

Swami Contractors Pvt. Ltd. vs Aai (Airport Authority Of India) & Anr. on 4 April, 2025

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

\$~24

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2036/2025, CM APPL. 9598/2025, CM APPL. 12500/2

CM APPL. 13948/2025 & CM APPL. 19151/2025

SWAMI CONTRACTORS PVT. LTD.

Through: Mr.Ravi Swami, Adv.

versus

AAI (AIRPORT AUTHORITY OF INDIA) & ANR.Respondent

Through: Mr.Digvijay Rai, SC w

Mishra, Adv for R-1.

Mr.Aneesh Sharma, Mr.

and Mr.Mayank Agarwal

R-2.

%

Date of Decis

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J: (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking direction to respondent no.1/AAI to consider the bid of the petitioner by allowing the petitioner to rectify the clerical/typographical mistake in the bid documents and to re-verify/reconsider the bid documents of Bidder no.6 in respect of Notice Inviting Tender (NIT) dated 25.01.2025 for renovation of Office Space etc., at R.G. Bhawan and its associate areas, New Delhi and in the alternative, sought direction to respondent no.1/AAI to cancel NIT dated 25.01.2025 and issue a fresh NIT.

2. The petitioner submits that it is a private limited company engaged in the construction business for over three decades, having consistently undertaken infrastructure construction and civil maintenance works at various Indian Airports, in adherence to the terms and conditions of the respective contractual agreements. On 25.01.2025, the respondent no.1/Airport Authority of India (AAI) issued an e-tender for the renovation of office spaces, corridors, and halls of A & B Block at R.G.Bhawan, alongwith associated areas in New Delhi. The grievance of the petitioner arises from the arbitrary and unjustified action of respondent no.1/AAI in disqualifying the petitioner from the

technical bidding process on the basis of two minor clerical errors, without affording any reasonable opportunity to rectify the same. The petitioner states that in contrast, the respondent no.2/Bidder no.6 was permitted to qualify despite committing significant typographical mistakes and failing to comply with key tender conditions, thereby violating the principles of natural justice, fairness and equal treatment under the tendering process.

3. Mr. Swami, learned counsel for the petitioner at the outset contends that the manner in which the respondent no.1/AAI has awarded the contract to respondent no.2 despite glaring mistakes having been committed by respondent no.2 while submitting its tender and supporting documents, would vitiate the entire tender process and the award of contract has to be revoked. He also submits that the disqualification of the petitioner at the technical bid stage on two minor mistakes, are also unmerited and simultaneously holding respondent no.2 as qualified despite similar mistake is apparent discrimination and violative of Article 14 of the Constitution.

4. Learned counsel refers to various documents placed on record pertaining to respondent no.2 like Form-C and certificate/letter furnishing details of similar works completed during the last seven years alongwith the Completion Certificate issued by the authority for which such works were undertaken. While reading through the said document, learned counsel sought to impress upon this Court as to the lack of clear details with respect to, (i) the Form-C as furnished by respondent no.2 and (ii) the certificate issued by the client of respondent no.2, namely, M/s. Polyplex, regarding completion of similar works within the last seven years. He emphasizes that the lacunae in the said documents are violative of the conditions of the NIT which have deliberately been ignored by respondent no.1/AAI and contract was awarded in violation of the terms of the NIT. He also refers to the Annexure to the Completion Certificate dated 31.12.2023 issued by M/s. Polyplex to submit that the said document is only indicative of the TDS which was deducted in respect of the works done by respondent no.2. Other than that, he urges that the entire certificate as also the Annexure is bereft of any specific details regarding the nature of work, the value of work, date of start, date of completion as per the agreement, actual date of completion and lastly, the said satisfactory completion of work. He strenuously submits that in the absence of such material particulars, the respondent no.1/AAI could not have awarded the contract to respondent no.2.

5. Other than the above arguments, learned counsel also urges that there are a number of glaring mistakes in the tender process as also in the award of contract. Learned counsel stresses that the respondent no.1/AAI did not afford any appropriate and optimal opportunity to the petitioner to resubmit proper and appropriate documents on its behalf and as such was deprived of a chance of a fair competition. He also states that by virtue thereof, the valuable financial status of the public exchequer as also competitive pricing has been lost. He prays in the aforesaid circumstances that the entire tender process including the award of the contract be quashed and set-aside. Simultaneously, the petitioner be awarded the contract and be permitted to complete the works.

