

(2025) 12 DEL CK 0014

Delhi HC

Case No: Writ Petition (C) No. 8044 Of 2023, Civil Miscellaneous Application Nos. 30979, 54402 Of 2023

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APPELLANT

Vs

M/s Mukesh And Associates &
Anr.

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Constitution of India, 1950- Article 226
- Indian Penal Code, 1860- Section 120B
- Prevention of Corruption Act, 1988- Section 13(1)(d), 13(2)

Hon'ble Judges: Devendra Kumar Upadhyaya, CJ; Tushar Rao Gedela, J

Bench: Division Bench

Advocate: Madhavi Diwan, Satvik Misra, Devashree, Aandrita Deb, Gunjan Dogra, Santanam Swaminadhan, Kartik Malhotra, Karthik, Vaisnavi Jay, Dr. Monika Arora, Subrodeep Saha, Anamika Thakur, Prabhat Kumar, Abhinav Verma

Final Decision: Dismissed

Judgement

Tushar Rao Gedela, J

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 seeking quashing of the appointment letter of the respondent no.1/M/s Mukesh & Associates bearing no.Z-28016/72/2016-PMSYY-III dated 26.04.2023 (hereinafter referred to as "impugned letter") in respect of the Expression of Interest (hereinafter referred to as "Eoi") bearing no. Z-28016/72/2016-PMSSY-III whereby the respondent no.2/Union of India (hereinafter referred to as "Uoi") appointed respondent no.1 as the Project Management Consultant (hereinafter referred to as "PMC") for establishing All India Institute of Medical Sciences (hereinafter referred to as "AIIMS"), Madurai.

2. Facts in brief are as under:-

a) It is stated that Uoi had floated an Expression of Interest vide reference No. ID-P291 in Z-28016/72/2016-PMSSY-III on 07.07.2021, for the purpose of setting up of AIIMS at Madurai in the State of Tamil Nadu under financial support of Japan International Cooperation Agency (hereinafter referred to as "JICA").

b) The petitioner and other firms including respondent no.1 submitted their bids and took part in the tender process. On 25.10.2022 the Standard Request for Proposal (hereinafter

referred to as "SRP") was prepared and floated by the JICA. The last date for submission of the Request for Proposal (hereinafter referred to as "RFP") was stipulated on 25.01.2023. The petitioner and other companies submitted their respective RFPs.

c) The petitioner claims that a meeting was held on 27.01.2023 in respect of the RFPs submitted by various bidders. The petitioner alleges that the respondents had connived with each other in order to deprive other bidders from being awarded the contract. The petitioner also claims that a complaint dated 01.02.2023 by one Mr. Amit Singh self styled Right to Information (hereinafter referred to as "RTI") activist, with respect to the purported professional conduct of respondent no.1 alleging concealment of relevant information was submitted to the Director, Ministry of Health and Family Welfare. Vide letter dated 08.03.2023, the UoI opened the financial bids from selected participants, including the petitioner and respondent no. 1.

d) Petitioner claims that UoI published the impugned letter dated 26.04.2023 appointing respondent no.1 as the PMC for establishing AIIMS Madurai. Challenging the same, the present writ petition has been filed.

3. Ms. Madhavi Divan, learned senior counsel appearing for the petitioner submitted that the UoI had overlooked and ignored a serious flaw in the eligibility of respondent no.1 and awarded the PMC services to respondent no.1. In that, the respondent no.1 was referred in First Information Report (hereinafter referred to as "FIR") dated 06.08.2020 bearing no. RC2182020A0001 registered by the Central Bureau of Investigation (hereinafter referred to as "the CBI") under Section 120-B Indian Penal Code, 1860 read with Sections 13(2) and Section 13(1)(d) of the Prevention of Corruption Act, 1988 on the complaint of Chief Vigilance Officer (hereinafter referred to as "CVO") of the Employees State Insurance Corporation (hereinafter referred to as "ESIC"). It is submitted by her that the then Director General (hereinafter referred to as "DG") of ESIC, namely Mr. P.C. Chaturvedi is alleged to have sanctioned 14 projects between the years 2007-2009 totalling to Rs.6255.39 Crores in violation of the Central Vigilance Commission hereinafter referred to as "CVC") guidelines and General Financial Rules (hereinafter referred to as "GFR"). Referring to the FIR, she submitted that it was specifically alleged that the Ex-DG did not have the powers under the Employees State Insurance Corporation Act, 1948 (hereinafter referred to as "ESIC Act") to sanction construction of medical colleges since his power of sanctioning capital works was limited to Rs.25 Crores only. Reading further, she pointed out that respondent no.1 was awarded 8 projects worth Rs.1528 Crores and that no transparency was observed while selecting a private architect consultant.

