2025:DHC:6511-DB

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

\+ W.P.(C) 16676/2024 & CM APPL. 70536/2024

UDAI COLD STORAGE AND ICE PLANT PVT. LTD.
.....Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with Mohd. Fuzail Khan, Ms. Shisba Chawla and Mr. Mohit Garg, Advocates

versus

GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Sameer Vashisht, Standing Counsel with Mr. Manashwy Jha, Advocate for GNCTD.

% ***Date of Decision: 31.07.2025***

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

JUDGEMENT

TUSHAR RAO GEDELA, J: (ORAL)

1. Present writ petition has been filed seeking quashing of the order/notification dated 28.11.2024 passed by the respondent/Transport Department, GNCTD, whereby the Tender for Operation & Maintenance of Automated Vehicle Inspection & Certification (I&C) Centre at Jhuljhuli, Delhi has been cancelled. The petitioner further seeks a direction to the respondent to issue Letter of Award and Work Contract in favor of the petitioner, being the L1 bidder.

2. On 27.10.2023, the subject tender was floated by the respondent/Transport Department of Govt. of NCT of Delhi. The petitioner had participated in the subject tender and subsequently, was declared L1 on

05.11.2024. Accordingly, the petitioner sent various correspondences requesting the respondent department to issue the Letter of Award (LoA) to the petitioner. However, the respondent department *vide* its letter dated 13.11.2024 directed the petitioner to justify its financial bid in the light of the Office Memorandum dated 06.02.2020 issued by Govt. of India, Ministry of Finance in respect of Predatory Pricing/Abnormally Low Bids and to submit the price analysis along with rationale of its financial bid in relation to scope, schedule, allocation of risks, responsibilities and other requirements of the bid documents. In response, the petitioner submitted its reply dated 17.11.2024 alongwith supporting documents to justify its financial bid. An additional reply was also submitted by the petitioner on 18.11.2024.

3. However, the respondent department *vide* order dated 28.11.2024 notified that the subject tender has been cancelled. Aggrieved thereof, the present writ petition has been filed.

4. Mr. Sanjay Ghose, learned senior counsel appears for the petitioner and admits at the outset that the financial bid submitted by it is way below the estimated cost of the project. He explains that though the petitioner had submitted its financial bid at Rs.12,69,600/-, after proper analysis of all the expenses including the salary expenses of 18 staff in compliance with the minimum wages as notified by the Labour Department, GNCTD, the expected yearly expense comes to Rs.66,25,608/-.

5. Learned senior counsel contends that the petitioner is willing to bear loss at this stage since it is new to the field and seeks to obtain 'Experience of Operation of automated Vehicle Fitness Centre' from Third Party by 'Sharing of Equity' in the proposed business and simultaneously, payment of considerable 'Upfront Payment', which would make the petitioner

eligible to participate in various other tenders being floated from time to time.

6. It is further argued that the issue of justification of the lower bid does not have any effect on the capability and capacity of the petitioner for carrying out the tender. It is stated that the petitioner was declared as successful bidder after thorough examination of the bid documents and it was only after going through a fair and transparent tender process, the petitioner was declared as a successful bidder. It is also contended that M/s. Udai Cold Storage and Ice Plant Pvt. Ltd., its directors and their other companies have very sound financial strength. Moreover, *vide* its reply dated 17.11.2024, the petitioner had also offered to give additional security to the respondent department, if required, apart from the mandatory Performance Guarantee, either in the shape of Fixed Deposit or Bank Guarantee or in any form as the department thinks suitable and the petitioner had assured to the Authority regarding successful completion of the contract terms, irrespective of the expenses of the said tender project.

7. Learned senior counsel further argues that an opportunity of hearing ought to have been granted to the petitioner before the subject tender was cancelled, affecting the civil rights of the petitioner. He also submits that the petitioner was never informed of the reasons for cancellation of the subject tender.

8. We have heard Mr. Ghose, learned senior counsel for the petitioner and Mr. Sameer Vashisht, learned Standing Counsel for the respondent, and perused the record.

