

(2022) 01 DEL CK 0163

In the Delhi High Court

Case No : Civil Writ Petition No. 168 Of 2022

M/S Kuldip Tourist Taxi Service

APPELLANT

Vs

Doordarshan Kendra & Ors

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Citation : (2022) 01 DEL CK 0163

Hon'ble Judges : Vipin Sanghi, J; Jasmeet Singh, J

Bench : Division Bench

Advocate : Pawanjit Singh Bindra, Naunidh S. Arora, Sumit Batra, Mike Desai, Manish Khurana, Vertika Sharma

Final Decision : Allowed

Judgement

Vipin Sanghi, J

C.M. Nos. 473/2022 & 2388/2022

1. Exemptions allowed, subject to all just exceptions.

2. The applications stand disposed of.

W.P.(C) 168/2022 and C.M. Nos.472/2022 & 2387/2022

3. The petitioner has preferred the present writ petition to seek a direction to the respondents not to award any contract for hiring of taxi vans/ cars

without following the due process of floating a tender/ bid through the online Government e-Marketplace (Gem) portal. The petitioner also assails the

appointment of M/s City Cab Co. (also described as M/s Citi Cab Co.) to meet the transport related requirements of the respondent Door Darshan

Kendra, Delhi (DDK, Delhi) with effect from 01.01.2022 as being illegal, null and void. The petitioner assails the cancellation of the tender/ bid

document issued vide Bid No. GeM/2021/B/1424866 dated 12.08.2021 as being bad in law, and seeks a direction to the respondents to continue with

the tender process in respect of the same. The petitioner seeks a declaration that the termination of the contract dated 05.10.2015 between the

petitioner and the respondents is illegal on account of non-service of mandatory two weeks notice upon the petitioner.

4. The background facts, in which the aforesaid reliefs had been sought, may be noticed. The respondent No. 1 is "Doordarshan Kendra,

New Delhi (DDK), floated a tender for hiring services of a vendor for providing cab hiring services in the year 2015. The petitioner emerged

as L-1 bidder and an agreement was entered into by respondent No. 1 with the petitioner for providing taxi cars and vans to the said respondent for

the period 26.08.2015 to 25.08.2016. Though the initial period of the contract was one year, the same was extendable by one more year, if the

services were found satisfactory, with the approval of the competent authority.

5. The case of the petitioner is that since the petitioner's services were found of satisfactory quality, the respondent No. 1 extended the contract

not only for the period of one year, but even thereafter, till 31.03.2021. Thereafter, the respondent No. 1 continued to place requisitions on the

petitioner to provide its cars/ vans on hire from time to time at the contractual rates.

6. On 12.08.2021, respondent No. 2/ Prasar Bharti floated the aforesaid tender on GeM Portal for hiring of cabs and taxis on monthly basis for

respondent No. 1/ DDK, Delhi. The petitioner participated in the said process. There were 14 bidders in all, of whom 4 including the petitioner,

were found to be technically qualified. The petitioner states that the petitioner's bid was found to be the lowest. The respondent No. 1, however,

cancelled the said tendering process in the first week of December, 2021. The petitioner's queries as to the reasons for cancellation of the said

tender have not been responded to by the respondents. We may notice that the respondents have now provided the reason for the cancellation of this

tender process in their counter affidavit.

7. On 21.12.2021, respondent No. 1 placed a requisition for 35 vehicles on the petitioner for deployment for the purpose of Republic Day celebrations

and Beating the Retreat ceremony for the year 2022 for the Engineering &

Programme Staff, DDK, New Delhi. The petitioner was informed that the vehicles are required as per previous year's practice and that the details of such vehicles shall also be relayed to respondent No. 1.

8. The petitioner states that suddenly, on 31.12.2021, the petitioner was instructed by respondent No. 1 telephonically not to send its vehicles to respondent No. 1 from 01.01.2022. The petitioner was also informed that respondent No. 1 had appointed M/s City Cabs Co. as the vendor to provide cabs/ taxi services to meet the requirements of respondent No. 1 with effect from 01.01.2022. The petitioner is aggrieved by the said cancellation of the requisition for 35 vehicles for the Republic Day celebrations for the year 2022, and the introduction of M/s City Cabs Co. for meeting the day to day requirements of respondent No. 1 without any transparent process.