4. Learned senior counsel, though fairly admitted that respondent no.1 was not named as an accused, however keeping in view the severity and the gravity of the nature of offences involved and charges of corruption levelled, stated that it is apparent that such projects were awarded to respondent no.1 on a quid pro quo by Mr. P.C. Chaturvedi. She submitted that despite having brought the serious infraction to the notice of UoI, ignoring the basic principles in the CVC guidelines, the impugned letter of award dated 26.04.2023 appointing respondent no.1 as PMC was issued. Inviting attention to para 3 of the said FIR, she contended that the inquiry conducted by the CVO, who had filed the complaint, clearly revealed that Mr. P.C. Chaturvedi in collusion and connivance with the then officers of ESIC entered into a criminal conspiracy with the private players and resultantly empanelled ineligible architect consultants for construction of ESI hospitals, dispensaries, offices and housing facilities. The fact that the complaint was submitted by a public authority i.e. the CVO, rather than a private party, according to her, itself is indicative of the gravity of the situation, therefore UoI ought to have considered the involvement of respondent no.1 seriously before appointing the respondent no.1 as PMC.

5. In order to drive home the point that UoI has completely ignored such a serious allegation against respondent no.1, she further referred to para G of the counter affidavit to submit that contrary to the facts on record, an irresponsible and false statement that none of the firms or their proprietor including respondent no.1 have been accused in the FIR by CBI was made. Infact, according to her, the UoI compounded the falsity by stating that there is no mention of any wrong doings by respondent no.1 and that the inquiry and the complaint itself yielded nothing against respondent no.1. According to her, this statement by UoI is far from the truth. She submits that in such cases where corruption is at the highest level and there is a clear element of quid pro quo, there can hardly be any case where direct or credible evidence would be available. She contended that what may have transpired between the said Mr. P.C. Chaturvedi and respondent no.1 has to be gathered in view of the overall circumstances which are part of the aforesaid FIR.

According to her, the taint itself was enough to render respondent no.1 ineligible even to participate in the Eol, what to speak of being awarded the project management consultancy itself.

6. Referring to the complaint dated 01.02.2023 submitted by one Mr. Amit Singh the self styled RTI activist, specifically directed against respondent no.1 in respect of alleged professional misconduct, she submitted that it revealed as to how the said conspiracy was engineered violating the CVC guidelines and GFRs. Further serious and grave allegations were also levelled against the said P.C. Chaturvedi. In order to buttress her contention as to the manner in which the Uol had dealt with and brushed aside such a serious and grave issue, she invited attention to the letter dated 06.03.2023 in respect of the complaint dated 01.02.2023 by the said Mr. Amit Singh. Reading various paragraphs, she attempted to discredit the manner in which the inquiry was conducted on the said complaint. She contended that a plain reading of the said letter brings to fore the perfunctory and summary manner in which the inquiry was conducted and closed.

7. Learned senior counsel referred to various clauses of the SRP specifically Section 1.06 of JICA guidelines, Clause 4 of the Instructions to Consultants (hereinafter referred to as "ITC") to emphasize that the provisions contained therein clearly prohibited any bidder who may have engaged in any corrupt or fraudulent practices from being eligible qua the Eol. In fact, according to her, Section 1.06 of JICA guidelines was clearly in respect of corrupt or fraudulent practices by the bidders who were consultants. It was specifically prohibited that in case any bidder is found to engage in corrupt or fraudulent practices, the JICA would recognize such consultant as ineligible to be awarded a contract funded with Japanese Official Development Assistance (hereinafter referred to as "ODA loans"). She also referred to the CAG report for the year ending March 2017 placed on record to demonstrate the grave and serious infirmities in the works executed by respondent no.1 which also questioned the due diligence and sincerity of respondent no.1 in executing certain projects. According to her, this was a clear indicator of the ineligibility of respondent no.1.