9. The argument canvassed on behalf of the petitioner appears to be contrary to the law laid down by the Hon'ble Supreme Court in ***Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd.***

& Ors.: (2016) 8 SCC 446. In ***Bakshi Security*** *(supra),* the Hon'ble Supreme Court was considering a case where Bakshi Security & Personnel Services (P) Ltd. and another bidder, namely, M/s Devkishan Computed (P) Ltd. in that tender, had submitted a bid price of Rs.2,92,93,944/- and Rs.2,77,68,000/- respectively. The Tender Evaluation Committee had rejected the same on the ground that both the bids were below the wage requirement as per the Minimum Wages Act. Aggrieved thereof, M/s Devkishan Computed (P) Ltd. had filed a writ petition challenging the disqualification and the High Court of Gujarat had allowed the writ petition directing that all the three bidders in that tender should be given an opportunity to revise their bids subsequent to the minimum wage calculated by the department. It appears that the Transport Department of the Govt. of Gujarat furnished the calculation by the Labour Department of the minimum wages plus bonus payable for the contract which was reckoned at Rs.3,00,92,346/-. Despite such calculation having been furnished, Bakshi Security stuck to its original bid figure of Rs.2,92,93,944/-, whereas M/s Devkishan Computed (P) Ltd. by its communication sought to justify its original bid price of Rs.2,77,68,000/- by assuring that even if it incurs a cost of Rs.3,00,92,346/, it is ready to accept the contract at the original bid price and would sustain the loss.

10. The Labour Department subsequently gave a second opinion to mean that Data Entry Operators are ordinarily to be treated as 'skilled workers', however, for the said tender, they should be treated as 'semi-skilled workers' and reworked and revised the minimum wage plus bonus to Rs.2,91,00,000/-. Consequent thereto, it appears that the tender was awarded to M/s Airan Consultant (P) Ltd. who was the third bidder.

11. M/s Devkishan Computed (P) Ltd. preferred a second writ petition before the High Court which was allowed and the decision of the authorities in awarding the contract to M/s Airan Consultant (P) Ltd. was quashed and consequently, it was directed that the offer of M/s Devkishan Computed (P) Ltd. be treated as matching with the revised minimum wage calculation. It was this order dated 22.02.2016 that was challenged by Bakshi Security (P) Ltd. before the Hon'ble Supreme Court by way of a Special Leave Petition.

12. While considering the similar factual background and almost similar arguments as raised in the instant writ petition, the Hon'ble Supreme Court in ***Bakshi Security*** *(supra)* repelled such contentions and held that the conditions mentioned in the tender are not only to be strictly construed but also to be implemented with same rigor. The Court observed that one of the conditions prescribed that if the component of salary quoted is less than the minimum wage prescribed, the bid would be liable to be rejected. Predicated on the said clause, the said appeal was allowed in favor of Bakshi Security (P) Ltd.

13. In the present case, it appears that the tendering authority, after finding that the petitioner had quoted an abnormally low bid, *vide* letter dated 13.11.2024, relying on Clause 6.8.6 of the Manual of Procurement of Consultancy and Other Services issued by the Department of Expenditure, Ministry of Finance, Govt. of India, sought justification from the petitioner. Clause 6.8.6 of the said Manual is extracted hereunder:

> *"An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other*

requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal .....”

14. The aforesaid letter was premised on the basis that the category of manpower requirement was ‘skilled workers’ and the rate of minimum wages according to the Labour Department is Rs.21,813/- per month and the rate quoted by the petitioner appeared to be in ignorance of the minimum wages. Interestingly, the petitioner *vide* its reply dated 17.11.2024 under the head of Price Analysis itself reckoned that the monthly expenses would approximately be Rs.5,52,134/- which would come to Rs.66,25,608/- per year. On a query put by this Court regarding this admission, learned senior counsel sought to justify by canvassing that the petitioner would sustain all the losses since it is otherwise a financially viable entity. This was the same argument or explanation tendered before the Supreme Court in ***Bakshi Security*** *(supra)* which was repelled.

