justifying Court's interference in the grant of contract in favour of the appellants. When the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases principles of equity and natural justice stay at a distance. If the decision relating to award of contracts is bona fide and is in public interest, courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.

41. In the instant case, as has been rightly contended by the learned Additional Solicitor General appearing for the Union of India, the contract is in respect of sensitive army equipments which are urgently needed. It cannot be held that the process adopted or decision made is so arbitrary or irrational that no responsible authority acting reasonably or in accordance with the relevant law could not (sic) have taken such a decision. The inevitable conclusion is that the appeal is devoid of any merit and deserves dismissal, which we order. However, there shall be no order as to costs.”

The Supreme Court in ***Manohar Lal Sharma v. Narendra Damodardas Modi, (2019) 3 SCC 25***, has observed the following with regard to judicial review in contracts pertaining to defence procurement:

“9. We also cannot lose sight of the tender in issue. The tender is not for construction of roads, bridges, etc. It is a defence tender for procurement of aircrafts. The parameter of scrutiny



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would give far more leeway to the Government, keeping in mind the nature of the procurement itself. This aspect was even emphasised in Siemens Public Communication Networks (P) Ltd. v. Union of India [Siemens Public Communication Networks (P) Ltd. v. Union of India, (2008) 16 SCC 215] . The triple ground on which such judicial scrutiny is permissible has been consistently held to be “illegality”, “irrationality” and “procedural impropriety”.

7. Having regard to the fact that the contract has already been awarded to respondent no.2 who is underway to execute the contract, we find no reasons much less any justifiable reasons to interfere or interdict with the tender or the letter of award/contract.

8. The petition is bereft of any merits and is resultantly dismissed, however, without any order as to costs. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 22, 2025/yrj/rl