8. Ms. Divan forcefully contended that despite the project having been funded by JICA, it is astounding to observe that a simple but a pertinent clause like "Previous Transgressions" was not engrafted in the said Eol. She contended that apparently all such important and pertinent clauses which would have prohibited bidders such as respondent no.1 from submitting their bids and participating in the tender process were visibly conspicuous by their absence. She contended that this absence was deliberate and a result of connivance and collusion between the respondent no.1 and Uol. In other words, it was with the sole view to award the contract to respondent no.1 that Uol purposely omitted from engrafting such prohibitory clauses in the Eol or the SRP. She stated that in case such clauses were engrafted in the Eol or the SRP, respondent no.1 would have not been able to even participate. According to her, Uol conveniently overlooked such pertinent clauses.

9. It is further contended that in contravention of Clause 10.9 of the "General Instructions on Procurement and Project Management" dated 29.10.2021 issued by the Ministry of Finance, Department of Expenditure, Government of India which emphasizes online tendering for efficiency and transparency, the bidding process for AIIMS Madurai was kept offline. Learned senior counsel specifically pointed out that the other JICA projects including AIIMS Awantipora (Srinagar), AIIMS Vijaypur (Jammu), AIIMS Bibinagar (Telangana), and at least 7 other projects had adopted online bidding. Thus, according to her it is questionable as to why the Uol deviated from guidelines, which were otherwise followed in all other projects. She would submit that it is apparent that the JICA guidelines were tweaked to align with the inadequacies and apparent ineligibility of respondent no.1.

10. Per contra, Dr. Monika Arora, learned Central Government Standing Counsel (hereinafter referred to as "CGSC") vehemently refuted the contentions of the petitioner and urged that the petition is without any merit.

11. In order to counter the contention that respondent no.1 is tainted having its name in the FIR registered by the CBI on 06.08.2020, learned CGSC submitted that on the complaint of Mr. Amit Singh, the self styled RTI activist, the Uol diligently conducted a thorough inquiry into the allegations. The said inquiry resulted in the letter dated 06.03.2023. Alluding to the letter dated 06.03.2023, she contended that the AIIMS, Madurai conducted an in depth inquiry after examining the complaint of the said Mr. Singh, the FIR of CBI as well as the investigation report submitted by the Sub Inspector of

the CBI before concluding that, (i) none of the firms, including respondent no.1 were named as an accused in the FIR by CBI and; (ii) the FIR, two inquiries and the complaint have not yielded anything incriminating against any firm including respondent no.1. Thus, according to her, from the above letter it is apparent that respondent no.1 is in no way connected with such allegations nor was tainted. Once such inquiry revealed no incriminating circumstance or evidence against respondent no.1, proceeding to award the PMC services by UoI cannot be questioned. According to her, since the petitioner lost out to respondent no.1, these frivolous grievances are being raised.

12. So far as the contention of the petitioner that certain clauses like "Previous Transgressions" etc., having not been incorporated or the present SRP seeking offline mode of bid submission is concerned, learned CGSC debunks the same. She stoutly contended that the whole project being funded under the Japan ODA Loans project, was entirely monitored and supervised under the JICA guidelines. The SRP which was floated with all the provisions was carefully drafted in accordance with such guidelines. To buttress the same, she alluded to the SRP particularly to "Note for Users (Client)" and clauses (a) and (b) to contend that there was a total prohibition from tinkering or tweaking any condition in the SRP by any person. In fact, clause (b) therein clarified that any modification in Information to Consultants or General Condition Contract from those proposed in the SRP, would render the proposal not worth considering. Thus, the terms and conditions engrafted in the SRP were sanctimonious. She would contend that the grievance of the petitioner with respect to the SRP not containing a clause in the nature of "previous transgressions" etc., are unsustainable.

13. To the contention that the UoI infringed the standard mode of online submission of bids purposely, learned CGSC would contend that nothing would be farther from the truth. In fact, according to her, this is an abject false contention. Inviting attention to clause ITC 12.1 of the ITC she vehemently contended that the said clause clearly provides that only physical/hard copies of the proposals would be accepted. This was in the knowledge of the petitioner who also complied with the same at the time of submission of proposals and is now unnecessarily raising a grievance only to cause prejudice.

