
(2011) 08 DEL CK 0027

In the Delhi High Court

Case No : Writ Petition (C) No. 4175 of 2011

Tonnjes Eastern Security Technologies Pvt. Ltd.

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 126, 50
Constitution of India, 1950 — Article 14, 19(1), 226
Delhi Motor Vehicles Rules, 1993 — Rule 123, 30(1)
Motor Vehicles Act, 1988 — Section 109(3), 2(37), 213, 41(6), 44

Citation : (2011) 08 DEL CK 0027

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Uday U. Lalit, Arunabh Chowdhury, Gainilung Panmei and Vaibhav Tomar, for the Appellant; Najmi Waziri, Standing Counsel, Shoaib Haider and Neha Kapoor for Respondent Nos. 1 to 3, Neeraj Chaudhari, CGSC, Mohit Auluck and Khalid Arshad for Respondent No. 4/UOI., for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—The Petitioner is at the vanguard of all those similarly placed persons, who seek to challenge the Request For Qualification and Proposal dated 05.05.2011 (hereinafter referred to as the "tender") issued to procure what are known as High Security Registration Plates (in short "security licence plates") by Respondent Nos. 1 and 3, i.e., the Government of National Capital Territory of Delhi (in short "GNCTD") through the instrumentality of Respondent No. 2. i.e., Delhi Integrated Multi Modal Transit Systems Ltd. (in short "DIMTS"), a public limited company incorporated by GNCTD.

2. The grievance ostensibly articulated by the Petitioner pertains to stipulation of such tender conditions by the Respondents which purportedly fall foul of the provisions of the Motor Vehicle Act, 1988 (hereinafter referred to as the "M.V. Act") and the Central Motor Vehicle Rules, 1989 (hereinafter referred to as the "C.M.V. Rules"). More specifically, the challenge in this writ petition centres

around, the failure of Respondent Nos. 1 and 3 in ensuring compliance with Rule 50 of the C.M.V. Rules.

Background pertaining to Amendments and Judgment/Orders of the Supreme Court 3.

3. Before we proceed further it may perhaps be necessary to give a brief background of the issue concerning us in so far it relates to the amendment of C.M.V. Rules qua issuance of security licence plates and the litigation which ensued on such a decision being taken, as also the delay in its implementation, with reference to the orders of the Supreme Court.

3.1 It appears that the Central Government with the view to curb the menace of theft and the usage of vehicles in heinous crimes, such as murder, dacoity, and terrorist activities, decided to implement a registration methodology, whereby these activities could be curbed, if not brought to a complete halt. A technical committee was constituted which, advised implementation of the security licence plate scheme. The object being: as indicated above, to ensure public safety and security.

3.2 Accordingly, the 4th Respondent, i.e., Union of India issued a notification dated 28.03.2001 in exercise of its powers under the M.V. Act. The said notification sought to amend the C.M.V. Rules. For our purposes, it is necessary to note that amendments were made to Rule 50, whereby Sub-rule (1) of Rule 50 was amended in a manner so as to include certain stated specifications qua display of registration marks as provided in Sub-section (6) of Section 41 of the M.V. Act. The details of these requirements will be extracted in the later part of the judgment to the extent they are relevant as most of the controversy, as indicated above, revolves around the requirements stipulated therein.

3.3 Continuing with the narrative the notification dated 28.03.2001, was thereafter, amended by the 4th Respondent, i.e., Union of India, vide notifications dated 22.08.2001 and 16.10.2001. These notifications were titled as follows: (i) Motor vehicle (New High Security Registration Plates) order 2001 (in short notification dated 22.08.2001); and (ii) Motor Vehicle [New High Security Registration Plates (Amendment)] order 2001 (in short notification dated 16.10.2001).

4. It would at this stage be relevant to note that a challenge was laid to the notification dated 22.08.2001 which reached the Supreme Court, and is, subject matter of the judgment of the court in the case of Association of Registration Plates Vs. Union of India (UOI) and Others, . It may perhaps be relevant to note that this was a judgment of three-Judges of the Supreme Court to whom, the matter had been referred, after a difference of opinion cropped up between the two Hon"ble Judges who constituted the Division Bench. Suffice it to say at this stage that, the Supreme Court by its judgment repelled the challenge made to both, the Rule making power exercised by the 4th Respondent u/s 109(3) of the M.V. Act and to the validity of the notification dated 22.08.2001, on the ground

that it was beyond the provisions of the M.V. Act, and lacked legal efficacy. The broad ground of challenge was that, the provisions of the notification dated 22.08.2001 created a monopoly in favour of some manufacturers who had tie-ups with foreign concerns and hence, were not only discriminatory being violative of Article 14 of the Constitution of India but also impinged upon the fundamental Rights of trade guaranteed under Article 19(1)(g) of the Constitution of India in favour of indigenous manufacturers. It may also be relevant to note that aforesaid judgment was passed after the Supreme Court had transferred to itself writ petitions filed by such like manufacturers in various High courts.

5. Despite the fact that Rule 50 was amended way back, in the year 2001, several States and Union Territories chose, for one reason or the other, not to implement the security licence plate scheme as envisaged by the 4th Respondent. Consequently, a writ petition came to be filed in the Supreme Court titled *Maninderjit Singh Bitta v. UOI and Ors.* being WP(C) No. 510/2005. The said writ petition was disposed of by order dated 08.05.2008 reported in *Maninderjit Singh Bitta Vs. Union of India (UOI) and Others*, . In the said judgment, broadly, the Court noted that the grievance of the Petitioner and the intervener that: the security registration plate scheme was largely; not being implemented; and if the objective of the scheme was public safety and security; a sense of urgency had to be infused in its implementation. It noted with concern that certain States had floated tenders, and thereafter, without reason had slowed down the process. It is in this background that the Supreme Court directed necessary action to be taken by the concerned authorities within six months from the date of its order.

5.1 In this writ petition interlocutory applications were filed not only to seek clarification and extension of time but also to bring to fore the fact that the security registration plate scheme had been placed on the backburner except by a few States / Union Territories. The latter aspect forms a subject matter of IA No. 12/2010 filed in IA No. 10/2010 in the said writ petition. The said interlocutory application came up for hearing before a Bench of three Hon"ble Judges of the Supreme Court headed by the Hon"ble the Chief Justice of India. The Bench vide order dated 07.04.2011 was constrained to issue directions to recalcitrant States and Union Territories, in order to ensure due compliance and implementation of the security registration plates scheme. The Supreme Court, in the aforementioned order categorized the States broadly into three broad categories. The first category being: those States which had implemented the scheme, and were consequently appreciated for their efforts. The second category consisted of States which had issued tenders but had not completed the process. The third category comprised of States which had miserably failed, to even commence the process. The court, in the first instance, called upon some of the States, falling in the third category, to show cause as to why contempt proceedings ought not to be initiated against them even while directing compliance with the directions contained in the said order. In this category the States of Delhi, Punjab and U.P. were identified for action, in the first instance.

