

**SI Builders Vs. Cpwd and Anr**

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**SooperKanoon Citation :** [sooperkanoon.com/5567](http://sooperkanoon.com/5567)

**Court :** Delhi

**Decided On :** Dec-16-2014

**Judge :** Vibhu Bakhru

**Appellant :** SI Builders

**Respondent :** Cpwd and Anr

**Judgement :**

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

16. 12.2014 W.P.(C) 6341/2013 & CM No.13848/2013 ANIL GAMBHIR .....  
Petitioner versus CPWD AND ANR ..... Respondents AND + W.P.(C) 6342/2013 &  
CM No.13849/2013 SL BUILDERS ..... Petitioner versus CPWD AND ANR .....  
Respondents Advocates who appeared in this case: For the Petitioners : Mr  
Anand Mishra. For the Respondents : Mr Vivek Goyal, CGSC for UOI. Mr. Saqib,  
Adv. for R-2 (in W.P.(C) 6341/2013). CORAM:HONBLE MR JUSTICE VIBHU  
BAKHURU

**JUDGMENT**

VIBHU BAKHRU, J1 The petitioners impugn an Office Memorandum No.DGW/MAN/ 202 dated 15.12.2009 issued by respondent No.1 (hereafter CPWD), whereby outsourcing of day to day maintenance, annual repair and maintenance and special repair etc. pertaining to civil, electrical & horticulture service was declared as a specialised work/item (hereafter referred to as the

impugned memorandum).

2. The petitioners contend that the impugned memorandum is arbitrary, unreasonable and violates Article 14 of the Constitution of India. According to the petitioners, there is no intelligible differentia between day to day maintenance and repair works and other civil works, which would warrant the day to day maintenance and annual maintenance to be classified as specialised work.

3. The controversy to be addressed is whether the decision of respondent no.1 in treating the day to day maintenance repairs and special repairs pertaining to civil, electrical and horticulture services as specialised items of works - thus, distinguishing the same from general civil, electrical and horticulture works - is unreasonable or without any difference.

4. The relevant facts relating to W.P.(C) 6341/2013, which are necessary for considering the controversy, are as under:4.1 Shri Anil Gambhir (petitioner in W.P.(C) 6341/2013 - hereafter referred to as the petitioner) is a contractor, registered as Class-II (Civil) CPWD contractor; he is, thus, eligible to submit tenders for works which are executed by CPWD. 4.2 It is asserted that, earlier the maintenance work for public buildings was entrusted to the employees of CPWD and was not outsourced to other contractors. Subsequently, the said work of day to day maintenance, annual repair of civil electrical works was outsourced to contractors and all contractors registered with CPWD were eligible for participating in the bids. CPWD issued the impugned memorandum, which declared outsourcing of day to day maintenance, annual repair and maintenance and special repair etc. pertaining to civil, electrical & horticulture services as specialized work/item in addition to works/items already listed as specialised work. The petitioner represented against the impugned memorandum and sought its withdrawal. 4.3 In the month of June 2013, by a Notice (hereafter NIT) an e-tender was invited for the following works for a total estimated value of `3,64,64,115/- (consisting of Civil works of `2,91,05,811/- and electrical works of `73,58,304/-):

Outsourcing of day to day maintenance of CBI Pool, Rajya Sabha / Lok Sabha and General Pool Quarters at Vasant Vihar, New Delhi during 2012-14 (SH. Civil & Electrical maintenance works, relating day to day maintenance under A/R & M/O

and Special repair works.

The eligibility criteria specified under the said notice was as under:

1. Specialized agencies who fulfill the following requirements shall be eligible to apply. Joint ventures are not accepted. (a) Should have satisfactorily completed the works as mentioned below during the last Seven years ending last day of the month December 2012. (i) Two similar works each costing not less than Rs. 219 lakhs or one similar work costing not less than Rs. 292 lakhs. Similar works shall mean works of Civil & Electrical operation involving day to day maintenance and repairs of residential buildings. The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 7% per annum, calculated from the date of completion upto the last month of submission of tender. (b) Should have had average annual financial turnover of Rs. 109 Lakhs during the last three years ending 31st March 2012 (Scanned copy of certificate from C.A. to be uploaded) (c) Should not have incurred any loss in more than two years during the last five years ending 31st March 2012. (d) Should have a solvency of Rs. 146 Lakhs (Scanned copy of Original solvency to be uploaded).

4.4 The petitioner submitted its bid pursuant to the above notice, however, the petitioners bid was rejected. The reason for rejection of the bid was stated as under:

Work Experience is not as per NIT condition. The contractor has shown upgradation work as work experience hence, rejected.

According to the petitioner, his tender has been rejected as he was not recognised as a specialized agency.

5. The relevant facts obtaining in W.P.(C) 6342/2013 are similar except that the petitioner therein states that he could not submit a tender pursuant to NIT as he did not qualify the eligibility conditions.

6. It was contended by the learned counsel for the petitioners that the impugned memorandum had artificially created a special class of work and contractors. He

submitted that the nature of repair and maintenance work is not different from normal construction work. Therefore, contractors who were entrusted with constructing buildings and providing electrical works could also carry out the day to day maintenance work. He submits that, in the circumstances, treating day to day maintenance involving civil and electrical repairs different from civil and electrical construction is an unreasonable classification. He further submitted that the impugned memorandum had resulted in increase of effective cost of repairs as it has restricted the existing civil and electrical contractors from bidding for such works.

7. The learned counsel for the respondent submitted that the day to day maintenance work could not be considered as similar to an original work or an extensive repair work. He submitted that the day to day maintenance and annual repair and maintenance contract comprised of regular small value works which were materially different from carrying out a civil construction or carrying out electrical works in a new building.