14. Learned CGSC also referred to the "General Instructions on Procurement and Project Management" dated 29.10.2021 issued by the Ministry of Finance, Department of Expenditure Government of India, particularly para 1.3, to submit that the said policy is not applicable to projects funded by World Bank and other International Funding Agencies. She would contend that this project was being funded by Japan under its ODA Loans and thus would qualify under International Funding Agencies and the said policy cannot be made applicable and the contentions of the petitioner in that regard are not available.

15. Learned CGSC would allude to the counter affidavit filed on behalf of the UoI to submit that all the relevant contentions regarding the eligibility of respondent no.1 have been explained including the issue of the FIR registered by CBI. She would contend that the CBI did not name respondent no.1 as an accused firm nor from the reading of the FIR does any incriminating instance or complicity of respondent no.1 in the allegations get revealed. In such circumstances, it was not possible for the UoI to eliminate any entity from participating in the tender process. Even the inquiry by AIIMS Madurai also did not reveal any such aspect which the UoI could have considered. She prays that the writ be dismissed with heavy costs.

16. Adopting the arguments addressed on behalf of UoI, Mr. Santanam Swaminadhan, learned counsel for respondent no.1 submits that the entire SRP conditions were available with the petitioner and it participated fully without any objection or demur and therefore it cannot be now permitted to question the conditions or the false bogey of lack of provisions.

17. Learned counsel for respondent no.1 invited attention to the Letter of Invitation dated 25.10.2022 issued by the UOI in respect of the instant SRP. Referring to para 3 of the said letter, he contended that the name of respondent no.1 is reflected at Srl. No.(d) which was also in the knowledge of the petitioner on the said date. He would contend that it is intriguing as to why the petitioner did not object to the name of respondent no.1 reflecting in para 3 of the letter dated 25.10.2022 on the grounds now being raised in the writ petition. According to him, it is apparent that the petitioner out of pure professional rivalry has raised bogus pleas in the writ petition which are not only false and frivolous but also unsubstantiated. In fact, he contends that the writ petition deserves to be dismissed

on this ground itself. That apart, he invited attention to Clauses ITC 4.1(b) and ITC 4.1(c) of the ITC to submit that the list of ineligible and debarred firms and individuals at JICA's and World Bank's website were also available in which the name of respondent no.1 does not figure. Meaning thereby respondent no.1 does not fall within the debarred or ineligible firms as per the list maintained by both JICA and the World Bank. Predicated thereon, he would contend that the contentions raised by the petitioner are without any substance.

18. Learned counsel alluded to various documents filed in support of the contention that respondent no.1 had successfully executed similar projects without being debarred. He supports the contention that besides being fully eligible respondent no.1 is fully technically qualified, he also relies upon the judgment of the Hon'ble Supreme Court in *National High Speed Rail Corporation vs. Montecarlo Limited & Anr. (2022) 6 SCC 401*.

19. Having heard the learned counsel for the respective parties and minutely perused the documents on record, we are of the considered opinion that the only issue requiring examination by this Court is essentially on the question as to whether respondent no.1 was rendered ineligible on account of some taint in respect of the FIR dated 06.08.2020 registered by CBI. In fact, this was the mainstay of the contention of the petitioner.

20. Perusing the said FIR dated 06.08.2020, we find that the allegations revolved around the misuse of powers of Ex-DG of ESIC, one Mr. P.C. Chaturvedi. The FIR also alleges that no transparency was observed while selecting private architect consultants and so on and so forth. A bare perusal brings to fore that the allegations were principally against the said Mr. P.C. Chaturvedi and other officers of ESIC as also a private consultant. In particular the name of respondent no.1 appears only in the context of having been awarded eight projects worth Rs.1528 Crores. Other than that, there are no allegations which could be said to be incriminating or demonstrating any complicity. Of course, this opinion of ours is prima facie, upon examination of the FIR which is before us.

21. In the above context, we have also perused the complaint dated 01.02.2023 submitted by Mr. Amit Singh bringing to notice of the UoI the FIR registered by CBI and divulging certain allegations noted therein. It appears from the record that this complaint was referred to AIIMS, Madurai for its comments or observations. In compliance to such referral, by the letter dated 06.03.2023 and after having examined the complaint, the FIR of the CBI dated 06.08.2020 and the investigation report submitted by the Sub-Inspector, CBI, the AIIMS Madurai concluded that, (i) the FIR is primarily against the Ex-DG, ESIC and other officials who were involved in various malpractices and corrupt activities during their tenure in ESIC, (ii) the action recommended by the CBI calling for investigation is pointed against accused no.1 to 7 who are the officials of ESIC and accused no.8 who is the private consultant of HLL Lifecare Ltd. and (iii) none of the firms or their proprietor including M/s. Mukesh & Associates (respondent no.1) have been accused in the FIR. Consequently, respondent no.1 was found eligible to participate in the PMC tender process.

