

Karix Mobile Private Limited vs Union Of India & Ors. on 28 March, 2025

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment reserved on: 24.03.2025
Judgment delivered on: 28.03.2025

+ W.P.(C). 253/2025, CM APPL. 1194/2025, CM APPL. 10521/2025,
CM APPL. 10522/2025, CM APPL. 16763/2025& CM APPL.
16868/2025

KARIX MOBILE PRIVATE LIMITEDPe

versus

UNION OF INDIA AND ORS.Re

Advocates who appeared in this case:

For the Petitioner: Mr. Jayant Mehta and Mr. Sashank Garg,
Senior Advocates with Mr. Aseem
Chaturvedi, Mr. Shivank Diddi, Mr.
Tomu Francis, Mr. Arsh Alok, Ms.
Jasleen Virk and Mr. Raghav Bhatia,
Advocates.

For the Respondent: Mr. Vikram Jetly, CGSC with Ms. Shreya
Jetly, Advocate and Mr. Aakash Pathak,
GP for R-1/UOI. Ms. Shweta Bharti, Mr.
Rohit Jolly and Mr. Raghav Sachdev,
Advocates for R-2. Mr. Rajesh Kumar
Gautam, Mr. Anant Gautam and Mr.
Dinesh Sharma, Advocates for R-3/IPPB.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950, inter alia, seeking the following prayers:-

"a. issue a writ of mandamus or any other appropriate writ or order W.P.(C).
253/2025 12:03:22 directing the Respondent Nos. 2 and 3 to reconduct the Reverse

Auction in E-Tender Id GEM/2024/B/5019145 dated 07 June 2024 for Selection of Bidder to Provide SMS Gateway Services and Missed Call/ SMS Banking for Delivery of SMS for IPPB (Under Opex Model); b. issue a writ of mandamus or any other appropriate writ or order directing the Respondent Nos. 2 and 3 to reconduct the bidding process under the E-Tender ID GEM/2024/B/5019145 dated 07 June 2024 for Selection of Bidder to Provide SMS Gateway Services and Missed Call/SMS Banking for Delivery of SMS for IPPB (Under Opex Model); c. issue a writ of mandamus or any other appropriate writ or order declaring that the inaction on part of Respondent Nos. 2 and 3 in not rectifying the technical glitch has resulted in loss of due opportunity to the Petitioner in E-Tender Id GEM/2024/B/5019145 dated 07 June 2024 for Selection of Bidder to Provide SMS Gateway Services and Missed Call/ SMS Banking For Delivery of SMS for IPPB (under Opex Model); d. issue a writ of certiorari or any other appropriate writ or order for directing the Respondents to forthwith cancel the Tender issued by Respondent No.3;

e. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring that the entire action of Respondents in issuing the Letter of Award to L1 bidder in E-Tender Id GEM/2024/B/5019145 dated 07 June 2024 for Selection of Bidder to Provide SMS Gateway Services and Missed Call/ SMS Banking for Delivery of SMS for IPPB (under Opex Model) as highhanded, illegal, manifestly arbitrary and unconstitutional;

f. issue a writ of mandamus or any other appropriate writ or order directing the Respondents, its officers, employees and agents to forebear them from giving effect, in any manner whatsoever, to the E-Tender Id GEM/2024/B/5019145 dated 07 June 2024 for Selection of Bidder to Provide SMS Gateway Services and Missed Call/ SMS Banking for Delivery of SMS for IPPB (under Opex Model);

g. pass ad-interim ex-parte orders; and.

h. Pass any other Order(s) as this Hon'ble Court may deem fit in the given facts and circumstances of the present case."

CONTENTIONS OF THE PETITIONER:-

2. Mr. Jayant Mehta and Mr. Shashank Garg, learned Senior Counsels appearing for the Petitioner submitted that the petitioner had bid for the W.P.(C). 253/2025 12:03:22 Tender floated by the respondent no.2/Government E-marketPlace (hereinafter referred as "GeM") for selection of bidder to provide SMS Gateway Services and Missed Call/SMS banking for delivery of SMS for India Post Payments Bank (hereinafter referred as "IPPB/respondent no. 3") (under OPEX model) vide the Notice Inviting Tender/Request For Proposal dated 07.06.2024. The technical bid of the petitioner was duly accepted by the respondent no.2/GeM on 13.08.2024 and the learned senior counsel submitted that it is undisputed that the petitioner and respondent no.4/ACL Mobile Private Limited both were technically qualified and had entered into the Reverse Auction process.

3. Learned senior counsel for the petitioner submitted that it was during the Reverse Auction process when petitioner had faced technical glitch where it was not able to enter/modify the next lower bid in the Reverse Auction process and the portal was not accepting the figures and the save/submit button was unresponsive. He submitted that the petitioner had immediately raised the ticket with the respondent no.2/GeM portal for resolution of the glitch it faced. However, despite lodging the dispute and ticket having been generated, the GeM portal team did not assist the petitioner in resolving the glitch and ultimately it was forcibly kept out of the Reverse Auction process.

