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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 12.11.2018

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W.P.(C) 11832/2018 with CM Appl.Nos.45827-45828/2018

M/S DHIRAJ GUPTA

..... Petitioner

Through: Mr. O.P. Saxena, Mr. V.K. Jain and
Ms. Shradha Saxena, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Ramesh Singh, Standing
Counsel for GNCTD with Mr. Chirayu Jain and
Ms. Nikita Goyal, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (ORAL)

ORDER

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12.11.2018

1. The respondent, Deputy Commissioner of Police by a public notice invited tenders to hire two types of cranes for use in the Traffic Unit, which were to be on duty for 12 hours a day. The petitioner participated in a previous bid process; however, the respondents cancelled it and by a newspaper advertisement called fresh bids on 12.12.2017.

2. The new tender conditions stipulated *inter alia* that the bidder firms should offer a minimum of 30% of the total requirement of the RFP towing/hauling/lifting equipment (cranes) in the particular category for

which the bidder is applying. Two types of cranes were stipulated; Delhi Police required them to tow vehicles for its routine work. The condition in question reads as follows:

“The bidder firms must offer a minimum of 30% of the total requirement in the RFP towing/hauling/lifting equipment (Cranes) in a particular category for which category the bidder is applying. The calculation to arrive at minimum offer for cranes in both categories is as under:-

<i>S.No.</i>	<i>Category of Cranes</i>	<i>Total Nos.</i>	<i>Minimum No. To be quoted for (30%)</i>
<i>1.</i>	<i>Hydraulic Cranes</i>	<i>75 Nos.</i>	<i>22.5 rounded off as 23</i>
<i>2.</i>	<i>Small Cranes</i>	<i>40 Nos.</i>	<i>12</i>

Criteria will be same if applying for both categories. Applying for both categories is not mandatory. Any tender/bid offering towing/hauling/lifting equipment (crane) less than the minimum requirement shall be summarily rejected. To support the offer, the bidder has to provide copies of Registration Certificate (R/C) or full payment purchase invoice of vehicle.”

3. Besides other terms, Delhi Police also stipulated *inter alia* as follows:

“1.23 As part of Technical Evaluation of Bids, the bidders shall arrange presentation and live demonstration of their Towing/Hauling/Lifting Equipments (cranes) within a period of 10 days from the date of opening of the technical bids to show that they fully conform to this tender. The bidders will be intimated the exact date and time for them to carry out such demonstration. The bidders are advised to make all necessary arrangement for the live demonstration of their quoted/offered Towing/Hauling/Lifting Equipment (cranes) for towing / hauling / lifting capacity as per the tendered requirement well in advance as they will be required to

adhere to the time schedule given to them soon after bid opening/technical bid evaluation. A certificate to this effect that the firm is ready for live demonstration of their quoted/offered Towing/Hauling/Lifting Equipment (cranes) within 10 days from the date of opening of the Technical Bid should be attached with Technical Bid.

1.29 The delivery of the Towing/Hauling/ Lifting Equipments (cranes) shall be completed within 45 (Forty Five) days from the date of Award of Contract.”

4. The petitioner complains that his bid was rejected at the technical evaluation stage and did not proceed further. It is also stated that no reasons for the rejection of the tender were communicated.

5. In support of the pleadings the petitioner asserts that it has placed an order on the concerned vendor i.e. M/s Tata Motors Ltd. for purchase of 25 cranes.

6. On the previous date of hearing this Court required the respondent to produce the original documents. The respondent produced the original file. The rationale for not accepting the petitioner's bid, appears to be that enquiries made by the respondents from M/s Tata Motors with respect to the petitioner's claim were that it placed a purchase order for 25 cranes. The petitioner had relied upon the copies of the purchase order dated 24.07.2018 and certain cheques issued in favour of M/s Tata Motors. At the stage of processing the tender the respondent's query was to ascertain whether the purchase order had materialised into a commitment, in order to evaluate the tender. The letter of 28.03.2018 was written by the Deputy Commissioner of Police (Prov. & Logistics) to M/s Tata Motors requesting the latter to confirm whether the full payment of ₹2,41,73,150/- for purchase of 25 vehicles (cranes) was received by the vendor.

7. The vendor in turn on 09.08.2018, appears to have replied to the Deputy Commissioner of Police Prov. & Logistics *inter alia* stating as follows:

“Dear Sir,

This is in reference letter No.5093 / HAMT (II)/P&L dated 03.08.2018 to M/s TATA Motors Sales & Service, Patparganj. The letters have been received at our end dated 08.08.2018.

Response/Update on

- a. Mr.Dhiraj Gupta had enquired to purchase vehicles on 23.07.2018 and as a Standard Procedure, the respective Proforma Invoice (Just a Quotation Copy) was provided to the enquiry.*
- b. There has been no payments made by Mr.Dhiraj Gupta to Tata Motors ltd. Against the Proforma Invoice issued(mentioned in Point a.) and hence no Purchase of SFC 407 CNG vehicles as on date.*

Note: Please find the Standard Operating Procedure at TATA Motors For Future reference & also for further clarity on the above subject:

- a. Proforma Invoice is just a quotation, which is issued to any client who enquires on to make TATA vehicles purchase. There is no Sale at this stage of discussions.*
- b. A customer/Buyer can only claim to have purchased the vehicle from TAT Motors Sales & Service only if a valid GST Invoice copy with duly filled details at the vehicle model payment of the purchase, is produced/submitted by the buyer. (A blank copy of the same is attached for kind reference*

Lastly, for any further queries on the above subject, kindly feel free to connect with the undersigned.

Thanking you,

*Yours Faithfully,
For TATA MOTORS LTD.”*

8. Mr.O.P.Saxena, learned counsel submitted that the petitioner cannot be faulted if the vendor did not encash the cheque. As far as it was concerned, the order was final and it was committed to purchase 25 cranes. It was urged besides that the tender conditions have been tailor made to suit a third party who has retained monopoly in the trade so far. Learned counsel further submitted that the question of presenting the vehicles arises much later and relied upon clause 1.29 in this regard.

9. It is evident from the above discussion that the petitioner was not primarily aggrieved by the tender condition, rather participated in the process and asserted that he possessed the technical expertise as well as vehicles stipulated in clause 1.6.1. The respondent as part of their evaluation process, routinely checked with the vendor (on whom the petitioner claimed, it had placed the purchase order for 25 vehicles). The reply of M/s Tata Motors was infact that there was no commitment. It further explained the sale procedure which it normally follows.

10. The petitioner had during the course of these proceedings also filed an additional affidavit. The additional affidavit enclosed copies of the purchase order which were originally not on record. The copy of the purchase order supplied to the government clearly shows that it was not an unconditional offer made to the vendor (M/s Tata Motors) but rather with a condition. The purchase orders were premised upon the following conditions:

“Note: Subject to issue of Letter of Award from Delhi Police for Crane.”

11. The petitioner has not placed on record copy of its bank statement or any other credible evidence to indicate that it possessed the amounts for

which the cheque was issued or that the amounts had been debited from such account.

12. Given all these circumstances, the Court is of the opinion that the decision of the respondent to not to process petitioner's tender and reject it cannot be characterized as arbitrary. In this regard, the petitioner's reliance on Clause 1.29 is of little consequence. If the authorities could determine – as they did – on a reasonable assessment of the bid, based upon an enquiry that the petitioner had not unconditionally committed to purchase the requisite number of vehicles, their decision to reject the offer does not suffer from the vice of arbitrariness.

13. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 12, 2018

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