

(2025) 12 DEL CK 0011

Delhi HC

Case No: Writ Petition (C) No.13990 Of 2023 & Civil Miscellaneous Application Nos.
55227-55228 Of 2023

Tarun Aggarwal

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Constitution of India, 1950- Article 226

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

Bench: Division Bench

Advocate: Achin Goel, Vinay Bhardwaj, Avshreya Pratap Singh Rudy, Usha Jamnal,
Mohammad Junaid Mahmood, Prajna Pandita, Santosh Kumar, Nidhi Rani, Ritik Dwivedi

Final Decision: Dismissed

Judgement

Tushar Rao Gedela, J

1. Present petition has been filed under Article 226 of the Constitution of India, 1950, seeking a direction to the respondent no.2/National Highway Authority of India (hereinafter referred to as NHAI) to cancel the bid submitted by the respondent no.3/M/s Chrishmatic Developers Private Limited (successful bidder) in respect of Request for Proposal bearing tender no. NHAI/WSA/DBOT/NORTH&EAST/1/2022 dated 26.09.2022 (hereinafter referred to as RFP), and further to restrain NHAI from awarding any tender/contract/work to respondent no.3. He further seeks a direction to award the said tender to him, being the highest bidder.

2. Before we advert to the facts of the case, it would be pertinent to note that the petitioner has incorrectly referred to NHAI as the tendering authority, and has directed his reliefs against it, while factually it is the respondent no.4/National Highway Logistics and Management Limited (hereinafter referred to as NHLML), which is the tendering authority and the relief ought to be claimed against it.

Therefore, our references in the following paragraphs would be to NHLML.

3. The brief facts germane to the present lis, leading to the filing of the instant petition, are as follows:

a. The NHLML floated RFP for a specified land at Mathura, Uttar Pradesh, for developing, operating, and maintenance of large and small wayside amenities in accordance with the bid documents, and accordingly, a detailed RFP was published. In pursuance thereto, the petitioner claimed to have offered his bid alongwith all the relevant documents, including the proof of eligibility on 07.01.2023.

b. The tender process was followed by the bidding process, where the petitioner submitted his initial financial bid of Rs. 11,00,000/- on 11.01.2023, while the tender was valid till 17.01.2023. Petitioner further claimed that the time for submitting the revised bid was extended from time to time, the last extension issued on 01.02.2023 being valid till 06.02.2023. Petitioner also claimed to have submitted his revised bid of Rs.62,22,222/- on 01.02.2023 at 05:51 p.m.

c. It was also claimed that though the corrigendum dated 01.02.2023 scheduled the bid opening date and time as 07.02.2023 at 11:30 p.m., however, for some alleged administrative reason, the said bid opening was not held.

d. Petitioner claimed that without issuing a mandatory notice under Clause 6.3 of the RFP, the financial bids were suddenly opened on 08.06.2023. The petitioner also claimed that on account of the non-issuance of notice, the petitioner could not send its representative to participate in the opening of the financial bid held on 08.06.2023 by NHLML. Petitioner further claimed that immediately thereafter, he sent an e-mail on 26.02.2023, requesting NHLML to apprise him about the status of the award. He also claimed that despite such an e-mail and repeated follow ups, NHLML did not provide the requisite information to the petitioner. The petitioner claimed to have visited the officers of NHLML, however, did not receive any proper response.

e. The petitioner claimed to have submitted a representation on 10.08.2023, pointing out that a serious mistake had occurred in the system of NHLML, whereby his revised bid of Rs. 62,22,222/- was not taken into consideration. Having received no response, the petitioner issued a legal notice on 20.09.2023.

f. In the interregnum, the petitioner stated that a letter dated 13.09.2023 was received by him from NHLML containing false statements based whereon, the representation of the petitioner was rejected. Aggrieved by the alleged arbitrary and discriminatory approach of NHLML, the petitioner filed the present writ petition.