We are informed that the Supreme Court is still seized of the matter. The contempt proceeding are pending consideration by the Supreme Court.

6. It may be relevant to note at this juncture that the tender issued by two States, i.e., State of West Bengal and the state of Orissa became a subject matter of challenge which was finally resolved by a judgment of the Supreme Court in the case of Shimnit Utsch India Pvt. Ltd. and Another Vs. West Bengal Transport Infrastructure Development Corporation Ltd. and Others, As a matter of fact in so far as the state of West Bengal was concerned, it was facing challenge for the second time. The first round was when it issued a Notice Inviting Tender (in short NIT) in July 2003 which was impugned and upon due adjudication sustained vide judgment of the Supreme Court in the case of Association of Registration Plates (supra). The second round commenced when the State of West Bengal issued a fresh N.I.T whereby it did away with the very conditions of the earlier N.I.T which were sustained by the Supreme Court in the case of Association of Registration Plates. Broadly, in the case of Association of Registration Plates, the Supreme Court had upheld N.I.T conditions which stipulated that the bidder must have foreign experience and a specified turnover. Despite succeeding, the State of West Bengal vide notification dated 27.4.2005 withdrew the July 2003 N.I.T and followed it with a fresh N.I.T dated 04.10.2005. Significantly in the fresh N.I.T, the State of West Bengal did away with clauses pertaining to experience in foreign countries and minimum turnover. This led to challenge to the 2nd N.I.T.

6.1 Similarly, The state of Orissa issued a N.I.T dated 11.4.2007 which did not contain conditions pertaining to foreign experience and minimum turnover. Both N.I.Ts were challenged, the N.I.T issued by State of West Bengal was impugned by Shimnit UTSCHE India Private Ltd., while the State of Orissa N.I.T was challenged by none other than the Petitioner before us i.e. Tonnjes Eastern Security Technologies Pvt. Ltd. The dispute reached the Supreme Court. The Supreme Court by judgment dated 12.5.2010 titled Shimnit Utsch (supra), repelled the challenge. The gravement of the challenge was that states could not alter conditions in the N.I.T which had received judicial imprimatur of the Supreme Court in the Association of Registration of Plates case. This submission did not find favour with the Court. The Court's observation in this regard for the sake of convenience are extracted herein below:

55. The judgment of this Court in Assn. of Registration Plates cannot be read as prescribing the conditions in NIT for manufacture and supply of HSRP. Rather this Court examined the legality and justification of the impugned conditions within the permissible parameters of judicial review and recognised the right of the States in formulating tender conditions. In our opinion, there is No. justification in denying the State authorities latitude for departure from the conditions of NIT that came up for consideration before this Court in larger public interest to broaden the base of competitive bidding due to lapse of time and substantial increase in the number of persons having TAC from the approved institutes

without compromising on the quality and specifications of HSRP as set out- in Rule 50 (sic) of the 2001 Order and the Amendment Order, 2001.

56. Mr F.S. Nariman, learned Senior Counsel heavily relied upon a decision of this Court in *S. Nagaraj v. State of Karnataka* and submitted that the decision of this Court in *Assn. of Registration Plates* was binding on all States and the said judgment has to be enforced and obeyed strictly and any deviation from those conditions by the States on their own is impermissible.

57. ...

58. The statement of law expounded in *S. Nagaraj* is beyond question. As noticed above, in *Assn. of Registration Plates* this Court did not find any fault with the controversial conditions in NIT and overruled all objections raised by the Petitioners therein in challenge to those conditions. The WP(C) 4175-2011 Page 8 of 42 impugned conditions of NIT in that group of cases were not held to be arbitrary, discriminatory or irrational nor amounted to creation of any monopoly as alleged. The declaration of law by this Court in *Assn. of Registration Plates* is that in the matter of formulating conditions for a contract of the nature of ensuring supply of HSRP, greater latitude needs to be accorded to the State authorities. We find it difficult to hold that by virtue of that judgment the impugned conditions were frozen for all times to come and the States were obliged to persist with these conditions and could not alter them in larger interest of the public. In our view, the decision of this Court in *Assn. of Registration Plates* did not create any impediment for the States to alter or modify the conditions in NIT if the circumstances changed in material respects by lapse of time."

Facts vis-a-vis the tender

7. As a necessary consequence of perhaps the directions issued by the Supreme Court vide its order dated 07.04.2011 in WP(C) No. 510/2005, the GNCTD issued a tender on 05.05.2011 for procurement of security licence plates and associated items.

7.1 It is the say of the GNCTD, on affidavit, filed in this Court that, vide a Cabinet decision taken on 10.03.2006 it decided to constitute a Special Purpose Vehicle to implement an integrated multi modal transport network in Delhi, which would advise GNCTD on issues regarding transportation wherever such functions were assigned and undertaken to be implemented by it. This decision resulted in the birth and, therefore, the incorporation of DIMTS. It is averred in the affidavit filed by GNCTD that 50% of the shares in DIMTS is held by it, while the balance 50% of the share capital is held by IDFC Foundation. Furthermore, DIMTS is headed by the Chief Secretary to the GNCTD. The sole purpose, it is averred, in constituting DIMTS is to meet the task of "augmentation of multi modal transit system" keeping in view the ever burgeoning population of Delhi.

7.2 The averments made in the affidavit filed on behalf of GNCTD reveal that a

decision to implement the security registration plates scheme through DIMTS received the approval of the Finance and Planning Department as far back as on 13.07.2009, but came to be communicated to DIMTS only on 15.04.2011. Therefore, it is quite obvious that a scheme which had received approval, though late, as far back in July, 2009, was lying somnolent till it was kick-started by the order of the Supreme Court dated 07.04.2011.

8. GNCTD, thus entrusted the job of procurement under the aforementioned tender to DIMTS. Several amendments have been issued in respect of the said tender. These being: amendment No. 1 dated 18.05.2011, amendment No. 2 dated 24.05.2011, amendment No. 3 dated 26.05.2011 and, more particularly, the last amendment i.e., amendment No. 4 dated 21.06.2011 which, succeeded evidently, a clarification sought by the Petitioner vide letter dated 31.05.2011. Suffice it to note at this stage that amendment No. 1 dated 18.05.2011 pertained to appendix 9 annexed to the tender. Amendment No. 2 inter alia adverted to change in dates for various mile stones indicated in the amendment No. 1 dated 18.05.2011. The amendment No. 3 pertained to appendix 10, i.e., the format for financial proposal and amendments to amendment No. 1 dated 18.05.2011. The amendment No. 4 which is dated 21.06.2011, brought about amendments to para 3.4.4. of instructions to bidders, appendix "A", scope of supply (including any amendment made from time to time) and appendix 9 which related inter alia to provision of an additional security feature.

