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

+ W.P.(C) 9568/2020, CM APPL. 30670/2020 & CM APPL. 490/2021

MR. SANJAY SHARMA Petitioner

Through: Mr. Sudanshu Batra, Sr. Adv. with
Mr. Mohit Gupta, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents

Through: Mr. Rajiv Bansal, Sr. Adv. with
Mr. Arjun Pant, Adv. for R-1 & 2.

Mr. Kanwal Jeet Arora, Secretary,
DSLISA

+ W.P.(C) 608/2021 & CM APPL. 1530/2021 & CM APPLs.
5286/2021 & 5309/2021

SUNIL KUMAR KHATRI Petitioner

Through: Mr. Sanjay Bansal, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents

Through: Mr. Rajiv Bansal, Sr. Adv. with
Ms. Mrinalini Sen & Ms. Kritika
Gupta, Advs. for R-1
Mr. Kanwal Jeet Arora, Secretary,
DSLISA

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **12.02.2021**

1. Issue Notice. Mr. Arjun Pant, Adv. accepts notice on behalf of respondent nos.1 & 2 in W.P.(C) 9568/2020. Though the private respondents, who were sought to be impleaded by way of CM APPL.

490/2021 have also been served, none appears before us today. In fact even the proposed respondent no.7, who had appeared in person, has left the weblink during the course of this virtual hearing.

2. On 27.11.2020, this Court, while restraining the respondent from issuing letter of acceptance in respect of the subject tender, had already noticed the issue raised by the petitioner. The crux of the matter is that the respondent no.1/DDA floated tenders *inter alia* for upkeep and maintenance of public parks, and in terms of NIT N0.87/DY DIRECTOR/HORT.DWK/DDA/2020-21 pertaining to various colonies under Dwarka zone, the bidders/contractors were required to deploy a minimum number of employees depending upon the size of the park. The bidders/contractors were also told to give an undertaking to pay minimum wages to the employees, failing which, their bids were liable to be rejected. It transpires that in all such tenders floated by the respondent no.1/DDA, practically all the contractors only quote an amount equivalent to the minimum wage notified by the government from time to time. The other expenses that the contractors would have to incur for carrying out the contract by deploying tools and machineries, water charges, labour cess etc. are not factored in the bids submitted by them, though it appears that the respondent no.1/DDA reimburses statutory dues such as EPF, ESI contribution, bonus etc. to the contractors upon submission of proof of deposit/payment by them.

3. It appears that the way these contracts are structured and worked out, there is serious malpractice and, possibly, corruption involved, otherwise we see no reason as to why the contractors would be interested in securing and performing these contracts by quoting only the minimum wage payable to

the requisite number of employees that the contractor must deploy to carry out the work awarded in terms of the tenders. It is apparent that either the contractor would not deploy the requisite number of employees – as required under the contract, or would be receiving kickbacks from the employees as a condition of employing them. The first of the above-mentioned eventualities cannot work without the blessings of the local inspectors and other staff of the respondent no.1/DDA responsible for supervision of the work of the contractors. Pertinently, the respondent DDA has not built into the tender any requirement of biometric attendance and GPS monitoring, which leaves the field open for manipulation.

4. It is, thus, obvious by the manner in which the respondent no.1/DDA has floated these tenders, that the terms and conditions which have been laid down lack proper checks and balances, and under the very nose of the respondent no.1/DDA, rampant breach of labour laws (such as the Minimum Wages Act), and/ or the terms of the tender would be taking place. It, however, appears that the concern of respondent no.1/DDA is only to award the contract to see that the required work is done, without showing any sensitivity or concern towards compliance of the relevant labour laws and/ or the contractual terms. If the bids, as submitted by most of the contractors, are believed to be their genuine bids -meaning thereby that they are paying minimum wages to their employees without receiving anything in return for their services and deploying, then one fails to understand as to why the contractor would, in the first place, be eager to undertake such loss making contracts, and as to how the said contractor would earn any net profit. In fact, there can be no other conclusion, but that the contractor would suffer a loss, since he would have to deploy tools tackles and machinery as required

under the tender conditions, for which he would not be charging a penny! That apart, he would have to bear water cess and labour cess. Surely, they are not here to do charity. This also implies that the contractors would be receiving unaccounted and undisclosed income by resorting to malpractices and by not working the contracts in the manner that they are required to under the terms and conditions thereof.

5. On the last date, after noticing these concerns, we had issued notice to the Secretary, DSLSA, who is present today. We call upon him to place before us, suggestions so as to improve the system in a manner so as to ensure that all laws relating to labour welfare are strictly complied with, and all malpractices and possibilities of corruption are plugged.

6. We also issue notice to the Central Vigilance Commission (CVC) to invite their attention to the situation, and also to seek their views in the matter so as to suggest ways and means to improve the system. Let court notice be issued to Central Vigilance Commission, returnable on the next date. A copy of this order shall accompany the Court notice.

7. By placing reliance on the additional affidavit filed by the petitioner on 08.01.2021, Mr. Batra has pointed out that since April 2020, the respondent has floated about 300 other tenders of the same kind, where the L1 bidders have quoted only the amount equivalent to the minimum wages payable to the workers to be engaged by them, without factoring in other expenses that they would incur, much less any element of profit. It would be apposite to refer to Para 4 of the additional affidavit, wherein the petitioner has made the following averments: -

“4. That the petitioner has also prepared another chart to show to this Hon’ble Court that the Respondents even after passing the restrain orders dated 27.11.2020, are issuing NITs for similar work,

opening the financial bids and all participating bidders are quoting same/minimum bids, who are being chosen through draw of lots, without appreciating that all bids received from various bidders in such NITs, also only refer to the minimum wages, without factoring in without factoring other components and expenses as per the requirements NIT. Copy of this second chart is being filed and annexed herewith as ANNEXURE B.”

8. The petitioner has also given, by way Annexure ‘B’ to this affidavit, particulars of 40 tenders, which have been floated on the same terms even after this petition was preferred, and that too when the respondent no.1/DDA has been participating in these proceedings from day one.

9. In the light of the aforesaid, we direct the respondent no.1/DDA not to proceed to award the tenders which are yet to be awarded. We further direct that the award of tenders, which have been awarded after filing of these petitions, would remain subject to further orders in these writ petitions. The respondent no.1/DDA shall put all the successful bidders/awardees to notice of the pendency of the present petitions and the orders passed herein.

10. In the meantime, the respondent no.1/DDA shall also file its Counter Affidavit, dealing with the averments made in the petitions as well as in the additional affidavit.

11. List on 08.03.2021.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 12, 2021/kk