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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 14209/2024 & C.M. Nos. 59423-59424/2024****GOOD YEAR SECURITY SERVICES (R)**

.....Petitioner

Through: Mr. Abhay Kumar with Mr. Shagun
Ruhil, Mr. Gaurav Tirupati and Mr.
Karan Chopra, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly, Advocates for R-1 and
Mr. Taqvi, GP.
Mr. Sugam Kumar Jha, Mr.
Sureedass K.P. and Mr. Raghav
Tandon, Advocates for R-2.

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Date of Decision: 8th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, CJ : (ORAL)**

1. Present writ petition has been filed seeking quashing of Tender No. GEM/2024/B/5347639 dated 31st August, 2024 alongwith its Evaluation Criteria and Request for Proposal (for short 'RFP') dated 31st August, 2024.
2. The petitioner had approached this Court in an earlier writ petition bearing W.P.(C)12890/2024 with the same prayer challenging the Tender No. GEM/2024/B/5347639 dated 31st August, 2024 alongwith its Evaluation Criteria and RFP dated 31st August, 2024. This Court had *vide* order dated 13th September, 2024 directed the respondent no. 2/Sports



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Authority of India (for short 'SAI') that the representation dated 6th September, 2024 of the petitioner be disposed of within two working days. The respondent no.2/SAI has accordingly disposed of the said representation by the rejection order dated 18th September, 2024. Not being satisfied, the petitioner has preferred the present writ petition.

3. Mr. Abhay Kumar, learned counsel appearing for the petitioner has reiterated the arguments addressed by him on the previous occasion while this Court was hearing W.P.(C) 12890/2024. He states that though the respondent no.2/SAI has disposed of its representation, yet the rejection order is bereft of any rationale. He states that the same is vague and has not really considered any of the objections raised in the representation.

4. He states that the petitioner is capable of supplying manpower in accordance with Clause 3.17 of the Terms of Reference (for short 'TOR') and thus, the assumption that it cannot supply such manpower is unfounded. He states that the Marking Scheme is also skewed. As an example, he refers to SI. No. 4 of the evaluation criteria of the TOR to submit that though the requirement of security personnel is 212 and may go upto 50% more, that is, around 315-320, lowest marks of 5 are awarded to the bidder having 350-500 security personnel. He states that this is not even the condition of the TOR itself. He states that this eligibility condition is even beyond the scope of the TOR. In any case, he states that the petitioner is capable of supplying even 350 security personnel as and when required.

5. Learned counsel for the petitioner also states that the subject tender has an estimated cost of Rs.20,65,26,638.02/- with contract duration of two years and a total requirement of 212 security personnel (196 Unarmed Security Guards, 6 Armed Security Guards and 10 Security Supervisors). He states that an average annual turnover requirement of Rs.31,00,00,000/-



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has been inserted in order to weed out small firms and companies, such as the petitioner in the present case. He states that this eligibility condition mandates that any agency participating in the subject tender should have an average annual turnover of almost Rs.93 crores for a period of three (3) years, meaning thereby that the requirement of average annual turnover for past three years is almost five times the actual estimated cost of the subject tender. According to him, this condition is onerous and has been inserted with a view to eliminate bidders like the petitioner and ought to be struck down as unjust and unfair.

6. He states that the Marking Scheme has been designed only to cater the big contractors inasmuch as the various criteria adopted reflects elimination of marginal and small players like the petitioner. According to learned counsel for the petitioner, every component of the eligibility criteria is measured arbitrarily to weed out smaller players. He states that the Marking Scheme providing lower marks for least experienced, lower marks for turnover of last three years and lowest marks for executed projects of not less than Rs.8.27 crores during past five (5) years etc., is wilfully designed to keep the petitioner and other smaller players out of the game entirely. He states that even if the petitioner has requisite years of experience or the manpower, yet on other components of eligibility criteria, the petitioner shall stand to lose out. In other words, he states that any which way, the smaller players would have no chance of fair competition. He states that it is well settled that in contractual matters, larger participation ensures competitive rates and level playing field to all. On the above submissions, he prays that the writ petition be allowed.

7. *Per contra*, Mr. Sugam Kumar Jha, learned counsel for respondent no.2/SAI states that around 86 bidders had bid for the TOR in question and



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thus, there is no question of the terms being restrictive and keeping the smaller bidders out. He states that the order rejecting the representation of the petitioner is self explanatory and reiterates its contents.

8. This Court has considered the submission of the learned counsel for the parties and examined the rejection order dated 18th September, 2024.