15. We have also examined the tender documents which contain Clause 2.4.1 of Annexure-1 and Clause 7.5 of Annexure IX: General Conditions of Contract of the tender document, relevant portions of which are extracted hereunder for the sake of clarity:

Clause 2.4.1

“2.4.1

xxx xxx xxx

All the minimum wages for the manpower shall be paid as per latest order of Labour Commissioner GNCTD.”

Clause 7.5

“7.5 Labour Compliances

In the employment of labour for the Performance/Operation of the Works the Bidder shall comply with all requirements of any Applicable Law relating to the employment of workmen or any subsequent modification or re-enactment thereof including but not limited to, matters relating to timely payment of wages and allowances, payment of minimum wages, etc.”

[Emphasis supplied]

16. It is apparent from the aforesaid clauses that the bidders were obligated, while submitting their bids, to factor the issue of minimum wages to be paid to 'skilled workers' as required by the tendering authority. It cannot be doubted that the tendering authority required skilled workers, nor can it be disputed that the minimum wage according to the Labour Department's order no. F. No. (142)/02/MWNII/Part file/3478-3495 dated 26.09.2024 is Rs.21,813/- per month, per skilled worker, at the relevant time. When the tender conditions expressly stipulate that the workmen to be employed by the tenderer are covered under the Minimum Wages Act and Circulars and Notifications issued by the concerned Labour Department, we do not fathom how the petitioner can quote a figure which could be below that standard or so abnormally low, creating a doubt as to whether the petitioner would be able to justify such an abnormally low price bid, or even complete the contract at all.

17. We are of the firm opinion that the terms and conditions specified in a tender are sacrosanct and have to be complied with, scrupulously, particularly when it envisages statutory duties and obligations. We also find from a perusal of the reply dated 17.11.2024 that the petitioner has failed to actually give a justification of the abnormally low price bid of Rs.12,69,600/-. In fact, the entire reply is conspicuous by the absence to even a reference to its original price bid. On the other hand, surprisingly, the petitioner itself has calculated the yearly estimated cost at Rs.66,25,608/-. We are at loss and confounded as to how the petitioner having realized that the estimated yearly cost of Rs.66,25,608/- would be incurred on the project envisaged under the tender and yet, is insisting that

its price bid at Rs.12,69,600/- is perfectly valid and justified. We are unable to appreciate this submission.

18. Though this is not a subject matter of the petition, yet we do note that in case such deviations are permitted, it would lead to multiplicity of litigations, we dare say involving the public bodies like the tendering authority apart from the bidders, which may be preferred by the workers who are intended to be employed by such bidders. This, surely would not be in public interest, rather, would be detrimental not only to the interest of the workers but also to be tendering authorities, apart from directly impacting the public exchequer. It is trite that Constitutional Courts, while adjudicating upon the issues arising out of tenders notified by State or its instrumentalities, are mandated to keep the public interest element, paramount.

19. So far as the submission regarding opportunity of hearing not having been granted to the petitioner before cancellation/annulment of the tender is concerned, suffice it to state that it is the prerogative of the tendering authority to cancel or annul the tender, if it so deems fit in the interest of the intended project. Moreover, Clause 17 of the tender reposes the power and jurisdiction with the respondent to cancel or annul the tender at any point of time without assigning any reason. The relevant portion of the said Clause is extracted hereunder:

> *"...RIGHT OF TRANSPORT DEPARTMENT, GOVT. OF NCT OF DELHI to accept or reject any or all bidders.*
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> *Transport Department, Govt. of NCT of Delhi reserves the right to accept or reject any bid, and to annul the tender process and reject all Bids, at any time prior to award of Contract without assigning any reasons for such acceptance/rejection, or to divide the Contract between/amongst Bidders without thereby incurring any liability to the affected Bidder or Bidders or any obligations to inform the affected Bidder or Bidders of the grounds for Transport Department, Govt. of NCT of Delhi action. The Bidders shall not*

have any cause of action or claim against Transport Department, Govt. of NCT of Delhi for rejection of their bids…"

Thus, this submission too, is unmerited and fails.

20. For the reasons aforesaid, we do not find any merit in the writ petition and the same is dismissed, alongwith pending applications, though without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JULY 31, 2025/*rl*