9. When the writ petition came up before us on 05.01.2022, after hearing learned counsels, we passed the following order:-

1. Issue notice. Ms. Vertika Sharma accepts notice on behalf of the respondents.

2. The grievance of the petitioner is with regard to the sudden discontinuation of the services being offered by the petitioner to the respondent for providing taxis, and introduction of another service provider, namely, M/s City Cabs Co. in place of the petitioner without any transparent process.

3. The admitted position is that the petitioner was declared as the successful bidder, and an agreement was entered into between the petitioner and the respondent no.1 i.e. Doordarshan in the year 2015. The term of the agreement was one year. It was extendable by one more year. Since the services of the petitioner were found satisfactory, the respondents continued to avail of its services even after the expiry of the term of the contract and expiry of the next year.

4. The petitioner continued to provide its services at the rates quoted by the petitioner in year 2015. Incidentally, in June, 2021, the petitioner has also been issued a certificate of satisfactory performance showing nil rate of penalty or deduction on account of indeficient service.

5. The respondent No.1 issued a fresh tender dated 12.08.2021 for hiring of monthly-basis cab/taxi hiring service for respondent no. 1,

Doordarshan Kendra, Delhi. The petitioner participated in the said process. Out of the 14 bidders, 4 bidders qualified including the

petitioner. M/s City Cabs Co. did not even bid for the tender in question. However, this tender process was cancelled by the respondents in

the first week of December, 2021 without assigning any reasons, and no new bidding process has been initiated.

6. The case of the petitioner is that the respondents placed a requisition for 35 vehicles on the petitioner for deployment for the purpose of

Republic Day celebrations, and Beating Retreat ceremony for the year 2022 for the Engineering and Programme Staff of DDK, New Delhi

on 21.12.2021. However, that requisition has now been cancelled without any reason whatsoever.

7. Learned counsel for the petitioner submits that now respondents are proceeding to take services from M/s City Cabs Co. without

following any due process.

8. Learned counsel for the respondent has appeared on an advance notice, and she has opposed petition as well as prayer for any interim

relief. She submits that the extension granted to the petitioner year after year was without the sanction of the Competent Authority. This

aspect was brought to the notice of the top management, and it was decided to discontinue the services of the petitioner in the end of

December, 2021, and services be availed of from an existing contractor within the Departments of Prasar Bharti, and that is how M/s City

Cabs Co. could be required to provide services in respect of respondent No.1 i.e. Doordarshan Kendra, Delhi.

9. From the submission made by respondent No.1 itself, it is clear that the different Departments of Prasar Bharti had been engaging their

own contractors, and that is how the fresh tender was invited by respondent No.1 in August, 2021, which was ultimately withdrawn.

10. It appears to us that though the petitioner may have no vested right to seek continuation of its contract to provide taxi services to

respondent No.1, at the same time, respondent No.1 cannot bring in another service provider to the exclusion of the petitioner without

following a transparent method of selection. Ms. Sharma has also shared some documents with us on screen which, in fact, show that the

rates at which the petitioner is providing its services are substantially lower than the rates at which M/s City Cabs Co. has been providing

services in other Departments of Prasar Bharti.

11. In these circumstances, we are inclined to restrain the respondents from engaging third party vendors for providing cab and taxi hire

services in relation to respondent No.1 i.e. Doordarshan Kendra, Delhi without a transparent process of e-tendering in terms of GFR, 2017.

12. Respondents are, however, free to continue to avail of the services of the petitioner, as they have been doing in the past till the new

contractor is appointed in a transparent manner.

13. Counter affidavit be filed within 2 days as prayed for by Ms. Sharma. Rejoinder, if any, be filed before the next date of hearing.

14. List on 13.01.2022. â?? (emphasis supplied)

10. The respondents have filed their counter-affidavits and have also moved an application being CM No. 2387/2022 for vacation of stay granted by

the Court on 05.01.2022. We have heard learned counsels and proceed to dispose of the writ petition. We may first deal with, and dispose of the

challenge to the cancellation of the tender initiated on 12.08.2021.