9. The law in respect of judicial intervention in interpretation of tender conditions is no more res integra. In ***Balaji Ventures vs. Maharashtra State Power Generation Company Ltd. & Anr., 2022 SCC OnLine SC 1967***, the Supreme Court has succinctly held that the tender issuing authority should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, *mala fide* and/or tailor made. It was further held that the bidder/tenderer cannot be permitted to challenge the tender/bid conditions/clause which might not suit him and/or be convenient to him. The Supreme Court in ***Monte Carlo Limited vs. National Thermal Power Corporation Limited, (2016) 15 SCC 272*** held that the tender issuing authority is the best person to understand and appreciate its requirements and interpret its documents so long as there are no *mala fides* or arbitrariness. It was further observed that the government must have freedom of contract and such action can be tested by applying Wednesbury Principles and also examining whether it suffers from arbitrariness, bias or *mala fides*. (See also ***Tata Cellular vs. Union of India, (1994) 6 SCC 651***, ***Airport Authority of India vs. Centre for Aviation Policy, Safety & Research (CAPSR), 2022 SCC OnLine SC 1334*** and ***M/s Rasoi Canteen & Caterer vs. Indian Institute of Technology, Delhi, W.P(C) No. 10136/2024*** decided on 24th July, 2024).

10. To appreciate the above principles laid down in the context of the present case, it would be apposite to consider the reasons and rationale



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contained in the rejection order dated 18th September, 2024. The same is extracted hereunder:

**“SPORTS AUTHORITY OF INDIA
(ES Division)**

F NO: 01-02001/35/2024-HO – Legal Division

Dt: 18.09.24

To
M/s Good Year Security Services
Office A-75, Upper Ground Floor,
Sector-8, near Sports Complex,
Dwarka, New Delhi – 110077
Email: gyssdwarka@gmail.com

Subject: *Response to Representation Regarding
Tender for Security manpower Deployment
at 05 Stadia of Sports Authority of India, Delhi*

Reference: *1. Your representation dated 06.09.2024,
2. Order dated 13.09.2024 passed by the
Hon'ble High Court of Delhi in W.P.(C)
12890/2024.*

Sir/Madam,

This is in reference to your representation dated 06.09.2024, and the Order dated 13.09.2024 passed by the Hon'ble High Court of Delhi in W.P.(C) 12890/2024, which directed the Sports Authority of India (SAI) to respond to your representation. After careful consideration of the issues raised, we wish to clarify that SAI, as the author of the Tender, has structured the document with full knowledge of the operational requirements and the security challenges that the SAI stadia must address. Each condition in the tender has been included with a distinct purpose and rationale, such as the requirement for a large number of security personnel, the turnover conditions, and other evaluation criteria. In view of which the allegations made in your representation appear to reflect a misunderstanding of the operational needs and complexities associated with the tender. Nevertheless, to address the issues raised, we have provided a detailed explanation below.

Details	Representation Details	SAI's Detailed Response	Reason
Turnover Requirement	<i>It is claimed that the turnover requirement of Rs. 31 Crores is excessive and</i>	<i>The turnover requirement of Rs. 31 Crores has been carefully calculated based</i>	<i>Security is a critical priority for SAI. The personnel are responsible for</i>



	should be reduced to reflect the estimated one-year cost of Rs. 10.32 Crores.	on the total contract value of Rs. 206,526,638.02 over two years. This ensures the selected agency has the financial capacity to manage both routine operations and scale up during any unscheduled international or domestic events. As per Clause 3.17 of the TOR, the security Personnel requirement can increase by 40-50% during international and national events as per the Author's right to amend the Scope of Work in any unplanned or unscheduled events. The agency must have the financial resources to handle this scale-up, salaries, equipment, and logistics.	safeguarding athletes, VIPs, dignitaries, prime ministers, international delegations, sports stars, and celebrities. Any financial instability in the selected agency could result in service disruptions or lapses, which are unacceptable in such high-stakes environments. Along with the SAI's, the national goodwill and reputation are also at stake, and there can be no compromise on security during these high-profile events.
Experience of Managing Personnel	The tender asks for experience in managing 350 personnel, while only 202 are needed for routine operations. This is deemed excessive and unjustified.	The experience requirement for managing 350 personnel is justified as per Clause 3.17, which anticipates a 40-50% increase during contingency requirements including national or international events, the number of personnel required can increase substantially	Managing large numbers of personnel is essential for ensuring adequate coverage during high-profile events. Security personnel are responsible for monitoring sensitive areas, controlling access, and protecting VIPs and



		beyond this, often requiring deployment of double or triple the usual workspace. SAI's stadia frequently host high-profile events , requiring heightened security including crowd control, access management, VIP security, and public safety . Only agencies experienced in handling large teams can effectively manage this scale-up.	International delegations. The failure to provide adequate personnel could result in serious security breaches . Given the stakes involved protecting public figures and preserving national pride—there is no room for error . The requirement to have experience with 350 personnel ensures that the agency can handle both the regular and scaled-up demands of such events.
Marking System	The marking system does not comply with government norms and should be revised accordingly.	The marking system has been carefully designed to prioritize agencies that possess the capacity to handle large contracts and the unique security challenges of SAI stadia. As per Clause 3 , the agency must demonstrate the ability to deploy personnel quickly and efficiently . Especially during emergencies. Clause 3.17 anticipates a 40-50% increase in personnel during	The marking system is necessary to ensure that only agencies capable of managing high security operations are selected. The events hosted at SAI stadia attract dignitaries, international athletes, sports stars, and government officials, including prime ministers and international leaders . Given