6. Additionally, learned counsel very weakly urged that the financial bid was never uploaded giving rise to doubts as to whether the entire tender in process was held in a fair and transparent manner.

7. Per contra, Mr. Digvijay Rai, learned counsel appearing for respondent no.1/AAI vehemently refutes the contentions of learned counsel for the petitioner. According to Mr. Rai, the tender process as also the award of contract was held in a fair and transparent manner. He states that despite having been granted a number of opportunities, the petitioner has miserably failed in furnishing and in rectifying the defects and lacunae in the documents filed by the petitioner alongwith its bid. According to him, if the petitioner does not fulfill the criteria so specified in the NIT, it was but natural for the petitioner to be disqualified at the technical stage itself.

8. In order to emphasize the aforesaid, the learned counsel refers to various paragraphs of the short counter affidavit filed on behalf of respondent no.1/AAI particularly para 2(a) and the documents annexed thereto. He states that by virtue of the letter dated 04.02.2025 furnished to the petitioner on the e-portal, the defects and discrepancies in the documents so submitted were notified for rectification. He submits that though on one hand, respondent no.2 the successful bidder, had furnished the requisite and rectified documents, yet on the other, the petitioner miserably failed to comply with such requirements. In order to buttress the aforesaid arguments, learned counsel refers to various documents filed alongwith the counter affidavit which were filed originally alongwith the bid documents and submitted subsequent to notice dated 04.02.2025. Dilating on the said document, Mr. Rai attempted to demonstrate how and in what manner, the petitioner was unable to remove the discrepancies and resubmit the rectified documents to respondent no.1/AAI. In view of the same, learned counsel submits that respondent no.1/AAI had no alternative but to disqualify the petitioner at the evaluation of technical bid stage, leaving respondent no.2, the only bidder found to be technically and financially responsive. Resultantly, the award of contract to respondent no.2 cannot be assailed by the petitioner being a party in default itself.

9. So far as uploading of financial bid etc. is concerned, he refers to page 16 of the counter affidavit to demonstrate that the financial bid document were uploaded on the portal on 10.02.2025. He thus submits that there is no merit in the said submission. He accordingly prays that the present writ petition be dismissed.

10. Having heard learned counsel for the parties and after perusing and examining the documents on record, we are not persuaded by any of the submissions urged by the petitioner.

11. A perusal of the documents annexed with the counter affidavit would bring to fore that adequate and ample opportunity to rectify the defects and discrepancies and furnish appropriate documents in support of their bids was offered both to the petitioner as also respondent no.2, vide the short fall notice dated 04.02.2025 by respondent no.1/AAI. From the very same set of documents, it is also apparent that the petitioner despite having been afforded an opportunity, failed to avail the same in time. In fact, learned counsel for the petitioner in rejoinder neither disputed this fact nor was able to demonstrate that the opportunity so afforded was availed of by furnishing appropriate and requisite rectified documents. In such a glaring situation, we are unable to fathom as to how a party, which is in gross default of the basic eligibility conditions of the NIT, can invoke the writ jurisdiction of this Court seeking judicial review of an action taken by respondent no.1/AAI. From the examination of the said documents both filed by the petitioner as also respondent no.1/AAI, it is clear to us that the petitioner even after having been afforded an opportunity did not furnish appropriate documents to

respondent no.1/AAI. Therefore, we are unable to accede to the submissions urged on behalf of the petitioner which are untenable and unmerited.

12. So far as the submission regarding the defective Form-C and Completion Certificate of respondent no.2 is concerned, the petitioner has not placed on record any document worth its name to show whether even after the notice dated 04.02.2025 was published on the portal, the respondent no.2 failed to rectify the defects and discrepancies or was unable to furnish such documents within the time stipulated. In the absence of such material facts and documents, this Court cannot and should not appreciate such frivolous and unsubstantiated arguments. It appears from the pleadings and arguments so addressed that the petitioner has merely filed the present writ petition just to create an impediment or an obstacle to the award of contract and its successful and satisfactory completion. We do not appreciate such frivolous litigation. Ordinarily, we would have imposed some costs, however since the contract itself was for a very limited and short duration, we refrain from doing so.

13. In view of the above and finding no merit in the matter, this Court has no hesitation from dismissing the same and is accordingly dismissed alongwith pending applications.

TUSHAR RAO GEDELA, J DEVENDRA KUMAR UPADHYAYA, CJ APRIL 4, 2025/kct/rl