4. He submitted that it was due to this unreasonable and unjust actions/inactions of the respondent nos. 2 and 3, the petitioner had been ousted during the last stage from the tender process despite having qualified the technical bid and being unable to enter/modify value during the last leg of Reverse Auction. He further submitted, the action/inaction of respondent nos. 2 and 3 is evident from petitioner's various emails sent immediately after the issue arose, vide which the petitioner again and again informed respondent nos. 2 and 3 regarding the technical glitches being W.P.(C). 253/2025 12:03:22 faced by the petitioner while modifying the value or submitting its bid. He further submitted that it came as a shock when petitioner's ticket was unilaterally closed by the respondent no.2/GeM on 27.12.2024 without any effective resolution. Subsequently, petitioner made another attempt towards resolution by immediately issuing a representation to the respondent no.3/IPPB reiterating its grievance and requested respondent No.3 to not release the award in favour of L1 bidder without considering the representation of the petitioner.

5. In addition to the aforesaid, he further submitted that the said action/inaction of respondent no. 2/GeM is ex facie illegal, high handed, arbitrary, irrational and unconstitutional. The aforesaid acts of respondent nos. 2 and 3 as regards non-resolution of petitioner's bonafide concern and yet proceeding with the tender is unjust, arbitrary and defeats the very purpose of competitive bidding. Further, the respondent nos. 2 and 3 have also acted in violation of the settled law that equal and fair opportunity should be granted to all the eligible bidders to participate in tender. He also submitted that the respondent nos. 2 and 3 also failed to consider that the petitioner herein had heavily invested in the tender process and was competitively bidding against the other bidders and therefore, re- conducting the Reverse Auction would be in public interest as it ensures that the best price is received by the tender issuing authority. CONTENTIONS OF THE RESPONDENT:-

6. Mr. Rohit Jolly, learned counsel appearing for the Respondent no.2/GeM resisted the claims of the petitioner. He submitted that there was no technical glitch in its portal and possibly the technical fault or glitch may have occurred at the end of the petitioner itself. He also stated that in case there was a technical glitch or fault at the end of the portal itself, even the respondent no.4 who was held to be the successful bidder, would also W.P.(C). 253/2025 12:03:22 have faced a similar glitch. However, no such default or glitch was reported by respondent no.4. According to the learned counsel, the logs of record also did not indicate any such default or technical glitch at the end of the GeM portal which is the reason why the ticket generated by the petitioner was finally closed.

7. That apart, learned counsel for the respondent no.2/GeM also contended that unless the petitioner quotes and fills a price lower than that already quoted by the respondent no.4 during the

Reverse Auction process, in the fields provided, the question of "submit button" accepting its bid does not arise. In support he drew attention to material on record to indicate that the petitioner attempted to fill the previous bid figure, which is impermissible and unacceptable by the system itself. Thus, according to him, this is not a case of technical glitch or fault, but one where the petitioner itself is to be blamed. He prays that the petition be dismissed on this ground itself.

ANALYSIS AND CONCLUSION:-

8. After having heard learned counsel for the parties on previous hearings and being of the prima facie opinion that the issue raised in the present petition is highly technical in nature which may require and possibly be resolved by seeking expert opinion, this Court vide the order dated 03.02.2025 directed the Director, Indian Institute of Technology (IIT), Delhi to nominate an Expert Committee comprising two members to look into the issue of technical glitch on the portal of GeM after taking the required records, logs and inputs from both parties.

9. The Expert committee placed its report dated 15.02.2025 before this Court. We have perused the report dated 15.02.2025 filed by the Expert Committee and the conclusion reads thus:

"Conclusion: There is no conclusive evidence to indicate anything W.P.(C). 253/2025 12:03:22 definitive. It cannot be said with reasonable confidence that the website was indeed unresponsive (from 15:41, 18.12.24 onwards), nor can it be said that the petitioner's claim is false."

10. Though, Mr. Mehta, learned senior counsel drew attention to the observations recorded in the Expert Report to draw support of his contentions, however, this Court after perusing the entire report is unimpressed. The observations contained therein as also the conclusion of the expert body only propels this Court to conclude that the dispute raised by the petitioner is of such technical nature that it would be well nigh impossible for a Court exercising its jurisdiction under Article 226 of the Constitution of India to adjudicate the same on mere affidavits. Additionally, the dispute is factual and would necessitate this Court to evaluate the technical records, logs and other electronic evidence which is neither the domain nor the scope of a Writ Court.

11. No doubt that bids are invited by the public authorities to ensure transparency, wider participation and save public exchequer by competitive bidding process, yet, the dispute in the present case being highly technical in nature, this Court is of the firm opinion that it lacks the wherewithal to adjudicate the same. Moreover, learned counsel for the petitioner did not allege any malafide against GeM or any of its officials.

12. Therefore, in such circumstances this writ cannot be entertained.

13. Accordingly, the present writ petition is dismissed in light of the aforesaid terms.

14. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J DEVENDRA KUMAR UPADHYAYA, CJ MARCH 28, 2025/rl W.P.(C).
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