22. Having regard to the aforesaid and finding that there is nothing on record that could substantiate the contention of the petitioner that respondent no.1 was ineligible on account of being tainted or indulged in corrupt practices alongwith Mr. P.C. Chaturvedi, we are unable to find any merit in the contentions of the petitioner. The submission that the UoI did not examine the aforesaid issue or that it did not consider it appropriately, is clearly belied from the letter dated 06.03.2023 of AIIMS, Madurai, referred to above. No document or any evidence indicating or demonstrating the complicity or any incriminating circumstance has at all been either placed or referred to by the petitioner. We are not persuaded by said contention and we find it unmerited.

23. In view of the aforesaid finding, the contention based upon Section 1.06 of the JICA guidelines and Clause 4 of the ITC regarding corrupt and fraudulent practices also is rendered inconsequential since on facts there is nothing adverse or incriminating circumstance found against respondent no.1.

24. So far as the contention that the SRP was tailor-made to suit the needs of respondent no.1 or to make it eligible is concerned, we do not find any material on record that substantiates the same. In fact, from the letter of invitation placed on record under the heading "Notes for Users (Clients)", it was made clear that the Standard Request for Proposal i.e. the SRP is published by the JICA as a standard document without suppressing or adding text to the standard sections which are to be used without modification namely, Section I-ITC and Section VII - GCC. It was also clarified that if the

proposals are received with any modification at all, JICA would not consider them valid and it would be required that the consultants modify their RFP to align with the ITC or GCC, as the case may be. If that be so, the contention of the petitioner that the SRP or the RFP did not contain clauses like "previous transgressions" which has been omitted only to suit the respondent no.1 or make it eligible, is without any merit. Clearly, once the SRP was drafted and notified by the JICA, it is apparent that no additions or modifications thereto could be made by any person or entity. Having regard thereto, it is inconceivable that UoI could have altered any of the conditions as contended by the petitioner. As such this contention, too, is without any merit and is untenable.

25. Similarly, the contentions predicated on the policy for Clause 10.9 of the "General Instructions on Procurement and Project Management" dated 29.10.2021 issued by the Ministry of Finance, Department of Expenditure, Government of India are also unpersuasive and unsubstantiated. This is for the reason that para 1.3 of the said policy clearly indicates that the guidelines contained therein would not be applicable to projects funded by the World Bank and other International Funding Agencies. In other words, the said policy containing the guidelines may not be applicable to the present SRP being a project funded by the Japan ODA Loans which would be an International Funding Agency. The fact that the project is funded by Japan is not disputed. Thus, the guidelines and other provisions of the said policy would not be applicable to the present tender process.

26. Another contention raised by the petitioner to support their submissions regarding tweaking of the conditions of the SRP by UoI was in respect of the offline submission of RFP while in all other tenders relating to other AIIMS/Hospitals located in other cities of India, the bids were required to be submitted on-line. In this regard we may note that, Clause ITC 12.1 of the ITC clearly provided that so far as submissions of RFPs are concerned, only physical/hard copies will be accepted. When such clear instructions have been specified under the heading of "ITC", it is unfathomable as to how such a contention could even be raised at all. It is quite obvious and, cannot be denied even by the petitioner, that it must have submitted its RFP offline. If that be so, having regard to the fact that the SRP specifically provided such mode of submission of RFP, the petitioner appears to be attempting to mislead this Court There is no merit in this contention either.

27. Learned counsel for respondent no.1 had relied upon the following paragraph of *Montecarlo Limited & Anr.*(supra) to support his contentions:

"48. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advice, we rest the matter there and leave it to the wisdom of the Court(s) concerned, which ultimately may look to the larger public interest and the national interest involved."

There is no quarrel with the proposition however, since we have already disagreed with the petitioner's contentions on facts, we need not render any opinion as we have applied it in our consideration made in preceding paragraphs.

28. In view of the above, we do not find any merit in the writ petition. The same is dismissed, however, without any order as to costs.