4. Mr. Achin Goel, learned counsel for the petitioner submitted that the NHLML has arbitrarily and unjustly rejected the bid of the petitioner as also rejected the representation dated 22.06.2023 and 10.08.2023 by the reply letter dated 13.09.2023.

5. Learned counsel submitted that though the original bid of the petitioner was indeed submitted at Rs.11,00,000/- as the bid quote, however, on account of the revised bidding schedule as provided in corrigendum dated 01.02.2023 annexed at pg. 164 of the writ petition, the petitioner revised its bid to Rs.62,22,222/-. By referring to various documents, particularly the e-mail dated 06.07.2023, he emphasized that the revised bid of Rs.62,22,222/- was submitted on 01.02.2023 at 05:51 p.m. By referring to pg. 171 of the writ petition, learned counsel contended that the said document is an acknowledgement issued by the tendering authority/NHLML for the revised bid submitted on 01.02.2023. He relied on the said document to submit that the same is a proof of the revised quote of Rs.62,22,222/-, which cannot be disputed by the NHLML. In that view of the matter, he would contend that the quote of Rs.62,22,222/- being higher than Rs.54,00,000/- quoted by respondent no.3 (the successful bidder), the petitioner ought to have been declared as L-1, and the further process of award of contract ought to be granted to the petitioner.

6. Learned counsel also drew attention to the letter dated 13.09.2023 rejecting the representation of the petitioner dated 22.06.2023 and 10.08.2023 to submit that the contents therein are based on false and incorrect statements. In that, the letter falsely states that a representative of the petitioner was present in the e-tender room with the e-tender team and NHLML officials, while the financial bids were being opened on 08.06.2023. He asserted that no representative of the petitioner was present on 08.06.2023. He further contended by inviting attention of this Court to Clause 6.3 of the RFP, according to which, the financial bids were to be opened on the e-tender portal in the presence of authorized representatives of the bidders, and a notice was to be mandatorily issued to the bidders seven days in advance. He contended that in the present case, undeniably, the NHLML failed to issue any such notice violating its own RFP conditions.

7. He would further contend that this has caused serious prejudice to the petitioner inasmuch as taking advantage of the fact that there was no authorized representative of the petitioner on account of lack of any notice, NHLML illegally opened the financial bids, and contrary to the fact that the petitioner submitted a revised bid of Rs.62,22,222/- has concocted as a false version stating that the last revised bid received by NHLML on the portal on behalf of the petitioner is quoted at Rs.11,00,000/-. According to him, the entire premise on which the version of NHLML is predicated, appears to be collusive. In any case, he stated that having contravened Clause 6.3 of the RFP, the entire tender process, subsequent thereto ought to be held as illegal, calling for cancellation of the said tender process. He would further contend that instead of a direction that the petitioner be considered and granted the award of contract, the entire tender process may be annulled, and fresh tender be called for, where all parties may get a fair chance to participate.

8. Per contra, Mr. Santosh Kumar, learned counsel for the NHLML, while admitting that the notice required under Clause 6.3 of the RFP was not issued with 7 days notice, however, insisted that no prejudice has been caused to the petitioner inasmuch as the representative of the petitioner was indeed present in the meeting held for opening the financial bids on 08.06.2023, as recorded in the letter dated 13.09.2023, by which the representation of the petitioner was rejected. Thus, according to him the records available with the NHLML would contradict the version of the petitioner.

9. So far as the assertion of the petitioner regarding the revised bid dated 01.02.2023 is concerned, learned counsel admitted that revised bid was indeed received by the NHLML, however, stoutly contended that what the authority received as the last revised bid was the quote at Rs.11,00,000/- alone, and not Rs.62,22,222/-. He submitted that the document at page 171 of the paper book relied upon by the petitioner to assert that the revised bid was for a sum of Rs.62,22,222/- is a fabricated document never received by the tendering authority/NHLML. He invited our attention to page 251 of the paperbook, which is annexed to the counter affidavit to contend that it is an acknowledgement of the last bid received by the tendering authority/NHLML on 01.02.2023 at 5:51 p.m. from the petitioner. However, contrary to the submission of the petitioner regarding the quote of Rs.62,22,222/-, he stated that the document at page 255 of the paper book indicating the last revised bid at Rs.11,00,000/- was received. Predicated thereon, learned counsel would contend that there is no merit in the petition, and the same be dismissed.

