

\$~55

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

%

Judgment delivered on: 27.04.2015

+

WP(C) No. 4092/2015 & CM No.7320/2015

JAIVIR SINGH

.... Petitioner

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Raman Kapur, Sr Advocate with Mr Aviral Tiwari, Advocates.
For the Respondent No.1&2 : Ms Renu Gupta, Advocates for respondent Nos.1 & 2.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the fact that he has been found to be disqualified for not meeting the technical criteria specified in the subject tender for hiring of Mini Jetting/Pressure Spray Machine(s) mounted on Mahindra Bolero/Tata 207 or equivalent vehicle with driver, operator/Beldar and with all accessories and machineries etc. required for jetting/pressure spray of water by the machine on day-to-day basis to clean the public conveniences for minimum 8 working hours in a day.

The petitioner bid was rejected on the ground that it did not meet the specified criteria. Since no reasons were supplied, the petitioner wrote a letter dated 17.03.2015 requesting for reasons for the disqualification. In response, a letter dated 23.03.2015 was sent to the petitioner indicating that the petitioner did not meet the experience criteria as set out in the RFP document as per clause 5.7.1. The learned counsel for the petitioner submitted that this is also a very cryptic piece of information inasmuch as the exact reasons for disqualification have not been specified. We agree with the learned counsel for the petitioner that such a response is not explanatory of the reasons for disqualification. However, the learned counsel for the respondent, who is present on advance notice, informed us that the disqualification was on the ground that the experience of the petitioner did not match up with the minimum capacity specified in the RFP. It was submitted that while the petitioner was required to show experience as per the Clause 5.7.1, the experience certificate submitted by the petitioner did not match up with the said requirements.

2. Clause 5.7.1 of the RFP documents reads as under:-

“5.7.1 Experience Criteria

Bidder must have the experience of his firm for deployment and operation of any (equivalent or

higher specification) jetting machine(s) type vehicle, for the minimum one year during last three years on the Last date of submission of the bid to carry out the sanitation services anywhere in India with any Govt. Agency. The Experience Certificate from the Competent Authority would be submitted along with the technical bid. In-house work' experience/ private experience shall not be considered for qualification. The Bidder must own at least 02 nos. of equivalent or higher specification type of Jetting Machines or equivalent, registered in his own/ firm name.

The bidder shall submit a proof of ownership along with RC along with technical specification to this effect along-with the Technical Bid.

Or

The bidder must have the experience of carrying out cleaning & operation of urinals/ toilet blocks through any of the mechanical means by deploying equipments and manpower for at least one years during last three years on the last date of submission of the bid in anywhere in India with any Govt. Agency.

Or

The bidder must have the experience of carrying out sanitation services work through mechanical means by deployment/hiring of at-least five vehicles (in his/ her own name) of equivalent or higher capacity for the minimum two years during last seven years on the last date of submission of the bid in any Government Department.

The bidder shall submit a proof of ownership along with RC to this effect

along with the Technical Bid.”

3. The case of the petitioner is that its case falls under the third alternative referred to above. In other words, according to the petitioner, it has experience of carrying on sanitation work through mechanical means by deploying/hiring of at least five vehicles in its own name of “equivalent or higher capacity” for a minimum of two years during the last seven years as on the last date of submission in any work Department. The experience certificate furnished by the petitioner alongwith the bid was a performance certificate dated 15.01.2015 issued by the East Delhi Municipal Corporation. The said certificate reads as under:-

“East Delhi Municipal Corporation
Office of Executive Engineer EMS (Shahdara South Zone)
419, Udyog Sadan Patparganj Indl; Area, .
Delhi-110092

No.EE.EMS-SH(S)/EDMC/2014-15/D-216

Date:15/01/2015

Performance Certificate

Certified that the following works have been awarded to M/s Sai Interprises Prop.
Mr. Jaivir Singh.

S. No	Name of work	Work Order No.	Number of Auto Tippers
1.	Hiring of Auto. Tippers LMVs (Small) with Auto - Tipping Facility with one driver of GV-1150 KG(±5%) with one labour l/c T&P Fuel, lubricant for lifting /collecting of MSW garbage / malba/ drain silt	D-18 / EE(EMS)/ /EDMC/2012-13 dated 01.06.2012	15 Nos.

	etc. from narrow lanes upto full load / capacity and dumping same in the nearby designated site / SLF with travelling distance upto 30 Km per day with 8 hours working (Tata / Ace / Magic or Equivalent).		
2.	Hiring of Auto Tippers LMVs (Small) with Auto – Tipping Facility with One driver of GV-1150 KG(±5%) with one labour I/c T&P Fuel, lubricant for lifting /collecting of MSW garbage / malba/ drain silt etc. from narrow lanes upto full load / capacity and dumping same in the nearby designated site / SLF with travelling distance upto 30 Km perday with 8 hours working (Tata / Ace / Magic Or Equivalent).	D-19 /EE(EMS) /EDMC/2012-13dated 01.06.2012	15 Nos.

