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

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Judgment delivered on: 18.12.2014

+ **W.P.(C) 4709/2014**

**HDFC STANDARD LIFE INSURANCE COMPANY
LIMITED & ANR**

.... Petitioners

versus

**PENSION FUND REGULATORY AND DEVELOPMENT
AUTHORITY**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Nayar, Sr Advocate with
Mr Aman Gandhi.

For the Respondent : Mr Bharat Sangal & Ms Anasuya Choudhury.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE I. S. MEHTA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the letter dated 23.07.2014 issued by the Pension Fund Regulatory and Development Authority in the context of the Request For Proposal (RFP) issued by the said authority on 16.01.2014. By virtue of the said letter dated 23.07.2014, the said authority has informed the petitioner that the proposal submitted by it on 13.12.2014 had been evaluated under clause 3.1 of the RFP and that the petitioner was found to have not fulfilled the conditions of appointment as stipulated in clause 7.1(d) of the RFP, namely, the criteria of profits after

providing for depreciation, interest and tax in all the immediately preceding three years, viz., 2010-11, 2011-12 and 2012-13, as specifically mentioned under clause 4.3 of the RFP. Consequently, the authority rejected the application of the petitioner.

2. This matter has had a long history. The petitioner had approached this court on two earlier occasions by virtue of W.P.(C) No.2358/2014 and W.P.(C) No.2516/2014 which were disposed of by this court on 16.04.2014 and 15.05.2014, respectively.

3. In W.P.(C) No.2516/2014, the petitioners had challenged the letter dated 21.04.2014 issued by the said authority whereby their commercial bid was not being considered inasmuch as, according to the authority, the petitioner no.1 did not satisfy the eligibility criteria regarding the profits after providing for depreciation, interest and tax in all the immediately preceding three years. The said writ petition was disposed of by a judgment dated 15.05.2014 wherein this issue was not considered on merits inasmuch as this court felt that the entire process had to be undertaken in a sequential manner and the stage for considering the conditions which were stipulated under clause 7 of the RFP had not been reached. This would be evident from the following extract from the said judgment dated 15.05.2014:-

“8. We may point out that as per clause 7.1 (d) one of the conditions for issuance of a letter of appointment to a successful bidder is as follows:

"(d) The Sponsor(s) should have positive net worth for the immediately preceding five (5) years and profits after

providing for depreciation, interest and tax in all the immediately preceding three 3 years" (underlining added)

From the above, it is evident that the Sponsor(s) must, inter alia, have profit after providing for depreciation, interest and tax in all the immediately preceding three (3) years. In other words the letter of appointment would only be issued if the conditions stipulated in clause 7.1 of the Request for Proposal are satisfied. This would include the condition with regard to profitability.

9. There was some debate as to whether the expression preceding three (3) years would include the financial year ending on 31.03.2014 or not. But we need not enter into this arena of discussion inasmuch as that stage has not yet moved. We are of the view that since clause 9 of the introduction of; the RFP clearly stipulated that existing fund managers would be 'eligible' for having their bids evaluated, it was incumbent upon the respondent PFRDA to have evaluated the technical bids of the petitioners. The technical evaluation has to be done in terms of the parameters spelt out in Annexure-VI to the REP and in accordance with the bifurcation of marks/weightage under the sub-parameters as arrived at by the Selection Committee and as done in respect of the other bidders. We also note that in our earlier order dated 16.04.2014 in the WPC 2358/2014 we had clearly directed that the bids of the petitioners be technically evaluated in accordance with law. In view of the foregoing discussion we feel that the proposal submitted in response to the subject RFP has to go through the steps in a sequential manner. Consequently, the bid submitted by the petitioners has to be evaluated under step 4 and the entire process has to be taken to its logical conclusion upto the

WPC 2516/2014 Page II of 12 issuance (or otherwise) of an appointment letter if the petitioners are successful and subject to the conditions stipulated in clause 7.1.