11. Mr. Bindra has submitted that the cancellation of the tender, wherein the petitioner had emerged as the L1 Bidder is also mala fide, and it was

done to favour M/s City Cabs Co., who was not even a bidder in the said tender process.

12. On the other hand, the submission of Ms. Sharma is that the cancellation of the aforesaid tender was resorted to because there were 4 qualified

bidders who had all offered the same prices. Thus, the petitioner alone was not the L1 bidder. Yet, DDK, Delhi favoured grant of the contract to the

petitioner in violation of the Rules of the GeM Portal. She submits that because of the influence exercised by the petitioner, it was decided to terminate

the tender process, and also to discontinue the services of the petitioner after 31.12.2021.

13. The respondents have provided sufficient justification for cancellation of the tender process initiated on 12.08.2021, and there is no merit in the

petitionerâ??s grievance in that regard. That cancellation took place in September, 2021, and has been assailed by the petitioner only now. Therefore,

we are not inclined to grant the relief sought by the petitioner in respect of the

said tender process.

14. At the outset, we may observe that the petitioner has no vested right to seek continuation of the contract, which expired way back in 2016, or 2017, as the case may be. The fact that the petitioner's services were availed of thereafter by the respondents, cannot enure to the benefit of the petitioner for claiming that the petitioner's services should be continued for any length of time. The only issue that we are concerned with is, whether, the respondents are justified in deciding to discontinue the services of the petitioner w.e.f. 01.01.2022 (on the premise that there was irregularity in the extension of his contract till 31.03.2021; in availing of its services after 01.04.2021, and; the recommendation of the petitioner as the successful bidder in the tender process initiated on 12.08.2021), and; in replacing the petitioner as the service provider with another private player M/s City Cabs Co. without following a transparent method of selection.

15. We have examined the said aspects in the light of the submissions advanced before us, and the documents placed on record, and we find that the conduct of the respondents in this regard has been unfair, whimsical and premised on an adverse inference drawn against the petitioner, behind the petitioner's back. In fact, the petitioner is sought to be condemned by brandishing the petitioner as dishonest and manipulative, without putting the petitioner to any notice in this regard. While that has been the thrust of the submissions advanced by the learned counsel for the respondent " to justify sudden discontinuation of the petitioner's services after 31.12.2021, no record has been placed before us, to show that any such conclusion has been reached, much less, after calling for an explanation from the petitioner. During the hearing, Ms. Sharma had stated that there are orders on record to say that the services of the petitioner be not availed of after 31.12.2021 because of the petitioner's conduct but, despite pass overs on two occasions, the said record has not been produced before us. In fact, the production of any such recorded decision would have only fortified our conclusion that the petitioner has been punished without being put to notice. This conduct of the respondents has been grossly in breach of the principles of natural justice, and cannot be sustained.

16. We may now proceed to notice the submissions of learned counsels, and the record that they have relied upon, and which has been placed before

us.

17. Mr. Bindra submits that the respondents have been shifting their stands. While it was claimed by the respondents before this Court on 05.01.2022

that it was decided to avail the services of an existing contractor within the departments of Prasar Bharti, after discontinuation of services of the

petitioner, and that is how M/s City Cabs Co. was sought to be introduced for providing services to DDK, Delhi, in their counter affidavit, the

respondents have now stated in paragraph 9 under the heading "Status of services from M/s City Cabs Co." that the competent authority has

issued directions "to overcome an unprecedented situation" that "the services of M/s City Cabs Co. be extended by DD News pro bono (from

their own resources/ budget)" It is claimed that no third party agreement has been entered into between DDK, Delhi and M/s City Cabs Co.

18. Mr. Bindra submits that the projection that the services of M/s City Cabs Co. would be provided to DDK, Delhi pro bono is an eyewash, since

they would be paid at the rates contracted with them by DD News for the services availed by DDK, Delhi, which rates are far higher than the rates

at which the petitioner has been providing services to DDK, Delhi ever since 2015.