10. Another ancillary argument to the above contended by learned counsel was that the narration of facts above, clearly demonstrate hotly contested and disputed questions on facts between parties, and this Court would be loath in interfering in such matters where evidence may have to be lead to prove or establish a fact by the parties. On this count too, he prayed that the petition be dismissed.

11. Having heard the respective learned counsel for the parties, and examined the records of the case, we are unable to accede to the arguments of the petitioner.

12. It is undisputed that the original bid submitted by the petitioner was for the sum of Rs.11,00,000/-. It is also not disputed that all the bidders were provided an opportunity to revise their bids vide the letter dated 01.02.2023, extending the bid validity period from 02.02.2023 to 06.02.2023. As per the said letter, the online bid submission was to close on 06.02.2023 at 11:00 a.m., and the opening of the technical bid was scheduled on 07.02.2023 at 11:30 a.m. Undisputedly, the petitioner was also held to be technically qualified. It is at this juncture that a controversy in respect of the amount quoted in the bid submitted by the petitioner arose. In that, on one hand, the petitioner claimed that its revised bid quoted an amount of Rs.62,22,222/-, while according to the NHLML when the revised bid of the petitioner was opened on 08.06.2023, the said bid quoted an amount of Rs.11,00,000/- only.

Both parties have placed on record documents supporting their contention. In that, at page 171 of the paperbook, the petitioner has placed on record a document claimed to be an acknowledgment of the revised bid showing an amount of Rs.62,22,222/- as the bid quote, whereas the NHLML at page 251 of the paper book has placed a document stated to be the bid acknowledgment which shows the revised bid having been received on 01.02.2023 at 5:51 p.m., and a document at page 255 of the paperbook, which according to NHLML is the last revised bid of the petitioner showing the revised bid at Rs.11,00,000/-. In that view of the matter, NHLML asserted that respondent no.3 (the successful bidder) had quoted a sum of Rs.54,00,000/-, which was way higher than the bid quoted by the petitioner at Rs.11,00,000/-, and accordingly, respondent no.3 was declared as the successful bidder.

13. It is apparent from the above that in respect of the controversy regarding the revised bid, there are two dramatically opposite and mutually exclusive documents produced on record, and relied upon by the parties. Equally, both parties are vehemently supporting the set of documents produced by them and placed on record. Having regard to the fact that these are disputed questions of facts, which would require evidence to be led to prove as to which of the documents is the genuine revised bid, it would be beyond the jurisdiction of this Court while exercising powers of judicial review under Article 226 of the Constitution of India. It is trite that such matters are best left to Civil Courts having jurisdiction for adjudication after proper trial.

14. Yet another controversy which we have been asked to determine is presented in the letter dated 13.09.2023 by which the representations dated 22.06.2023 and 10.08.2023 of the petitioner were rejected by NHLML. While NHLML has asserted that a representative of the petitioner was physically present on 08.06.2023 when the revised bids are stated to have been opened, the petitioner asseverates that there was no representative of the petitioner in the said meeting. This issue gathers relevance since NHLML emphatically contended that the revised bids were opened on 08.06.2023 in the presence of the representative of the petitioner where the revised bid of the petitioner quoted a sum of Rs.11,00,000/- only, and not Rs.62,22,222/- as claimed by the petitioner. This assertion is highly disputed by the petitioner. In our considered opinion, this controversy also is a highly disputed question of fact which cannot be considered or adjudicated by this Court in exercise of power under Article 226 of the Constitution of India. Whether the representative of the petitioner was indeed present, and had participated in the meeting dated 08.06.2023, while the financial bids were opened or not, is an issue requiring adduction of evidence to prove or disprove the aforesaid assertion. Thus, on this count too, we are of the opinion that we cannot exercise our extraordinary jurisdiction, and it is best left to be decided by a Civil Court exercising competent jurisdiction.