Total 30 Nos Auto tippers are deployed in Shahdara South & Shahdara North Zone. The performance of above given works is very good from more than 2 years of above agency.

This certificate issue on his application which received in the office of EE (EMS) Shah(s) vide no.EE(EMS)/Shah(S)/R-1943 dated 15.01.15.

EE (EMS) Shah (S)

M/s Sai Interprises.

Office Add-298-A, Tehkhand,

New Delhi-110020

Resi Add:- Village Sadullapur, Post-Vaidpura, Distt.-Gautam Budh Nagar (UP)”

4. This, according to the learned counsel for the petitioner, is sufficient experience and makes out eligibility to participate in the bidding process. On the other hand, the learned counsel for the respondent submitted that the experience of the petitioner is with vehicles

having a Gross Vehicle Weight of 1150 kgs whereas the minimum specifications as stipulated under the RFP was of a vehicle having a Gross Vehicle Weight of 2650 kgs or higher. Therefore, according to the learned counsel for the respondent, the petitioner does not have the requisite experience.

5. The learned counsel for the petitioner submitted that the minimum technical specifications of the Mini Jetting Machines as stipulated indicate that the capacity of the Jetting Machines should be a minimum of 2650 kgs. On the other hand, the learned counsel for the respondent submitted that the minimum capacity of 2650 kgs had reference to “GVW” which means Gross Vehicle Weight. In other words, this was to be the weight of the vehicle laden with the Mini Jetting Machine. The minimum technical specifications of the Mini Jetting Machines as stipulated under the RFP reads as under:-

MINIMUM TECHNICAL SPECIFICATION OF THE MINI JETTING MACHINE

- | | |
|------------------------|---|
| 1. Machine: - | MINI JETTING PRESSURE SPRAY
MACHINE MOUNTED ON
Mahindra Bolero/Tata 207 (or equivalent) |
| 2. Minimum Capacity:- | 2650 KG GVW |
| 3. Labour:- .. | Operator/Beldar along with driver |
| 4. Sitting Capacity: - | 2 persons with driver |

5. Engine: Suitable to meet the required pressure, Diesel/ Petrol modal any of the make like Greaves, Vnaguard, Honda or equivalent with ISO certification to meet out the required pressure of minimum 130 BAR.
6. Pump: To meet pressure of minimum 130-200 bar of any of the make like Interpump, Annovi Reverberi, Speck, Comet or equivalent with ISO certification.
7. Aluminium Hose Reel (Delivery Outlet): 50 mtrs minimum.
8. Water Tank: - 1000 Ltr water (minimum) and 50 Ltr (minimum) for phenyl etc. tank built integrally in a single piece with easy filling provision provided in the sides.
9. Body Work : - With covered body.

The above tank/ equipment shall be mounted on suitable vehicle chassis with all safety measures for smooth operation of equipments. The critical component i.e. jetting pump, jetting hose, nozzle, engine etc. should be from ISO certified manufacturers only. The firm should have a backup letter confirming their association and availability of spares till the completion of the contract period from the manufacturers of critical components.

6. From the above, it is evident that the Mini Jetting Pressure Spray Machine was to be mounted on Mahindra Bolero/Tata 207 (or equivalent) and the minimum capacity was specified as 2650 KG GVW. We have considered the arguments advanced by the learned counsel for the parties and we are in agreement with the submissions made by the learned counsel for the respondent that the minimum capacity indicated as 2650 kgs refers to the Gross Vehicle Weight. This has reference to not just the weight of the vehicle but the laden weight of the vehicle which means that the weight of the vehicle plus the Mini Jetting Pressure Spray Machine mounted thereon should be at least 2650 kgs. This further implies that the vehicle on which the Mini Jetting Pressure Spray Machine is to be mounted must have the capacity to have a laden weight

of at least 2650 kgs. The vehicles as shown by the petitioner and in response of which it has its experience as certified by the East Delhi Municipal Corporation are Tata/ Ace/ Magic having gross weight of 1150 kgs ($\pm 5\%$). This is far less than the minimum capacity specified which was of 2650 kgs. We may also point out that the laden weight of Mahindra Bolero Maxi Truck as per the registration certificate given at page 69 is 2560 kg whereas the laden weight of Tata 207 is 2950 kg. So, while the experience of the petitioner is inadequate for the purposes of considering the subject tender, it is also clear that Mahindra Bolero by itself may not qualify for the minimum capacity of 2650 KG GBW. In any event, insofar as the petitioner is concerned, the respondent has correctly rejected the bid of the petitioner for not matching the experience as required by Clause 5.7.1.

7. The writ petition has no merit. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 27, 2015
st