19. He has also drawn our attention to the file notings placed on record by the respondent with the counter affidavit on the subject "Requirement of

vehicles for Republic Day celebrations, Beating Retreat and general duty day and night shift for DDK, Delhi." He submits that this note, though

dated 31.12.2021(prepared by the A.O, DDK, Delhi) was received in the office of ADG (E) HQ only on 11.01.2022. This note relates to meeting

the requirements of vehicles for Republic Day Parade, Beating Retreat, 2022 from M/s City Cabs Co. He points out that though this note appears to

have been forwarded only on 11.01.2022, it is claimed by the respondents that for the purpose of Republic Day Parade and Beating Retreat, the

names of drivers and vehicle details had been forwarded for security clearance in the beginning of the year itself. He, therefore submits that the

respondents have resorted to covering their steps by creating the record expost facto.

20. Mr. Bindra has also drawn our attention to Annexure A9 filed along with the rejoinder. This is an email dated 31.12.2021 issued by Prasar Bharti

to M/s City Cabs Co. for providing vehicles of different models as per requirement to DDK, Delhi on rates, terms and conditions of the agreement

made with DD News, Delhi. This communication, inter alia, states that the vehicles may be provided to DDK, Delhi w.e.f. 01.01.2022 to 30.04.2022

or till the bid finalisation for hiring of transport through GeM, whichever is earlier. You are also requested to provide a copy of existing agreement,

duly self attested, made with DD News with certificate of your consent to provide vehicles on the basis of the same agreement rates, terms &

conditions. This was despite the fact that DDK, Delhi itself was not in favour the changing of the service provider. In this regard, he has drawn our

attention to the following file notings:

Note # 1

SUB : Transport requirement & Compliance for RDC-20222 regarding.

We had sent requisitions for the deployment of vehicles for the Republic Day Ceremony on 22 but the reply from the Admin Section is

getting delayed. As list for security passes has already been sent to the PM Security and MoD without the list of vehicles and drivers. As per

the underlying process, these two lists should be sent together. It also takes time to verify Drivers by security agencies.

You are requested to expedite the matter lest it is late and unnecessary hassles crop up.

16/12/2021 3:09 PM

ANOOP KHAJURIA

(ADP | DDK DELHI)

Note # 2

16/12/2021 5:51 PM

C. SENTHIL RAJAN

(ADG (RNU, VVIP COVERAGE) | DD NEWS DELHI)

Note # 3

1. As discussed.

16/12/2021 5:56 PM

COL. KALYAN DAS

(DDG (ADMIN) | DD NEWS DELHI)

Note # 4

The issue is very important and necessary action may be taken up on priority basis.

Â The deployment of vehicles for the Republic Day Ceremony â?" 22 is getting delayed beyond proportion and may put the office under trouble.

As action can only be initiated after the disposal of File no â?" 82289 where decision regarding hiring of vehicles from empaneled vendor

for DD: News, M/s City Cab Company, has to be taken and only there after the hiring of vehicle from M/s Kuldip Tourist Taxi Service, New

Delhi, could be discontinued.

We have reached to cross road & need to act on priority as with-in a short notice perhaps M/s City Cab Company may not be able to

arrange fleet of vehicles (Around 50 vehicles would be required for programme & Engineering staff deployed on duty.)

In this regard list for security passes have already been sent to the PM Security and MoD without the list of vehicles and drivers. As per the

underlying procedure, these two lists should be sent together. It also takes time to verify Drivers by security agencies.

Accordingly arrangement of office transport for RDC-2022 has reached to very alarming stage and need immediate intervention.

17/12/2021 1:59 PM

SHASHI KANT

(ADG (E)-HOO-DDK DELHI | DDK Delhi)

Note # 6

The matter was discussed in the meeting with the CEO. Please put up accordingly.

17/12/2021 3:35 PM

MAYANK KUMAR AGRAWAL

(DG DOORDARSHAN | DG DD NEW DELHI)

Note # 7

Â Reference note from DDG(E) DDK, DELHI at page no. 1 to4/c the communication has already been received from Deputy Commissioner

Of Police security (PM) asking for list of all DD staff including drivers of OB vans

DSNG Van and details of vehicles for transportation of

staffs w.e.f. 10.01.2022 to 30.01.2022 for Republic Day Celebration 2021-22 and Beating The Retreat 2022

Â Reference note no. 5 to 7 and as discussed, we may communicate the existing agency of DDK, Delhi to provide 50 vehicles for programme

and Engg staffs deployed on duty on account of urgency.

Â Submitted for approval please.