9. It is pertinent that the Petitioner had, in the interregnum, admittedly purchased the tender document on 01.06.2011 from DIMTS by depositing the requisite fee of Rs. 15,000/-. Despite the above circumstances obtaining, the Petitioner chose to challenge the tender in issue, by filing a writ petition in the Court under Article 226 of the Constitution of India, on 02.06.2011.

9.1 This Court by an order dated 03.06.2011 issued notice in the writ petition as well as in the interlocutory application being CM No. 8606/2011 seeking inter alia a stay on the operation of the tender and a restraint on the Respondents, its officers, agents and servants from taking steps pursuant to the tender, including a direction for grant of a status quo order. The court listed the matter in the category of "after notice miscellaneous matters" on 14.09.2011.

9.2 The Petitioner not being satisfied with the order dated 03.06.2011, preferred SLP being: SLP(C) No. 15880-81/2011. The said SLP was, however, withdrawn by the Petitioner with liberty to approach the vacation Bench of this Court.

9.3 In consonance with the liberty granted, the Petitioner filed an interlocutory application being CM No. 8753/2011 before the Vacation Bench of this Court. The Vacation Bench vide order dated 10.06.2011 dismissed the said interlocutory application.

9.4 Once again being aggrieved, a SLP was preferred being: SLP No. 16291/2011. The Supreme Court on going through the material on record and hearing counsels for both sides observed that it was not inclined to interfere with

the impugned order of this Court dated 10.06.2011. However, considering the urgency in the matter, a direction was made to this Court to take up the main writ petition and dispose of the same by the end of July, 2011. As an ad-interim measure, the Supreme Court clarified that the Respondents be permitted to process the tender with a caveat that final decision be taken only after disposal of the writ petition by the High Court. The matter was directed to be listed before an appropriate Bench of this Court on 05.07.2011. 9.5 The matter came up before this court on 05.07.2011, as directed by the Supreme Court. It was noticed that the pleadings were not complete; consequently time was granted to both parties to file counter affidavits and rejoinders within the stipulated time. The matter was posted for hearing on 28.07.2011. To be noted that, in view of the orders passed by the Supreme Court, in the Petitioner's SLP on 23.06.2011, the interlocutory application being: CM No. 8606/2011 was disposed of. At this very hearing, CM No. 10823/2011 was moved by an association of persons similarly placed as the Petitioner, to seek intervention in the matter. The said application was dismissed as withdrawn. This is precisely the reasons why we had noticed in the very opening paragraph of our judgment that the Petitioner leads a group of persons who are aggrieved by the tender in issue. The arguments in the matter, i.e., in the writ petition were heard. Since the counsel for the Petitioner was not available the matter was listed for further hearing on 01.08.2011. The writ petition was called out for hearing on the aforementioned date; since both counsels were not available, it was adjourned to 02.08.2011. On 02.08.2011, a request was made on behalf of the learned senior counsel appearing for the Petitioner that he was unavailable till 04.08.2011; consequently the matter was posted on 05.08.2011. The matter did not reach hearing on 05.08.2011. Consequently, the matter was taken up for hearing on 08.08.2011. On 08.08.2011 the matter could not be taken up since the learned senior counsel for the Petitioner was unavailable due to personal difficulty; thus the matter was listed on 09.08.2011. The arguments on behalf of the Petitioner were concluded on 09.08.2011. The matter was posted for 10.08.2011. Arguments were heard on that date as well as on the succeeding date, i.e., 11.08.2011 when, judgment in the matter was reserved. Counsels for parties were also directed to file their respective bill of cost.

SUBMISSIONS of COUNSELS

10. Before us on behalf of the writ Petitioner arguments have been advanced by Mr U.U. Lalit, senior counsel assisted by Mr Arunabh Chowdhury, while on behalf of GNCTD Mr Najmi Waziri, Sr. Standing counsel advanced submissions. On behalf of the 4th Respondent submissions have been made by Mr Neeraj Chaudhari, Advocate.

11. Mr Lalit, learned senior counsel, assailed the tender issued by DIMTS on the ground that it was contrary to Rule 50, which, according to him, introduced a seamless scheme for security registration plates which could not be bifurcated in the manner as sought to be done by GNCTD by having their procurement being

made under the aegis of DIMTS. It was, therefore, his contention that under the Rules as framed, DIMTS was not an entity recognized by law to issue security licence plates, and since the procedure and the manner concerning manufacture, issuance and affixation of security licence plates had been provided in the M.V. Act and the C.M.V. Rules, GNCTD had acted contrary to the law in bifurcating the procurement of the security licence plates, that is, its manufacture from its issuance and affixation. In order to buttress this contention, which is avowedly a pivotal part of his submission, following sub-points were made in support of this contention:

(i) Section 2(37) of the M.V. Act defines registering authority as one which is empowered to register motor vehicles under chapter IV. The provision for its registration are contained in chapter IV which, inter alia provide, u/s 40, the place where registration has to be made. The manner of registration is provided u/s 41 of the M.V. Act. A special emphasis was laid on Sub-section (6) of Section 41 of the M.V. Act which provides, inter alia, that the registering authority shall assign to a vehicle, a "distinguishing mark", consisting of one of the groups of such letters followed by such letters and figures as allotted to the State by the Central Government from time to time by notification in the official gazette; which would be "displayed" and "shown" on the motor vehicle in such a form and in such a manner as may be prescribed by the Central Government. Therefore, according to the learned Counsel, the manner in which the registration marks are to be displayed are contained in Rule 50 as amended in 2001 (reference to which has already been made hereinabove). Based on the provisions of Rule 50 wherein, under Clause (v) of Sub-rule (1) it is provided that, licence plates with the specifications indicated in other sub-clauses of Rule 50, along with specified registrations, would be issued either by the registering authority or the approved licence plate manufacturers or their dealer; it was argued that the DIMTS in law could not undertake this job function as, it was neither a registering authority, as defined u/s 2(37) of the Act, nor an approved licence plate manufacturer or their dealer; which approval, if at all, could be granted by the Central Road Research Institute (in short "CRRI") or an agency authorized by the Central Government in that behalf.