		major events. The marking system awards points for financial stability, operational flexibility, past experience in managing large-scale operations, ensuring that the selected agency demands.	the sensitive nature of these events, the selected agency must demonstrate exceptional capability in managing personnel, responding to crises, and protecting key individuals. Any lapses could lead to national and international embarrassment, as well as damage to SAI's reputation. Therefore, the marking system is designed to prioritize highly capable agencies.
EPF and Bonus calculations	The EPF contribution is set at Rs. 65 per day, whereas it should be Rs. 75 per day as per statutory requirements. Personnel earning more than Rs. 21,000 are not entitled to bonuses.	The EPF calculations follow the ESIC and EPF rules. The EPF contribution has been calculated based on a 30-day month, consistent with government practices. Rule 2 (1B) of the Employees' State Insurance (Central) Rules, 1950, clarifies the appropriate method for calculating EPF contributions. The calculation is	Ensuring compliance with Statutory regulations is vital for maintaining the legal integrity of the contract. The selected agency must demonstrate compliance with government norms to avoid legal disputes or grievances. Given the sensitive nature of the work environment and the high stakes involved, any



		<i>correct and reflects industry standards.</i>	<i>irregularities in wage or benefit calculations could disrupt security operations and lead to disgruntlement among personnel, potentially compromising security.</i>
Cancellation of Tender	<i>The tender is biased toward certain bidders and should be cancelled to ensure fairness.</i>	<i>The tender process has been conducted transparently through the GeM Portal, with 86 bidders participated. This demonstrates that the tender is neither restrictive nor biased. Clause 3.16 provides SAI with the authority to the agency's performance and take corrective action, including contract termination, if performance standards are not met. The tender process is competitive and designed to select the most capable agency based on merit.</i>	<i>The tender process has been transparent and fair, with multiple bidders participating. SAI prioritizes selecting agencies that can meet the stringent security requirements necessary to protect its stadia and its high-profile events. The integrity of this process ensures that the best suited agency is selected based on capability and performance, rather than bias or favouritism. SAI cannot afford to compromise on security due to inadequate agency</i>



			selection.
General Observations	<i>The tender contains various anomalies that need to be addressed before proceeding.</i>	<i>After careful examination, no anomalies have been found in the tender. The conditions, including turnover, experience, and the marking system, have been designed the security requirements of SAI. Clause 3 of the TOR provides SAI with the flexibility to amend the scope of work based on specific needs, ensuring that security measures can be adapted as necessary.</i>	<i>SAI's stadia host high-profile events that attract International attention. Given the scale and significance of these events, SAI must retain the flexibility to adapt its security operations as per Clause 3 of the TOR. The selected agency must have the ability to meet these demands, as any security lapse could have serious repercussions on the national and international stage. Ensuring absolute security is paramount to SAI's goodwill, reputation, and the safety of its guests.</i>

*The powers granted to SAI under the tender and the **Terms of Reference (TOR)** ensure that the selected agency can meet the stringent security standards necessary for safeguarding SAI Infrastructure in general and also **athletes, VIPs, dignitaries, and high-profile guests** attending events at SAI stadia. SAI retains the authority to modify the security arrangements based on event requirements, ensuring that there is no room for compromise on security.*

The security requirements set forth in this tender are non-negotiable given the sensitivity of the security of the 05 stadia situated at strategic locations and also in view of the national and international



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significance of the events hosted. Any lapse in security could have serious consequences, affecting SAI's reputation, goodwill, and the safety of its guests.

We trust this detailed response addresses your concerns. As the tender process has been fair and transparent, no changes will be made to the tender conditions. Thank you for your understanding and participation.

*Regards,
[Vishnubhatla Sharma]
Assistant Director (ES)''*

11. It can be clearly seen from the explanation rendered by the respondent no.2/SAI that the TOR was designed keeping in mind the requirement of security personnel at five (5) major stadiums of Delhi. The respondent no.2/SAI appears to have taken into consideration the overall situation regarding the number of stadiums; the exigency of events; the international events; the international sports persons, dignitaries, international delegations, celebrities; and other persons with high end value, while floating the TOR. It also appears that the respondent no.2/SAI does not want any risk regarding disruptions or lapses in services which according to them, is unacceptable. The rationale behind the marking system and the increase in the number of security personnel required in times of exigency or events also appear to be justified. Respondent no.2/SAI has also sought to justify the fairness by stating that around eighty-six (86) bidders have submitted their bid documents in accordance with the same TOR. It was also stated that none of the other bidders have challenged any of the TOR's terms and conditions.

12. This Court is satisfied that the respondent no.2/SAI has given plausible and reasonable justification while constructing the terms of TOR. It appears from the aforesaid letter that the TOR does not suffer from the vice of arbitrariness or unreasonableness. TOR appears to be in consonance



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with the requirements of the tender issuing authority, i.e., respondent no.2/SAI.

13. Thus, the petition has no merits and is dismissed along with the pending applications.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

OCTOBER 8, 2024/rl