10. The writ petition is accordingly disposed of with the direction that the technical bid submitted by the petitioners be

evaluated as has been done in the case of other bidders and further steps be taken in terms of the Request for Proposal and, in particular, the clear cut steps spelt out therein. Consequently, the impugned letter dated 21.04.2014 is set aside. The consequential steps taken pursuant to the letter dated 21.04.2014 by the PFRDA insofar as the petitioners are concerned also stand quashed.

11. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.”

4. From the above, it is evident that the issue of preceding three years, including the financial year ending on 31.03.2014, was not gone into and only the eligibility for having the bid of the petitioners evaluated was considered and it was held that since clause 9 of the introduction of the RFP clearly stipulated that the existing fund managers would be eligible for having their bid evaluated, it was incumbent upon the authority to have evaluated the technical bids of the petitioners. It was, thus, directed that the bids submitted by the petitioners had to be evaluated under step 4 and the entire process had to be taken to its logical conclusion upto the issuance (or otherwise) of an appointment letter, if the petitioners were successful and subject to the conditions stipulated in clause 7.1.

5. This brings us to the present writ petition. Clause 7 of the request for proposal deals with the appointment conditions. It stipulates that on the issuance of the letter of appointment to the successful bidders (sponsors), they would be allowed to float and operate the Pension Fund for management of the National Pension System (NPS) contributions of subscribers other than Government employees under the terms and

conditions stipulated therein. One of the conditions stipulated for appointment has been prescribed in clause 7.1(d) which reads as under:

“7.1(d) The Sponsor(s) should have positive net worth for the immediately preceding five (5) years and profits after providing for depreciation, interest and tax in all the immediately preceding three (3) years”.

6. The above conditions clearly stipulates that the sponsors should have positive net worth for the immediately preceding five (5) years and profits after providing for depreciation, interest and tax in all the immediately preceding three years. The question that has arisen for consideration in this writ petition is - which three years are to be taken for considering the profits after providing for depreciation, interest and tax?

7. It is the case of the petitioners that since the letter of appointment would be issued in the current year i.e., the financial year ending on 31.03.2015, the preceding three years would be the three years ending on 31.03.2014. However, it is the contention of the learned counsel for the authority that since RFP was requested in the financial year ending 31.03.2014, the last of the three years preceding would be the financial year ending on 31.03.2013. He further submitted that the bid submission date was also 14.02.2014 and thereafter, at that point of time, the three years that have been reckoned, would include the years upto the financial year ending on 31.03.2013.

8. We have considered the arguments advanced by the learned counsel for the parties on this issue. It may be relevant to reiterate that

clause 7 of the RFP deals with the conditions of appointment and not with the eligibility conditions. Therefore, there is some logic in what the learned counsel for the petitioner submits that the preceding three years should be taken from the point of time when the appointment letter is to be issued. Since the appointment letter is to be issued in the current financial year ending on 31.03.2015, the preceding three years would be the years ending on 31.03.2014. If that were to be taken, then the conditions stipulated under clause 7.1(d) would admittedly be satisfied. But, there is also logic in what the learned counsel for the authority has submitted that the preceding three years should end with the financial year ending on 31.03.2013 in view of the fact that the bid submission date in the financial year was 31.03.2014.

9. The result of this discussion is that the issue is debatable. Once this happens and once we recognise that this is not an eligibility condition but the condition for giving of appointment letter, we feel that it would not be inappropriate for us to lean in favour of the submission made by the learned counsel for the petitioners. This view has been taken by us in the backdrop of the facts that there were eight slots for pension funds and apart from the petitioners only seven slots have been filled up. In other words, if the petitioners are granted the pension fund, the petitioners would not be displacing anybody else. And, if the petitioners, who are otherwise eligible, are not granted the fund then, apart from anything else, one slot would go abegging. Furthermore, the petitioners have also complied with the condition of matching the L-I bidder.

10. Consequently, it is directed that the respondent no.1 shall issue an appointment letter to the petitioners also. The impugned letter dated 23.07.2014 is set aside.

11. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

12. *Dasti.*

BADAR DURREZ AHMED, J

DECEMBER 18, 2014
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I. S. MEHTA, J