15. An aspect on law was canvassed by the petitioner in respect of violation of Clause 6.3 of the RFP. Before we traverse the said issue, it would be appropriate to reproduce the said clause hereunder:

6.3 EVALUATION OF FINANCIAL PROPOSAL

The Evaluation Committee will open the financial proposals (including modification to bid, if any) of those bidders who were found technically responsive as per clause 6.1. The financial proposals would be opened on etenders -portal in the presence of the authorised representatives of the bidders, a notice for which would be issued to the bidders 7 days in advance. For

For Category A WSA Sites (i.e. land parcels with area less than 2 ha), the higher value of annual lease rent in INR rupees quoted by the responsive bidder will form the basis for award.

Category B WSA Sites (i.e. land parcels with area greater than 2 hectares), the highest value of share of revenue in percentage quoted by the responsive bidder will form the basis for award.

Plainly, Clause 6.3 of the RFP requires the tendering authority to issue a seven days advance notice specifying the date on which the financial proposals would be opened on the E-tender portal in the presence of authorised representatives of the bidders.

In the aforesaid context, learned counsel for the petitioner had contended that no such notice was ever issued by the NHLML causing grave hardship to the petitioner. This fact was not disputed by the learned counsel for NHLML rather, he had candidly admitted that no such notice as contemplated under Clause 6.3 of the RFP was ever issued before the opening of the financial bids i.e. on 08.06.2023.

16. We have considered the requirement in Clause 6.3 of the RFP, and have also taken note of the admission that no such notice was issued by the NHLML. Having regard to the aforesaid narration, we are called upon to consider as to what would be the effect of such infraction. In that, whether such infraction would entail recall/annulment of the tender process or it would suffice if in place of respondent no.3 (the successful bidder), the revised bid of the petitioner be considered and consequent thereto, the petitioner be declared as the successful bidder.

17. We are afraid that none of the aforesaid consequences would entail in the present case. This is for the reason that to reach such a drastic conclusion, the petitioner has to clearly demonstrate serious prejudice having been caused to him on account of such infraction. What we find is that except to contend that there has been an infraction of Clause 6.3 of the RFP, the petitioner has been unable to show any prejudice which might have been caused to it. It is not the case of the petitioner that his revised bid was not considered by NHLML except to state that its revised bid

was for a quote of Rs.62,22,222/-, which document itself is stated to be fabricated by NHLML. We have already observed above that this controversy regarding the documents placed at Page 171 and 255 of the paper book being hotly contested and disputed questions of facts, cannot be considered by this Court in exercise of Article 226 of the Constitution of India. In view thereof, it would be well nigh impossible for this Court to assume that any prejudice has been caused to the petitioner on account of infraction of Clause 6.3 of the RFP.

18. This complexity is compounded by another controversy regarding the presence or absence of the representative of the petitioner in the meeting dated 08.06.2023 when the financial bids were opened. If the representative was indeed present, probably one may not be able to infer any prejudice, however, in case the representative was not present, perhaps the conclusion may be different. However, all this would ascertainable or determinable only after the evidence, whether oral or documentary, to be adduced by parties before the Civil Court of competent jurisdiction. In our considered opinion, it would only be after such determination that a Court could give some reasoning or finding as to whether any prejudice has been caused to the petitioner by the non-issuance of notice under Clause 6.3 of the RFP. Manifestly, we would not be able to decide this factual dispute.

19. Having regard to the overall factual matrix considered and analysed by us above, we are not persuaded by the arguments addressed on behalf of the petitioner. Finding no merits in the writ petition, we dismiss the same, however, without any order as to costs. Pending applications also stand disposed of.