THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.05.2016

+ **W.P.(C) 4843/2016**

AMAN ARORA AND ANR ... Petitioners

versus

NEHRU MEMORIAL MUSEUM & LIBRARY ... Respondent

Advocates who appeared in this case:
For the Petitioners : Mr Arjun Harkauli with Mr Satyawan Shekhawat
For the Respondent : Mr Ripu Daman Bhardwaj

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 20203/2016

Allowed subject to all just exceptions.

W.P.(C) 4843/2016 & CM 20202/2016(stay)

1. This writ petition has been filed in respect of the Notice Inviting Tender for supply of full dome 3-D projection system, installation, testing and warranty at Nehru Planetarium, New Delhi. The tender has been invited by the Nehru Memorial Museum and Library, Teen Murti House,

New Delhi. The tender was invited on 20.04.2016 and the last date of submission of bids is 25.05.2016.

2. The petitioner has raised several grievances, but the main grievance is with regard to the Clauses 1.27.1 and 1.27.2, which form part of the technical eligibility criteria prescribed under Clause 1.27 of the Instructions to Bidders.

3. The relevant Clauses are as under:-

> "1.27 Technical Eligibility Criteria:
>
> The following are some of the criteria required to be eligible technically for further consideration in the bid process.
>
> 1.27.1 The tenderer should have a minimum of five years of existence in the field of supply, installation, testing and commissioning of Planetarium systems, with experience of three years in supplying and installing Full Dome digital systems and an experience of at least two years of installing Full Dome 3D systems.
>
> 1.27.2 The tenderer should have installed at least five Full Dome digital systems worldwide and two full dome 3D systems. Documents in support of experience claim must be submitted. A satisfaction/recommendation letter from at least two planetaria where the Vendor has installed full dome digital projection systems as also such letters from planetaria where full dome 3D system has been installed, should be submitted. In particular such letters from Indian planetaria, if available, should be submitted. Reputation, in terms of continued onsite

support provided, after the initial installation, will also be considered, and supporting documents may be provided.

xxxx xxxx xxxx xxxx"

4. The grievance of the petitioner is that it has requisite experience for full dome 3-D projection systems. Yet, the petitioner would not be eligible for the said tender because the respondent has specified the requirement of minimum five years of existence in the field of supply/installation/testing and commissioning of planetarium systems. It is the case of the petitioner that the condition of experience in planetarium systems is arbitrary and unreasonable inasmuch as the petitioner would have full expertise in installing the full dome 3-D system even in a planetarium. It is also the case of the petitioner that there is no technical literature which provides for specialized planetarium systems.

5. On the other hand, the learned counsel for the respondent submits that the tender conditions and eligibility criteria have been specified keeping in mind the specific requirement of the respondent. The conditions cannot be tailor-made to suit the petitioner. The suitability has to be considered from the standpoint of the institution inviting tenders and not of a person who does not fit in the eligibility criteria. The learned counsel for

the respondent drew our attention to Clause 1.27.2, which has been extracted above, to indicate that there is a specific requirement of the respondent that a satisfaction/recommendation letter from at least two planetaria where the vendor has installed full dome digital projection systems as also such letters from planetaria where full dome 3D system has been installed. It is obvious that the eligibility criteria has been specified keeping in mind the specific requirements of the respondent.

6. It is an admitted position that the petitioner does not have any experience in planetarium systems and, therefore, would not be able to produce any satisfaction/recommendation letter from any planetarium with regard to installation of a full dome digital projection system.

7. In ***Michigan Rubber (India) Limited v. State of Karnataka and Others: (2012) 8 SCC 216***, the Supreme Court has clearly indicated in paragraph 23(c) thereof that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities and that unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted. Paragraph (d) of the said

paragraph 23 also indicates that certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work.

8. The eligibility criteria stipulated in Clauses 1.27.1 and 1.27.2 of the Instructions to Bidders, in our view, do not appear to be unreasonable or arbitrary. For this reason, no interference is called for. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

MAY 24, 2016 **SANJEEV SACHDEVA, J**
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