

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 06.11.2009

+ W.P.(C) 7763/2009

LMS TECHNOLOGIES PVT LTD Petitioner

-versus-

UOI & ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr M.A. Niyazi with Mr Manish Kumar,
Advocates

For the Respondent : Ms Jyoti Singh, Advocate for respondent
nos.1 to 3.
Mr Pramod B. Agarwala with Mr Abhishek
Baid, Advocates for respondent no.4.
Mr R.V. Sinha with Mr A.S. Singh,
Advocates for respondent No.5.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. We have heard the counsel for the parties at length spreading over several dates. We have also examined the technical aspects of the matter as presented by the respective counsel for the parties and their technical experts. After long deliberations, the learned counsel for the petitioner,

upon instructions from his client, who is also present in court, does not press for the prayer seeking the award of the tender to the petitioner. As an incident thereof, the quashing of the award of the tender to the respondent no. 4 also does not arise for consideration of this court. However, the learned counsel for the petitioner lays stress and emphasis on his third prayer which is for directing the respondent no. 5 – Central Vigilance Commission to furnish and submit a time bound investigation report with regard to the tender in question.

2. The learned counsel for the petitioner drew our attention to our order dated 29.07.2009 passed in CM No. 9273/2009 in this writ petition wherein we had directed that since the document filed by the respondent nos. 2 and 3 and the rejoinder filed by the petitioner to the counter affidavit of the respondent nos. 2 and 3 are already on record, the respondent no. 5 would also look into these documents at the time of giving the final report.

3. Thereafter, the report of the respondent no. 5 has been placed on record and the same has been filed in the form of an affidavit of one Ms Shalini Darbari working as Director in Central Vigilance Commission. The affidavit is dated 06.10.2009. On going through the final report, we find that the learned counsel for the petitioner is right in his submission that the question of intercession which is to be found in Article 23.1 of the Defence Procurement Manual – 2006 has not been examined in any detail. The said Article 23.1 reads as under:-

“23.1 The SELLER confirms and declares to the BUYER that the seller is the original manufacturer of the stores referred to in this contract and has not engaged any individual or firm, whether

Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the SELLER; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The SELLER agrees that if it is established at any time to the satisfaction of the BUYER that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the SELLER has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the SELLER will be liable to refund that amount to the BUYER. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The BUYER will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such event be liable to refund all payments made by the BUYER in terms of the Contract alongwith interest at the rate of 2% per annum above LIBOR rate. The BUYER will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.”

4. According to the learned counsel for the petitioner, the GPS/DGPS receiver, which is part of the subject tender, was manufactured by a company named Hemisphere based in Canada. The said equipment was supplied to a company named Leica Geosystems in Switzerland and Leica Geosystems supplied the same to the respondent no. 4 – Elcome Technologies Pvt Ltd, which, in turn, participated in the global tender and ultimately was awarded the contract and supplied the equipment to the respondent no. 2. According to the learned counsel for the petitioner, the intervention of Leica Geosystems in the supply chain would amount to intercession and would attract the provisions of Article 23.1 of the Defence Procurement Manual – 2006. This aspect of the matter, in our view, requires re-consideration by the CVC. Therefore, while we are not entertaining the

petition with regard to the first two reliefs of quashing the tender and awarding the same to the petitioner, we are hereby issuing a direction to the respondent no. 5 to examine the award of the tender to the respondent no. 4 from the standpoint of Article 23.1 of the Defence Procurement Manual – 2006.

With these directions, the writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

NOVEMBER 06, 2009
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