

(2004) 07 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (C) No's. 6384-85 of 2004

Engineering Development Corpn. and Another

APPELLANT

Vs

Municipal Corpn. of Delhi and Another

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 116 DLT 309

Hon'ble Judges : B.C. Patel, C.J.;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Anusuya Salwan, for the Appellant; Vinay Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—By filing these petitions, a grievance is made by the petitioners that conditions 2 and 3 in the pre-qualification bid documents for contractors/firms are bad in law inasmuch as the petitioners were already registered as Class-I Contractors with respondents and, Therefore, no such condition could be attracted in case of the petitioners.

2. The learned Counsel for the petitioners submit that in view of the Division Bench decision of this Court in case of Subash Chander Gupta and Others Vs. Municipal Corporation of Delhi and Others, , it is not open for the respondent to insert conditions. According to the petitioners, in view of this decision, once the Contractor is enlisted for unlimited amount, then he is entitled to get the tender papers and no conditions can be put in. The decision was rendered in 1996 keeping in mind the policy which was in existence at the relevant time framed by the CPWD, which was applicable to the MCD. However, in view of the instructions issued in 2001, the earlier instructions are no more applicable. We may again point out that the Division Bench while deciding the matter pointed out as under :

"It may make a difference if the respondent may revise its policy of registration

and issuing NITs. It may have further classifications. It might be reasonable to pose a question to oneself if a contractor who has had to his credit successful completion of works up to Rs. 25 lakhs only, can he be depended on for entrusting works of the magnitude of crores ? The experts in CPWD, or in MCD for the matter of that, may examine if the broad category of building and roads needs to be further sub-categorized or fresh categories are required to be devised, if they may feel that a contractor having an experience of building and roads merely - in the sense in which the words building and roads are commonly understood deserves to be placed in a class or category apart from the contractors experienced in bridge and subway works."

Thus, when the policy is revised and the specific clause is inserted, the petitioners cannot rely on the said decision.

3. The Circular placed at page 74 of the petition for enlistment/ revalidation of Contractors in M.C.D. (revised), is required to be considered. All previous circulars regarding working of contractors in MCD existing before coming into force of the instructions dated 7.8.2001 have been repealed by the Repeal and Saving Clause and, Therefore, the conditions indicated in the said policy are required to be taken into consideration. While enlisting the persons or giving tender documents, it is also required to be noted that Contractors already enlisted earlier are to be treated to be enlisted in their respective categories with effect from 1.1.2001 for a period of 5 years and are to be treated as enlisted under the same category. The petitioners were enlisted vide Annexure P3 dated 6.7.2001 as Class I Contractor being qualified to submit tender even of unlimited amounts. In the policy for enlistment, there is the overriding Clause-IV, which is required to be taken into consideration:

"Scope-The enlistment of a contractor in MCD shall only entitle him to be considered for issue of tender papers subject to the conditions laid down in each individual Notice inviting Tenders, it shall not confer any right on him either to be issued the tender papers or for award of work."

4. In view of the earlier practice, once the person is enlisted, he was entitled to get the tender papers and other work even if he has no experience in that branch of work. Keeping this aspect in mind, in view of Clause IV, it is very clear that it permits the respondent-Corporation to impose conditions looking to the nature of the work in the individual notice inviting tender. If that be so, it cannot be said that the action is arbitrary and, Therefore, we find no reason to interfere in matter. The petition stands dismissed.