(ii) The instant tender issued for security licence plate was not in consonance with Clause (iii) of Sub-rule (1) of Rule 50 which required that each such plate shall bear a permanent consecutive identification number of a minimum seven (7) digits to be printed on the reflective sheeting. This requirement having not been included in the scope of work (even though subsequent clarification and addendum was issued on 18.05.2011 and 03.06.2011 respectively), created a serious defect in the implementation of the said scheme.

(iii) The Clause (iv) of Rule 50 introduces a vital security feature, in the form of a third registration mark, which is, a chromium based self-destructive hologram sticker required to be affixed on the left-hand top part of the windshield of a vehicle. This third registration mark, as per Clause (iv), of Sub-rule (1) of Rule

50, is required to contain details, such as, the registration mark, the details of registering authority, etc.; which again, can be issued only by the registering authorities or approved dealers of the licence plates manufacturers, alongwith regular registration marks, and if, for any reason the said sticker is destroyed it shall be issued by the licence plate manufacturer or its dealer. It was contended that appendix 9 of the impugned tender excluded the branding of this sticker and, therefore, once again introduces a serious deviation from the provisions of Rule 50(1)(IV).

(iv) The unnecessary introduction of an additional security feature, in the form of, a dynamic water mark in the reflective sheet, based on a design approved by the GNCTD. In support of this submission, it is submitted that the rule making power vests in the Central Government and any amendment to the rule can only be brought about by the Central Government and not by the State Government(s) or the Union Territories, which are only the implementing agencies. The GNCTD by introducing this additional feature has amended the rule without the requisite authority.

(v) It was submitted that the tender in issue, requires Respondent No. 2 to only procure security licence plates and associated items from successive bidders, and that it is only thereafter that DIMTS would emboss and affix the same on the concerned motor vehicle. This, according to the learned Counsel, is not permissible under the M.V. Act or the C.M.V. Rules since DIMTS is neither a registering authority nor an entity which has a type approval certificate issued in its favour. As would have been noticed from what is observed hereinabove that this is the same argument which impugns bifurcation of job functions (as envisaged by the GNCTD) on the ground of its impermissibility under M.V. Act and C.M.V. Rules.

(vi) Under Clause 4(xiv) of the notification dated 22.08.2001, there is a requirement to carry out a periodic audit by the testing agency, which is the CRRI, or any other agency appointed by the Central Government in that behalf. The manner of carrying out this audit, to ensure compliance with the security licence plate scheme [which is known as the Conformity of Production Procedure (in short "COP")] has been notified by the 4th Respondent, i.e., Union of India through the Ministry of Road Transport and Highways. The procedure put in place requires the compliance test to be first conducted at the manufacturer's plant, while the subsequent test is required to be carried out on the basis of samples drawn at random from the vendor premises. This position according to the learned senior counsel has been reiterated by the CRRI vide their notification dated 10.06.2011, which seeks to convey that the COP cannot be bifurcated. It is submitted that the COP compliance test commences at the manufacturer plant and continues till embossing is carried out, to ensure quality of the number plates. (To be noted that this document, i.e., letter dated 10.06.2011 has been appended for the first time by the Petitioner with its rejoinder). Based on the aforesaid letter and the earlier notification dated 04.09.2002, it is argued that

the COP compliance test cannot be bifurcated as is sought to be done by the impugned tender.

(vii) The Memorandum of Association (in short "MOA") of DIMTS does not permit it to undertake the activity in issue and hence is *ultra vires* the provisions of its MOA.

(viii) Lastly, the impugned tender seeks to implement Rule 50; since its terms are not in consonance with the said Rule, it is *ex-facie* illegal. It was contended that the process prescribed under Rule 50 vests a "processual right" in the Petitioner. Any breach of processual right is actionable. For this purpose the learned Counsel relied upon the observations made by the Supreme Court in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*,

11.1 Before we proceed further, it may be relevant to record here that even though other grounds have been raised in the writ petition, such as, ground "Q"; the submissions of the learned senior counsel have been confined to the aforesaid aspects.

12. In so far as GNCTD was concerned, the arguments were advanced by Mr Waziri. Mr Waziri submitted that the tender in issue was confined to invitation of bids from private vendors only, for procuring security licence plates and associated items for security registration plates. The project, as conceived by GNCTD, required bifurcation of the procurement process from installation and affixation of the security registration plates, as these activities, according to the GNCTD, were critical to the safety and security of the citizens. The fact that personal information and records of the vehicle owner would be available in the process, GNCTD for good reason had deemed it fit to engage a government owned entity which was under its control, rather than a purely private entity. The bifurcation of the procurement process from installation and/or affixation of security registration plates was conceived, in order to further public interest. The bifurcation of job functions was not barred either under the M.V. Act or the C.M.V. Rules framed thereunder.

12.1 Bifurcation, according to the learned Counsel, had given a flip to competition, and hence, had resulted in economy of price. As a matter of fact it was contended by Mr Waziri that they had received a quote for the security registration plates at a price as low as Rs. 277 per plate. The learned Counsel contended that if this rate was compared with other States, the court would find that prices ranged from Rs. 349 per plate, as in West Bengal, to a couple of thousands rupees, in some of the North-Eastern States. It is his contention that the difference in prices would itself demonstrate the in-built public interest in the bifurcation process. Mr Waziri further contended that in the Notice Inviting Tender (in short "NIT") GNCTD, had consciously, in public interest, given up on the insistence of the bidders" possessing a type approval certificate and a COP at the NIT stage itself, even while simultaneously, making a provision to have the

same in place within 120 days from issuance of the LOI; only with an idea of making the tender process inclusive, and thereby, giving a chance of widening the spectrum of prospective supplier/ vendors. The learned Counsel sought to buttress this submission by reference to judgment of the Supreme Court in *Shinmit* (supra). Special emphasis was laid on the observations of the Supreme Court wherein the court has observed that, in formulation of tender conditions, State had to be accorded a greater leeway.

12.2 As regards the contention of the learned Counsel for the Petitioner that the Respondents had not included in the scope of work, the requirement of carrying a laser branded permanent consecutive identification number; Mr. Waziri relied upon the clarification issued by DIMTS on 21.06.2011; which evidently had cured the alleged defect.

12.3 Similarly, with regard to the allegation made on behalf of the Petitioner that the additional security feature in the form of dynamic water mark had been introduced by GNCTD contrary to the scheme of the M.V. Act and the C.M.V. Rules, on the ground that the power to amend the Rules was vested only in the Central Government; was answered once again by reference to the amendment dated 21.06.2011 issued by DIMTS. The learned Counsel pointed out to us that this was only an additional feature which was not required to be considered at the time of evaluation of the bids.