17/12/2021 6:16 PM

HARI PARKASH SINGHAL

(ADMN. OFFICER | DDK DELHI)

Note # 9

Considering the urgency of transport requirement for RDC-22 (Approx. 50 Vehicles for programme and Engg staffs deployed on duty) & to

break the impasse, following decision taken by CEO in the meeting, held on 17th Decâ?? 2021, after discussion.

1. To ensure smooth coverage of RDC-2022, changing of agency for supply of transport is very risky. Accordingly DDK : delhi will

continue the transport services from the existing transport supplier till 31st January.

2. The transport services will be switched to M/s City Cab Company, the approved agency for transport supply to DD News, wef 1st

Febâ??2021 onwards.

3. The meeting was attended by DG:DD & ADG News & ADG HOO DDK Delhi.

4. Submitted for any further direction & necessary approval.

17/12/2021 7:15 PM

SHASHI KANT

(ADG (HQ) | DG DD NEW DELHI)â??

21. Mr. Bindra submits that the respondents have filed, along with their counter affidavit, as Annexure R1, the extract of the Minutes of the 108th

Management Committee Meeting held on 24.11.2021 under the Chairmanship of CEO, Prasar Bharti. He points out that one of the decisions taken in

relation to the transport services for DDK, Delhi was that â??Existing GeM contract service provider, DG: DD may be asked to accommodate the

current requirement of vehicle at DDK, Delhi.â? He submits that if this decision was taken as early as on 24.11.2021, it is not explained as to why a

requisition for vehicles was issued to the petitioner for the Republic Day celebrations and Beating Retreat celebrations for the year 2022. Secondly, as

per the said decision, the current requirement of vehicles of DDK, Delhi was to be met by the DG: DD, and not by DD News, as is now sought to

made out by the respondents.

22. Mr. Bindra submits that even if the petitioner does not have a vested right for continuation of the pre-existing contract which has been extended by

the respondents on their own, year after year up to 03.03.2021, the respondents cannot hold the petitioner responsible and victimise him for their own

decisions. He submits that there was nothing irregular in the extensions granted to the petitioner year after year, since the petitionerâ??s services

were never adversely commented upon, and the petitioner continued to provide the services at the same rates as fixed in the year 2015, even though,

the market rates over the years have been going up. He points out that the rates at which the contract has been awarded by DD News to M/s City

Cabs Co. are much higher than the rates at which the petitioner has been providing its services without revision from 2015. The decisions taken by the

respondents are premised on assumption of some wrong doing by the petitioner, even without putting the petitioner to notice thereof, which is wholly

impermissible.

23. Ms. Sharma submits that the petitioner has no vested right to continue to provide its services to the respondents, and DDK, Delhi is free to engage

any other service provider, other than the petitioner. The petitioner cannot have any actionable grievance in that regard. She submits that since the

fresh tender would take some time, the services of M/s City Cabs Co. have been availed of by the respondents, and the petitioner has no vested right

to insist that his services alone should be taken by DDK, Delhi.

24. Ms. Sharma has also submitted that a decision has been taken on the file that no work should be taken from the petitioner because of its conduct.

As aforesaid, despite pass over on couple of occasions, the relevant noting has not been produced before us.

25. From the record adverted by Mr. Bindra, it appears that the respondents have been shifting their stands. On 05.01.2022, we were informed that

the services of M/s City Cabs Co. would be availed of by DDK, Delhi as an interim arrangement till the new contract is finalised, as it had been

decided to discontinue the services of the petitioner after 31.12.2021. The stand taken in the counter affidavit is that the services would be provided to

DDK, Delhi pro bono by M/s City Cabs Co. This projection made before the Court is, indeed, an eyewash, and appears to have been made on

account of the fact that we noticed in our order of 05.01.2022, that the rates at which the work would be taken from M/s City Cabs Co. are far higher

than those which the petitioner has been providing its services since 2015. The aforesaid stand of the respondents is an eyewash, because DD News

would be footing the bill. Therefore, instead of the money coming out of one pocket of Prasar Bharti i.e. DDK, Delhi, it would be paid out of the

pocket of DD News, Delhi. It is not that. would be providing its services pro bono.

