

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.11.2013

W.P.(C) 5308/2013 & CM Nos. 11894/2013 & 12944/2013

SUNIL YADAV

..... Petitioner

versus

GOVT. OF NCT OF DELHI & OTHERS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Ashwini K. Mata, Sr. Advocate with
Mr Joydeep Sarma and Mr Pranav Kumar,
Advocates.

For the Respondent : Mr Arjun Pant, Advocate for R-1.
Ms Tania Ahlawat, Advocate for
Ms Avnish Ahlawat, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition concerns the notice inviting tender for running a central canteen which has been issued by the Delhi Technological University (formerly Delhi College of Engineering), GNCT of Delhi. The NIT was issued in April, 2013. The said NIT reads as under :-

“F. No. DTU/GA/64/2012-13

Dated.

NOTICE INVITING TENDER FOR RUNNING CENTRAL CANTEEN

Sealed tenders are invited under two bid system from reputed agencies, either by themselves or as a joint venture/consortium/partnership having capacity to run Canteen with the suitable and uniformed trained manpower for the **Delhi Technological University, Shahbad Daulatpur, Bawana Road, Delhi-110 042**, for a period of two years and extendable for a further period of two years on yearly basis on the satisfactory performance and quality of service by the licensee/contractor on contract basis/outsourcing basis.

Prescribed Tender documents containing terms and conditions can be obtained in person on submission of written request alongwith tender cost of **Rs. 500/-(Rs. Five Hundred only)** as cost tender form non-refundable in the form D.D. drawn in favour of **"REGISTRAR, DLEHI TECHNOLOGICAL UNIVERSITY"** payable at **DELHI** from nationalized banks only. If required by post Rs. 250/- will be charged as postal charges. The tender document can be downloaded from DTU tender link [http://www.dce.edu/web/Sections/Miscelaneous/tenders/index.p hp](http://www.dce.edu/web/Sections/Miscelaneous/tenders/index.php). In such case the tenderer shall enclose cost of tender document by separate D.D. in a separate envelop along with tender before the closing of the bid, will entail rejection of bid and blacklisting.

Date of start of issuance of tender	17.04.2013 at 11.00 AM
Last date and time of submission of tender & EMD	09.05.2013 at 02.00 PM
Date of opening of technical bids	09.05.2013 at 02.30 PM

**Designation of the Authorized : Assistant Registrar (Gen. Admn)
Officer**

**Name and Address of the : Delhi Technological University
Department Shahbad Daulatpur, Bawana Road,
Delhi-110042.”**

2. The technical bid was to be in terms of Annexure 'D' to the NIT
Clauses 8 and 9 of the technical bid were as under :

“8. Contractor should have at least two years working
experience of running canteen of similar types. YES/NO

9. Certificate regarding running of Canteen in
University/College/Reputed Organization
YES/NO”

3. It is apparent, on going through the above two clauses, that the
contractor was required to have at least two years experience of running a
canteen of similar type. Furthermore he was to submit a certificate for
running a canteen in university/ college/ reputed organisation.

4. In the present case, the petitioner had one year's experience of
running a canteen for students at IIT. A certificate to that effect had also
been furnished by the petitioner. Apart from that, the petitioner was
running a cafeteria for the DDA w.e.f. 01.01.2008 for about 1-1/2 years.
The petitioner also claims to have the experience of running a canteen at
the Indira Gandhi National Open University (IGNOU), Maidan Garhi, New
Delhi. According to the petitioner, the canteen was run by the petitioner at
IGNOU from 18.07.2007 to 19.12.2009 and therefore, this satisfied the
requirement of Clause 8 which stipulated that the contractor must have at
least two years experience of running a similar canteen.

5. Learned senior counsel for the petitioner submitted that a copy of the award of contract for operating the canteen at IGNOU had been furnished along with the technical bid. The original file concerning the tender has been produced before us and we find that a copy of the award of contract for operating the canteen at the university campus of IGNOU is available on record. It is also apparent that the canteen was taken over on 17.07.2007 by the petitioner and was handed back to the IGNOU on 19.12.2009 which would, prima facie, indicate that the petitioner had two years experience of running the canteen. Apart from this the petitioner is also stated to have run a 'kiosk' at the Indira Gandhi International Airport. According to the learned senior counsel for the petitioner, though, the nomenclature used is 'kiosk' at the Airport Terminal it is, in fact, a canteen.

6. However, the respondents have rejected the technical bid of the petitioner by virtue of a letter dated 05.09.2013 which reads as under :-

“No. F.DTU/GA/64/2012-13/8399 Dated: 5.9.13

To

M/s. Sunil Yadav
WZ-115, Raj Nagar Part-II
Palam Colony
New Delhi-110045.

Sub:- NIT for Running Central Canteen : Evaluation of technical bid

Sir,

This has the reference to your bid for running Central Canteen at DTU. In this connection, it is informed that the

Tender Evaluation Committee after going through the papers has observed that you have experience of about one year for running Canteen of students type at IIT Delhi and remaining experience of having running Kiosk, which is not of similar types as referred at Sr. No 8 & 9 of the Annexure-D of the NIT. Hence, as per the Technical Bid Evaluation Committee your firm's financial bids shall not be opened.

This is for your information, please.

Yours faithfully,
Sd/-
(R.K. Shukla)
Officer Incharge(S&P)”

7. It would be apparent from the aforesaid rejection letter that the petitioner’s technical bid had been rejected on the ground that the petitioner had only one year’s experience of running a canteen of students type at IIT, Delhi and remaining experience of running a kiosk, was not of a similar type as referred to in Clauses 8 and 9 of Annexure ‘D’ to the NIT.

8. We agree with the learned senior counsel for the petitioner that the experience of the petitioner with IGNOU has apparently not been considered by the respondents at all. The petitioner had run a canteen and not a ‘kiosk’ at IGNOU. We also agree with the learned senior counsel for the petitioner that one way of reading Clauses 8 and 9 of the Annexure ‘D’ of technical bid is that the contractor should have two years working experience of running a canteen of similar type and he is only required to produce one certificate regarding running of canteen in a University/College/Reputed Organisation. According to him both the Clauses are not to be read in conjunction. We agree with this submission

that the two Clauses are to be read disjunctively, therefore, it was necessary for the contractor to only show that he had two years working experience of running canteen of similar types and also produce one certificate of running of a canteen in a University/ College/ Reputed Organization. In the facts of the present case, prima facie, we are of the view that the petitioner has been able to show that he has more than two years working experience of running a canteen if the experience of running the canteen of IGNOU is taken into consideration. The petitioner has also produced a certificate from IIT, of running of a canteen. Therefore, prima facie, in our view both the Clauses 8 and 9 have been complied with by the petitioner.

9. In these circumstances, we quash the letter dated 05.09.2013, whereby the petitioner's technical bid had been rejected for the purported reasons indicated above.

10. We remit the matter to the Technical Evaluation Committee for the purposes of satisfying itself as to whether the petitioner had the requisite experience of two years after considering the experience of the petitioner with IGNOU.

11. The said decision be taken within two weeks.

12. The petitioner is permitted to file a certificate from IGNOU in support of the contention that they have the requisite experience. The same be done within one week.

13. In case the Technical Evaluation Committee is satisfied that the petitioner has the requisite experience, the petitioner's price bid be opened

and be considered alongwith the other qualifying price bids. However, in case the Technical Evaluation Committee is of the view that the petitioner does not have the requisite experience as required under Clause 8 of the Annexure 'D' of the NIT, it will inform the same to the petitioner alongwith the reasons.

14. The writ petition and the pending applications are disposed of, accordingly.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

NOVEMBER 25, 2013

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