12.4 In so far as the other objections raised by the Petitioner were concerned, i.e., the exclusion of the third registration mark from appendix 9 of the tender; and the fulfilment of requirements as envisaged under the Government of India notification dated 04.09.2002 read with the clarification issued by CRRI on 10.06.2011, requiring compliance test to be carried out both at the manufacturer's plant and at the embossing stage without bifurcation - the learned Counsel submitted that the Petitioner had in a manner of speaking jumped the gun and not understood the ethos behind issuance of the instant tender. GNCTD's interest, according to the learned Counsel was, to reduce the cost and ensure the sanctity of information available with it, as well as the security and safety of its citizens. It was to achieve this end that it had bifurcated the project into two stages. The first stage being: procurement of security registration plates. Therefore, the objection with regard to insertion of registration details whether in the security registration plates or in the third registration mark would be fulfilled by an agency at the stage of embossing and affixation of the security registration plates on to the motor vehicles.

12.5 As regards carrying out the periodical audit in consonance with paragraph 4(xiv) of the notification dated 22.08.2001 was concerned; the learned Counsel submitted that in the tender, to obtain a COP and a type approval certificate, a window period of 120 days from the date of issuance of the LOI had been provided to successful bidders/vendors.

12.6 Mr. Waziri also repelled the allegation that the MOI of DIMTS did not permit

it to undertake the activity in issue.

12.7 Mr Waziri summed up his argument by saying that the entire challenge was motivated and made only for the purposes of delaying the process of implementation of the scheme. It was submitted that the Petitioner, who had not participated in the tender, had No. locus standi to lay challenge to the present tender. In these circumstances a prayer was made that the writ petition be dismissed with cost.

12.8 As regards the argument of the Petitioner that DIMTS could not undertake job of embossing and affixation/ installation of security registration plates as it was neither a registering authority, as defined u/s 2(37) of the Act, nor an entity which had a type approval certificate issued to it; Mr Waziri sought to meet the submission by referring to the provisions of Sections 2(37), 65(2)(b), 213 and Section 44 of the M.V. Act read with Rule 30(1) and 123 of the Delhi Motor Vehicle Rules, 1993 (in short "Delhi Rules") to contend that, the GNCTD had very wide powers u/s 2(37) of the M.V. Act to appoint any person as an officer, including DIMTS, to discharge statutory duties of a registering authority, which otherwise were conferred upon it under the M.V. Act. It was, however, simultaneously also sought to be contended that the issue of appointment as a registering authority would arise only at the stage when the security registration plates were required to be issued to the vehicle owner. The exercise undertaken by the GNCTD at the moment involved only the procurement of basic and semi-finished raw-materials in the form of plates and stickers from the manufacturers, its dealers and/or suppliers which would then be processed by the registering authority in consonance with the provisions of Rule 50 and the notification dated 22.08.2001. It was thus submitted that the challenge at the moment was half baked and in the least pre-mature, since issue of the security registration plates not meeting the requisite specifications would arise only at the stage of installation and/or affixation.

13. In rejoinder, apart from reiterating the submissions made hereinabove, Mr Lalit sought to bring to our notice that Rule 30 of the Delhi Rules clearly provided that the registering authority shall be an officer appointed or empowered by the Commissioner. An officer would only mean an individual and not an entity such as DIMTS and, therefore, the invocation of definition under the General Clauses Act, 1897 of person would not be applicable.

Reasons

14. Having heard the learned Counsels for the parties we are of the view that shorn of verbiage and unnecessary details, the challenge in the present petition veers only to one main issue which is: whether GNCTD was empowered to issue the instant tender, which seeks to bifurcate the procurement of security licence plates and associated items from the next step in the project related to embossing of details (as delineated in Rule 50 of the C.M.V. Rules) and the affixation/installation of duly compliant security registration plates. In order to

appreciate the said issue it would be important to note briefly the scheme of the M.V. Act and the contents of the Rule in issue, i.e., Rule 50.

14.1 Briefly, the registering authority is defined in Section 2(37) of

the Act as follows: "Registering Authority" means an authority empowered to register motor vehicles under Chapter IV. Chapter IV contains sections commencing from Section 39 and ending with Section 65. For our purposes Sections 39, 40, 41(vi), 64 and 65 are relevant.

14.2 Briefly, Section 39 prohibits every person from driving any motor vehicle including an owner of the motor vehicle from causing or permitting vehicle to be driven in any public place or any other place unless the vehicle is registered in accordance with the provisions of Chapter IV. There is a requirement that the vehicle should carry and display the registration mark in the manner prescribed. The only exception to this provision being: those motor vehicles which are in possession of a dealer subject to the conditions that may be prescribed by the Central Government in that behalf.

14.3 Section 40 provides that subject to the provisions of Section 42, Section 43 and Section 60 every owner shall cause his vehicle to be registered by a registering authority in whose jurisdiction he has residence or place of business where the vehicle is normally kept.

14.4 Section 41 speaks about the manner in which the registration is to be made. Sub-section (6) of Section 41 provides that the registering authority shall assign to the vehicle for "display" distinguishing marks (i.e., the registration mark) which shall consist of one of the groups of those letters, followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the official gazette. The said registration mark is required to be "displayed" and "shown" on the motor vehicle in such a "form" and in such "manner", as may be prescribed by the Central Government.

14.5 Section 64 empowers the Central Government to make rules to provide for all or any of the following matters including, as provided in Clause (d), the "manner" and the "form" in which, the registration mark, the letters and figures and other particulars referred to in Sub-section (6) of Section 41, shall be displayed and shown.

14.6 Section 65 confers on the State Government the power to make rules for the purposes of carrying into effect the provisions of Chapter IV and other matters provided in Section 64. Sub-section (2) of Section 65 provides that: without prejudice to the generality of the foregoing power, such rules may provide for, amongst others, under Sub-clause (b) the appointment, functions and jurisdiction of the registering and other prescribed authorities.

15. It is in consonance with the Rule making power conferred on the Central Government u/s 64(d) read with Section 41(6) of the M.V. Act that the Central Government has framed the rules including the rule in issue, i.e., Rule 50. The

power of the Central Government to frame rules is prefaced by the provisions of Section 65 of the M.V. Act which empowers the State Government to make only those Rules which give effect to the provisions of the Chapter, i.e., chapter IV and other matters as prescribed in Section 64 of the M.V. Act. Therefore, under the garb of the power conferred on the State Government u/s 65(2)(b) of the M.V. Act cannot make a rule which is contrary to the rules made by the Central Government. We have No. hesitation in saying that the State Government cannot make a Rule which is contrary to the provisions of Chapter IV and those matters which are specified in Section 64 of the Act.