26. Ms. Sharma has vehemently argued that the respondents have already forwarded the particulars of the vehicles and drivers of M/s City Cabs Co.

for security clearance for the forthcoming Republic Day Parade and Beating Retreat.

27. The respondents have also claimed that security clearance has been granted in respect of the vehicles and drivers of M/s City Cabs Co. for the

aforesaid functions. Since, there is lack of clarity in this regard, we required the respondents to file an affidavit today itself. The respondents have filed

a supplementary affidavit. In the supplementary affidavit, the respondents state that the list of drivers and vehicles were sent to PMO, Security vide

letters dated 03.01.2022 and 06.01.2022 from Programme and Engineering Wing respectively. The representatives from DDK, Delhi have been

regularly visiting the PMO, Security Office to take the update about the readiness of the security passes and they are being collected from time to

time.

28. Since, it is claimed that grant of relief to the petitioner, at this stage, for providing vehicles for the forthcoming Republic Day Parade and Beating

Retreat would seriously cause inconvenience and prejudice as, once again, security clearance would be required to be obtained in respect of fresh set

of vehicles and drivers, and the time is short, we are not inclined to interfere with the requisition made by the respondents of vehicles and drivers from

M/s City Cabs Co. for Republic Day and Beating Retreat functions. Thus, the

engagement of the services of M/s City Cabs Co. by DDK, Delhi for the Republic Day celebrations and Beating Retreat functions is not being interfered with.

29. As we have already noticed hereinabove, the issue that arises for our consideration is whether the respondents can dislodge the existing service provider on the basis of an assumption that there has been some kind of a scam in DDK, Delhi, and the petitioner is a party to it. In our view, there is no justification for the respondents to arrive at any such definite conclusion without putting the petitioner to notice, and calling for its explanation. The extensions granted to the petitioner year after year up to 31.03.2021 were at the pre-existing rate, and in the background that there were no complaints in respect of the services provided by the petitioner.

30. Moreover, these extensions were granted by the officers of the respondents themselves. Therefore, the decision not to take the services of the petitioner after 31.12.2021 appears to be an act of victimization. Such a decision was not called for, particularly after issuing the requisition to the petitioner for providing vehicles for the Republic Day and Beating Retreat Programme, 2022. There was nothing to prevent the respondents from coming out with a fresh tender after the previous one was cancelled in September, 2021, and till then, to continue to take the services of the petitioner.

As noticed hereinabove, it is not the respondents' case that the petitioner services were, in any way, lacking. They were, undoubtedly, at a much cheaper rate than the rates prevailing. There could be absolutely no justification for dislodging the petitioner by another named contractor. Merely because M/s City Cabs Co. is the contractor empanelled by DD News, Delhi, does not provide justification to use its services in the interregnum in

DDK, Delhi. Admittedly DDK, Delhi, like DD News, Delhi, and other departments of Prasar Bharti have been using services of different service providers by entering into contracts with them. The action of the respondents in discontinuing the services of the petitioner by labelling/ brandishing the petitioner as dishonest and manipulative suffers from the vice of arbitrariness, and this conduct of the respondents is completely whimsical, and in breach of the principles of natural justice. Had it been a case of the petitioner's services being found unsatisfactory by reference to specific instance(s), the situation would have been different, but that is not the case.

Replacement of one service provider with another ad hoc service

provider, without justification, cannot be permitted, particularly when there is no justifiable reason brought on record for the same.

31. We, therefore, allow the petition, and direct the respondents not to avail of the services of M/s City Cabs Co. or any other private contractor for

providing vehicles required by DDK, Delhi till DDK, Delhi appoints a fresh contractor through the tendering process. In case, DDK, Delhi requires

any vehicles on hire, they may avail of the services of the petitioner till such time as the new service provider is selected through a transparent

tendering process. It goes without saying that the petitioner would continue to provide its services as before. The decision taken by the respondents

not to avail of the services of the petitioner after 31.12.2021 having been taken behind the petitioner's back is quashed. We, however, permit the

respondents to avail of the services of M/s City Cabs Co. for the Republic Day celebration and Beating Retreat for the reasons also noticed

hereinabove.

32. For the aforesaid reasons, we allow the present petition in the above terms. The parties are left to bear their respective costs.