8. Before proceeding further, it would be necessary to refer to the impugned memorandum which reads as under:

In exercise of power vested with him, as per para 17.2(2) of CPWD Works Manual-2007, ADG (TD), CPWD, is pleased to declare "Outsourcing of Day to Day Maintenance, Annual Repair & Maintenance and Special repair etc. pertaining to Civil, Electrical & Horticulture services" as specialized work/item in addition to works/items already listed as specialized work/items/jobs in Annexure-I (Civil works) under paragraph 17.2.1 of CPWD Works Manual 2007 provided either composite tenders are invited for Outsourcing of Day to Day Maintenance, Annual Repair & Maintenance and or Special repair etc. pertaining to Civil, Electrical & Horticulture services or tenders are invited for Outsourcing of Day to Day Maintenance alone pertaining to Civil, Electrical & Horticulture Services. However, works of different categories such as Annual Repair & Maintenance, and Special Repairs pertaining to Civil, Horticulture or Electrical, if executed independently i.e. excluding works of Day to Day Maintenance, tenders are to be invited from CPWD regd. contractors only by respective wings.

9. It is seen from the above that only day to day maintenance and annual repairs and maintenance pertaining to civil, electrical and horticulture services were considered as specialized items. It was clarified that if separate tenders were invited pertaining to civil, horticulture or electrical works, where works of different categories were to be executed independently (i.e. excluding the day to day maintenance work), the same would be invited only from registered CPWD contractors. In other words, the respondents considered a composite contract involving day to day maintenance as a specialised item. It cannot be disputed that day to day maintenance of any public building(s) would involve myriad of activities, which would include works involving civil, electrical and horticultural services. This, clearly, cannot be equated to separate items of work executed by separate contractors who have the expertise in their respective fields, namely, civil works, electrical works or horticultural works. In other words a composite contract for day to day maintenance cannot be considered in the same manner as separate contracts for separate activities that are required to be executed under the composite contract.

10. The impugned memorandum further clarified that where separate works were tendered, only registered contractors would be eligible to submit their bids. In my view, the decision of respondent no.1 to treat a composite contract for day to day maintenance works, as a specialised item, cannot be faulted. The separate components of works to be executed under the composite contract for day to day maintenance, may be similar to the separate contracts executed by the contractors, nonetheless, when the said works are aggregated as a composite work, the same may be considered as a specialised contract distinct from the sum of activities that constitute the composite contract. It is possible to consider the day to day maintenance work as a separate area of expertise by reason of the fact that several separate small items of works are now bundled together.

11. The contention that the said classification violates Article 14 of the Constitution of India, cannot be accepted. Article 14 does not prohibit reasonable classification. And, the question whether a classification is reasonable has to be viewed with the object sought to be served. In the present case, the object is to award a composite contract for an entire area which may involve electrical, civil as well as horticultural

works in respect of day to day maintenance and repairs. Respondent no.1s view that the field of maintenance cannot be held to be similar to its independent components works that may be required, cannot be held to be unreasonable.

12. It is well settled that this Court in exercise of powers under Article 226 of the Constitution of India will not supplant its views with that of the policy makers and must defer to the decision of the authorities as the same fall within their technical expertise. The respondents are best suited to evolve their policy based of their perceptions.

13. The Supreme Court in the case of Federation of Rly. Officers Assn. v. Union of India: (2003) 4 SCC289held as under:-

12. ....On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.

This principle has been reiterated by the Supreme Court in several cases.

14. It is also relevant to note that classifying an item as a specialised work in effect enables all specialised agencies to bid for the same irrespective of whether they are registered as CPWD contractors or not. In this view, the contention that the impugned memorandum results in exclusion of registered contractors or in reducing competition is, plainly, erroneous. The number of bidders in a tender may be reduced on account of the eligibility conditions and not because specialised agencies are also entitled to bid for the same.

15. The petitioners bid for maintenance of flats at Vasant Vihar, New Delhi, pursuant to the NIT, had been rejected since the petitioner did not fulfil the requisite criteria in terms of the experience required and not because the maintenance work was open to specialised agencies. Indisputably, the petitioner did not have the requisite experience in respect of a composite work of day to day maintenance of public buildings. The petitioners experience with respect to

upgradation works could not be considered as an experience in day to day maintenance works.

16. The Supreme Court in *Michigan Rubber (India) Ltd. v. State of Karnataka*: (2012) 8 SCC216 held as under:-

23. From the above decisions, the following principles emerge: (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities; (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited; (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted; (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions: (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say:

the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached?. and (ii) Whether the public interest is affected?. If the answers to the above questions are in the negative, then there should be no interference under Article 226.

17. This court in *Jindal Steel & Power Limited & Anr. v. Rail Vikas Nigam Ltd.*: W.P.(C) 5179/2013, decided on 01.11.2013 while considering a challenge to a tender condition regarding past experience had also reiterated the well settled proposition as under:

17. It is now well settled that the terms of invitation to tender would not be amenable to judicial review unless the same have been actuated by malafides or are arbitrary and are such that no reasonable person could possibly accept the same as relevant for the purposes for which the conditions are imposed.

18. Applying the aforesaid principles to the facts of the present case, it is apparent that any interference with the impugned memorandum is not warranted.

19. In the circumstances, the challenge to the validity of the impugned memorandum must fail. Accordingly, the present petitions and pending applications are dismissed. No order as to costs. VIBHU BAKHRU, J  
DECEMBER16 2014 RK

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