16. At this juncture it may be relevant to note and examine the relevant provisions of Rule 50, which was amended by virtue of the notification dated 28.03.2001 brought into effect w.e.f. 28.09.2001. For the sake of convenience the relevant parts of Rule 50 are extracted hereinbelow:

50. Form and manner of display of registration marks on the motor vehicles.-80[(1) On or after commencement of this rule, the registration mark referred to in Sub-section (6) of Section 41 shall be displayed both at the front and at the rear of all motor vehicles clearly and legibly in the form of security license plate of the following specifications, namely:

(i) the plate shall be a solid unit made of 1.0 mm aluminium conforming to DIN 1745/DIN 1783 or ISO 7591. Border edges and corners of the plate shall be rounded to avoid injuries to the extent of approx. 10 mm and the plates must have an embossed border. The plate shall be suitable for hot stamping and reflective sheet has to be guaranteed for imperishable nature for minimum five years. The fast colouring of legend and border to be done by hot stamping;

(ii) the plate should bear the letters "IND" in blue colour on the extreme left centre of the plate. The letter should be one-fourth of the size of letters mentioned in Rule 51 and should be buried into the foil or applied by hot stamping and should be integral part of the plate;

(iii) each plate shall be protected against counterfeiting by applying chromium-based hologram, applied by hot stamping. Stickers and adhesive labels are not permitted. The plate shall bear a permanent consecutive identification number of minimum seven digits, to be laser branded into the reflective sheeting and hot stamping film shall bear a verification inscription;

(iv) apart from the registration marks on the front and rear, the third registration mark in the form of self-destructive type, chromium based hologram sticker shall be affixed on the left-hand top side of the windshield of the vehicle. The registration details such as registration number, registering authority, etc., shall be printed on the sticker. The third registration mark shall be issued by the registering authorities/approved dealers of the license plates manufacturer alongwith the regular registration marks, and thereafter if such sticker is destroyed it shall be issued by the license plate manufacturer or his dealer;

(v) the plate shall be fastened with non-removable/nonreusable snap lock fitting system on rear of the vehicle at the premises of the registering authority; The license plates with all the above specifications and the specified registrations for a vehicle shall be issued by the registering authority or approved the license plates manufacturers or their dealers. The Central Road Research Institute, New Delhi or any of the agency authorized by the Central Government shall approve the license plates manufacturers to the above specification;

(vi) the size of the plate for different categories of vehicles shall be as follows:

...

16.1 At this juncture it may also be relevant to note relevant contents of notification dated 22.08.2001 and the amendment notification dated 16.10.2001 i.e., in particular, paragraphs 4(1), 4(vii), 4(ix), 4(xi) and 4(xiv). The same are extracted hereinbelow:

(i) the manufacturer of supplier shall have a certificate from the Central Road Research Institute, New Delhi or any one of the testing authorities by the Central Government under Rule 126 of the Central Motor Vehicles Rules, 1989.

(vii) The third registration plate in the form of self destructive type chromium based hologram sticker shall be of the size of 100mm x 60 mm is to be affixed on the inner side of the left hand corner of windshield of the vehicles. The details of the sticker shall be (i) name of registering authority, (ii) registration number of the vehicle (iii) laser branded permanent identification number (iv) engine number and (v) chassis number of the vehicle, on the bottom of the right corner of the sticker. The chromium based hologram shall be applied but a smaller size of 10x10mm. In the said sticker the registration number of the vehicle shall be in the centre with a letter size of 10 mm in height. The name of registering authority would be on top of sticker in letter size of 5 mm, while laser branded permanent identification number, than engine number followed by chassis number shall come in the bottom left side of the sticker with numeral size being 2.5 mm in each case. A depiction of the sticker is given in the sketch as specified in the Annexure annexed to this order.

(ix) No. high security plate shall be affixed outside the premises of the registering authority.

(xi) The registration plate will be supplied to the motor vehicle owners by the vendor against the authorization by the Road Transport Officer or any officer designated for the purpose by the State Transport Department.

(xiv) Periodic audit shall be carried out by the concerned testing agency to ensure compliance of the requirements of the high security registration plate.

16.2 In so far as the notification dated 16.10.2001 is concerned the following Clause (iv) was relied upon:

In sub Clause (v), the following proviso shall be inserted, namely:

Provided that the permanent consecutive identification number in Arabic numbers shall be preceded by two alphabets representing the name of the vendor or the manufacturer or the supplier, as the case may be, for whom type approval certificates is issued by the test agencies.

17. A reading of the aforesaid Rule alongwith notification dated 28.03.2001, the notification dated 22.08.2001 and amendment notification dated 16.10.2001 would show that the main features of the rule and various notification are broadly as follows:

(i) To provide a registration plate which would be a solid unit made of aluminium conforming to the specification contained therein. The plate is required to be hot stamped bearing a reflective sheet.

(ii) The plate would bear IND in blue colour on the extreme left centre of the plate in order to indicate the nationality.

(iii) Counterfeiting of the plate is sought to be made difficult, by insisting on the requirement to have a chromium based hologram putting in place by using hot stamping process. The plate is required to bear a permanent consecutive identification number having a minimum of seven (7) digits by using the process of laser branding.

(iv) A third registration mark (which is really a chromium based hologram self-destructive sticker containing details, as provided in the Rule and the attendant notifications) is to be affixed on the left-hand top side of the windshield of the vehicle. This third registration mark (i.e., the sticker) should contain the following details: registration number, name of the registering authority, laser branded permanent identification number, engine number and chassis number of the vehicle. The manner of displaying such information is given in paragraph 4 Clause (viii) of notification dated 22.08.2001.

(v) Lastly, the plate is required to be fastened by a non-reusable snap lock fitted at the rear of the plate. This affixation is required to be done at the premises of the registering authority.

18. It has been contended by the learned Counsel for the Petitioner that the manufacture, issuance and affixation of security licence plates is one seamless job function which can be carried out either by the registering authority or by a manufacturer having a type approval certification or, its dealer. A reading of the Rule alongwith the three notifications, referred to above, would show that what is required under the provisions of Section 41(6) of the M.V. Act is that the registration mark is displayed and shown in the form and manner as prescribed by the Central Government. The form and manner of display of marks on motor vehicle is contained in Sub-clause (i) to (v) of Sub-rule (1) of Rule 50. There is to our minds No. provision whatsoever in clauses (i) to (iii) of Sub-rule (1) of Rule 50 which provides for the entity which is required to supply or manufacture the plates. As a matter of fact there is No. indication even in Clause (iv) of Sub-rule

(1) of Rule 50 as to who would manufacture the third registration mark, i.e., sticker. Seen more closely Rule 50 (1) (iv) comprises of three parts. In the first part of Clause (iv) of Sub-rule (1) of Rule 50 there is a reference to the form of the third registration mark/ sticker. In the second part of Clause (iv) of Sub-rule (1) of Rule 50 there is a reference as to the details which the sticker should contain. These details have been further amplified in the notification dated 22.08.2001 [See Clauses (iv) and (vii)]. The reference to entities is in the third part, which broadly provides that the third registration mark shall be issued by the registering authority/ approved dealers of the licence plate manufacturers along with the regular registration marks and thereafter if such sticker is destroyed, it shall be issued by the licence plate manufacturer or its dealer. Similarly, in Clause (v) of Sub-rule (1) of Rule 50, it is provided that the plate shall be fitted with non-reusable snap lock on the rear of the vehicle. There is an indication that the said job function shall be conducted at the premises of the registering authority. Below this clause i.e., Clause (v) of Sub-rule (1) of Rule 50, it is further indicated that licence plates with the aforesaid specifications shall be issued by the registering authority or the approved licence plates manufacturer or their dealers. The CRRI or other agency so authorized by the Central Government is required to grant approval to the licence plate manufacturers.

18.1. Therefore, a close perusal of the clauses, in particular, Clause (iv) and (v) of Sub-rule (1) of Rule 50 would show that the entities mentioned i.e., registering authorised/approved dealers come into the picture only at the stage of issuance and affixation. In other words there is No. impediment under the Rules in the bifurcation of the two job functions. The first job function with which the instant tender is concerned and is clearly distinguishable involves, manufacture of a solid aluminium plate bearing the letters IND. The manufactured plate should not only be suitable for hot stamping and laying out of a reflective sheet but is also required to carry a chromium based hologram affixed on it once again by resorting to a hot stamping process. Since Clause (iii) of Sub-rule (1) of Rule 50 does not allow the deferment of insertion of the seven (7) digit permanent consecutive identification number on the plate to the stage of issuance, GNCTD has corrected course by providing, admittedly, the necessary clarification vide its communication dated 21.06.2011. But as indicated above, this is not so vis-a-vis details which are required under Clause (iv) of Sub-rule (1) of Rule 50, to be provided, in the third registration mark/ sticker. The Rule as configured allows the registering authorities/ approved dealers of licence plate manufacturers to ensure its compliance in terms of what is required to be contained therein in the form of information on the sticker, at the time of issuance. Similarly, quite clearly Sub-clause (v) of Sub-rule (1) of Rule 50 brings into play the role of the registering authority to affix the plate at its premises at the time of the affixation of the security licence plates. Any doubt in this regard is clarified by what is stated under Clause (v) of Sub-rule (1) of Rule 50 which, in sum and substance, provides that it is the licensing authority or the approved licence plate manufacturer, as the case may be who is required to ensure that

the security licence plates comply with the specifications given in Clause (i) to (v) of Sub-rule (1) of Rule 50, at the time of its issuance. Therefore, we are unable to appreciate the argument of learned Counsel for the Petitioner that the job function of manufacturing a plate of a particular specification as also the third registration mark/ sticker sans the requisite details can be interdicted by the court at this stage.

18.2. Thus the concerns of the learned Counsel for the Petitioner which were based on the contents of appendix 9 are, therefore, according to us without merit. For the convenience we are extracting hereinbelow the relevant portion of appendix 9 based on which arguments were addressed on behalf of the Petitioner:

Appendix 9: Scope of Services

Sr. No.

Description

Supply of complete set of Security License Plates, in terms of the Motor Vehicle (New HSRP) order 2001 dated August 22, 2001 and Rule 50 Central Motor Vehicle Rules (CMV s) 1989 comprising:

1(*)

Security license plate for front and rear of mother vehicles conforming to Rule 50 para (i), (ii) and (iii), as modified/ updated from time to time but excluding the permanent consecutive identification number.

2

Non-removable/ non-reusable snap lock fitting system for front and rear of the motor vehicle and conforming to Rule 50 para (v) as modified/ updated from time to time.

4

Third registration mark in the form of self-destructive type, chromium based hologram sticker for affixing on the left hand top side of the windshield of the vehicle but excluding the printing of registration details of the motor vehicle and conforming to Rule 50 para (v) as modified/ updated from time to time.

5

Hot stamping firm for item no. 1 above of appropriate dimensions conforming to para 4(vi) of the Motor Vehicle (New HSRP) order 2001 dated August 22, 2001.

Note:

For details specifications the Motor Vehicle (new HSRP) order 2001 shall prevail at all times and CMVR Rule 50.

Appropriate approval from approved test agency shall be made available for aforesaid supplies.

Note:

1) The Inspection/testing organization nominated by the DIMTS/ Transport Department shall have the right to collect the samples of material from the stores of the vendor/s for the evaluation/ testing during the tenure of the Agreement.

(*) In addition to the requirements of the Motor Vehicle (NEW HSRP) order 2001, additional security feature in the form of a dynamic water mark in the reflective sheet of appropriate design as approved by GNCTD may be added.

18.3 As indicated hereinabove, insofar as exclusion of permanent consecutive identification number is concerned, GNCTD has in its clarification dated 21.06.2011 corrected course. The relevant part reads as follows:

It is clarified that laser etched branded permanent consecutive identification number as provided by successful bidder shall be accepted as marked by the successful bidder while supplying the license plates to DIMTS. Adequate inventorying alongwith in depth data base management for proper identification for supplied license plates with permanent consecutive identification shall be prepared between successful bidders and DIMTS, to ensure that the sanctity and security of plates is maintained. All bidders have to include this activity as part of their financial proposal.

18.4 Similarly, as regards the addition of the additional feature of dynamic water mark, GNCTD has relied upon the same clarificatory note dated 21.06.2011 wherein it states as follows:

This is only an additional optional feature. Further, this will also not be considered for evaluation of the bid.

18.5 This is as per the Petitioner's own stand in the rejoinder got cured by virtue of the said clarificatory note.

19. The argument, therefore, of the Petitioner really pivoted, as indicated at the very outset around the division in the job functions. As indicated hereinabove, the manner in which Rule 50 reads, it is permissible to segregate the manufacture of plates of requisite specifications sans the details (save and except that which pertains to permanent consecutive identification number) from the subsequent step in the process, which involves, issuance and affixation of the security registration plate. Undoubtedly, at that stage, it would be the bounden duty of the registering authority to ensure compliance with the requisites of Rule 50, particularly those set out in Clause (i) to (v) of Sub-rule (1) of Rule 50 read with the attendant notifications.

20. DIMTS at this stage is only conducting the job junction of procuring security plates and the associated items of requisite specifications. Therefore, the

argument of the GNCTD that the action is pre-mature is in our view well founded.

20.1 The submission of the learned Counsel for the GNCTD that the additional security feature in the form of a dynamic water mark is not taken into account in the evaluation of the bids, squarely answers the objection raised by the Petitioner that the M.V. Act and the C.M.V. Rules cannot be amended by the State Government; as it has No. power to amend the rules, in a manner of speaking, by a side wind.

21.2. The submission advanced on behalf of GNCTD that the price is required to be quoted for the additional security feature (i.e., the dynamic water mark) only to enable GNCTD/ DIMTS to gather information with regard to this feature, in case it is considered advisable at some point in time in the near future to include this feature as well in the security licence plate; is an approach if adopted required to bear in mind that while there is a prohibition on the State Government to enact rules contrary to the provisions of Chapter IV or matters specified in Section 64 of the M.V. Act, there is No. impediment whatsoever to provide for aspects which further the purpose of the provision of the said Chapter or the Section. In any event since this additional feature is not being introduced at this stage, we are not required to comment upon it.

21. Therefore, the argument of the learned Counsel for the Petitioner that DIMTS not being a registering authority or an entity having a type approval certificate; cannot issue a security licence plates with the specifications contained in Rule 50 would once again require us to labour on an issue without knowing with certainty whether DIMTS is going to be the issuing authority under the M.V. Act and the C.M.V. Rules. Once the argument of bifurcation is accepted the tender cannot be declared as being contrary to the provisions of the M.V. Act and the C.M.V. Rules as long as it confines itself, as it does at present, to the stage of procurement of security licence plate and associated items.

22. Similarly, the fact that GNCTD has granted 120 days for obtaining the type approval certificate in terms of Clause 3.2.2 cannot be found fault with as long as type approval certificate is accorded by the designated agencies as provided in Rule 50. There is No. requirement under the Rules which prohibits prospective bidders/ vendors from participating in the tender without having in place, in the first instance, a type approval certificate.

22.1 As a matter of fact the Petitioner on its own admits that out of the six (6) bidders, who have participated, four (4) bidders have in their possession a type approval certificate. The said four (4) bidders are those whose names appear in the list of eighteen (18) such entities in the country which have the requisite type approval certificate. In our view, therefore, the argument advanced on the basis that the process of procurement is undertaken by an entity other than a registering authority or a manufacturer having the requisite type approval certificate, is without merit, since amongst the bidders who have participated, at least four (4) have the requisite type approval certificate. This aspect is clearly

admitted by the Petitioner in the rejoinder in paragraph 13; the relevant portion of which reads as follows: "Contrary to the stand taken by the Respondent Nos. 1 and 3 that there was wide participation in the tender process, the Petitioner states that only 6 bidders participated in the impugned tender out of which there were only 4 TAC holders".

23. So far as the argument of the learned Counsel for the Petitioner is concerned that the M.O.A. of DIMTS did not permit it to carry on the activity of procuring security registration plates is, in our minds not tenable. A perusal of Clause 12 under Part B of the M.O.A. which deals with objects incidental or ancillary to the main objects of DIMTS, would show that such an activity can be undertaken by DIMTS. As regards the argument of the learned Counsel for the Petitioner that the COP cannot be bifurcated, in our view is also a submission which is without merit. Learned Counsel had relied upon the letter dated 10.06.2011 issued by CRRRI which succeeded an earlier notification dated 04.09.2002. A bare perusal of the letter shows that there is No. prohibition in the process being bifurcated.

24. We are, however, unable to appreciate the argument made on behalf of the GNCTD that, by the process that they have adopted for procurement, under the aegis of DIMTS, has resulted in substantially lowering the price of the security licence plates. According to us the price offered by the bidders would be dependent on myriad factors amongst which, the most important factor would be the volumes that would be required to supplied in the market in issue. Judicial notice can be taken of the fact that in Delhi today, the total numbers of vehicles on the road are more than the total number of vehicles put together in the city of Mumbai, Kolkata and Chennai. The number of vehicles which come up for registration in Delhi on a daily basis, is far more than any other city in the country. Given such large volumes the bidders in Delhi would necessarily quote far more competitive rates than those bidding for such like contracts in the State of Sikkim or cities in North-East. Having said so, it is not for the court to decide conditions to be incorporated in the tenders issued by the State. The court can if at all question the validity of the conditions contained in the tender if they are ex-facie illegal; arbitrary, unreasonable or discriminatory or actuated by malice or bias. The room for such interdiction by the court is consciously kept narrow. In our view none of the issues raised by the Petitioner are such as would persuade us to interdict the process of tendering any further.

25. For the foregoing reasons the writ petition filed by the Petitioner in our view is without merit and hence deserves to be dismissed. It is ordered accordingly.

26. At the conclusion of the hearing we had asked the counsels for the parties to submit their actual bill of costs as we are of the view that in tender matters having heavy financial stakes, the successful party should be entitled to actual costs incurred by way of fee paid to counsels. Mr Waziri has filed bill of costs both on behalf of Respondent Nos. 1 and 3, as well as on behalf of DIMTS, i.e., Respondent No. 2. Mr Neeraj Chaudhary has filed his bill of costs for Union of India, i.e., Respondent No. 4. The total cost incurred on counsels appearing on

behalf of Respondent Nos. 1 and 3 is Rs. 11,50,600/-, while the fee incurred by DIMTS is Rs. 15,74,650/-. On perusal of the memo of fee submitted on behalf of Respondents No. 1 to 3, we find that there was No. date fixed on 08.06.2011 and on 01.08.2011, the said counsel was not present. Further on 02.08.2011 and 08.08.2011, only adjournment was granted albeit at the request of learned Counsel for the Petitioner. We have also excluded the fee for these dates of hearing and, thus, the entitlement of costs would be Rs. 7,76,600/- as against the billed amount of Rs. 11,50,600/-. Similarly, Union of India, i.e., the 4th Respondent has incurred a costs of Rs. 19,150/-. Keeping in view the fact that Mr Waziri has addressed arguments both on behalf of GNCTD and DIMTS, we award one set of bill of costs, which is the lower of the two, as reduced by us to Rs. 7,76,600/- as indicated above. The said cost will be paid by the Petitioner to GNCTD and DIMTS in equal measure, while the second set of costs equivalent to Rs. 19,150/-, will be paid once again by the Petitioner to Union of India, i.e., the 4th Respondent.