

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

% Judgment Reserved on: 22nd March, 2016
Judgment Delivered on: 11th May, 2016

+ W.P.(C) 12354/2015

M/S SECURITY SHOPPE (INDIA) PVT LTD Petitioner
versus

THD DIRECTOR GENERAL, CENTRAL RESERVE POLICE
FORCE & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Maninder Singh and Mr Sermon Rawat
For the Respondents 1 & 2 : Mr Manish Mohan, Central Government Standing
Counsel with Mr Shivam Chanana and Ms Manisha
Saroha.
For the Respondent No.3 : Mr B.K.Singh and Mr P.S.Bhullar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioner has filed the present petition seeking a mandamus thereby directing the respondent No.1, i.e., the Director General, Central Reserve Police Force, to follow the Trial Directives dated 04.08.2014 issued by the respondent No.2/Ministry of Home Affairs, for verification/trial of Deep Search Mine/Metal Detectors

and for a further declaration thereby declaring the petitioner as the only successful bidder to the Tender No.U.II.1125/2015-16-Proc-1 dated 19.06.2015.

2. The respondent No.1 floated the above Tender Notice inviting online tenders under two bid systems for purchase of Deep Search Mine/Metal Detectors (DSMD). The respondent No.2 had issued Trial Directives dated 04.08.2014 for verification of various parameters. The relevant parameter in issue is parameter no. 3 which reads as under:-

S.NO	PARAMETER	SPECIFICATION	PROCEDURE SUGGESTED FOR TRIAL FOR BOARD OF OFFICERS	RESULT EXPECTED/DESIRED	COMPILED/ NOT COMPILED
03		The electronic circuit should be hermetically sealed and separate from batteries so that in case of battery leakage the electronic circuit is not damaged. The manufacturer will provide a certificate from a recognized laboratory for the same.	Should be checked physically. The electronic components used in the PCB should be hermetically sealed by any of the transparent insulating material to avoid contact of the components to the external environment like moisture etc. It should also be checked that the batteries used is kept separated from the electronic circuit. The firm should submit a national/ International accredited lab test report for the same.	The electronic circuit must be hermetically sealed and Separate from batteries so that in case of battery leakage the electronic circuit is not damaged. Check the national/ international accredited lab test report for the same. In case of any doubt in the test report, the veracity of the same may be checked from the concerned lab.	

3. As per the said Trial Directive, the firm bidding for such

product is required to submit a national/international accredited lab test report for having tested the offered product with respect to the said parameter and specification.

4. Several bidders had submitted their bids. However, the petitioner [M/s Security Shoppe (India) Private Limited] and M/s Static Systems were found to be technically qualified. Post the filing of the petition, it transpired on opening of the financial bids that the bid of M/s Static Systems was lower than that of the petitioner. M/s Static Systems was thus impleaded as respondent No.3.

5. The contention of the petitioner is that the bid submitted by Respondent No. 3 [M/s Static Systems] is non-compliant, inasmuch as the lab report submitted by them was non-compliant with the Trial Directives dated 04.08.2014. Respondent No.3 had submitted a lab test report in respect of Parameter No. 03 of the Trial Directives from M/s EON Testing Labs. In support thereof, the respondent No.3 has also placed on record the certificate of accreditation issued to M/s EON Testing Labs by National Accreditation Board for Testing and Calibration Laboratories (NABL).

6. The contention of the petitioner is that the certificate of accreditation issued in favour of M/s EON Testing Laboratories does not satisfy the Trial Directives as the said certificate of accreditation is

for a different discipline, i.e, only for building material etc. and is not an accreditation for the product in issue or any ancillary or similar product. It is further contended by the petitioner that in support of its bid, the petitioner has submitted a lab test report from Environmental Testing Laboratory Incorporated TEXAS, which Laboratory is accredited to the ANSL-ASQ National Accreditation Board. It is contended that the respondent No.1 has erred in accepting the lab test report submitted by the respondent No.3 from M/s EON Testing Lab, which is not accredited in the required discipline.

7. The respondent Nos. 1 and 3 have opposed the petition contending that the EON Testing Laboratory is an accredited Lab, accredited to NABL. It is further contended that there is no accreditation for the product in issue, i.e., DSMD. It is further contended that the bid submitted by the respondent No.3 is compliant and the certificate furnished by the EON Testing Laboratory is in accordance with the Trial Directives. It is submitted that a lab test report was required to be submitted and the same has been submitted by respondent No.3.

8. The dispute raised by the petitioner is not with respect to non furnishing of a lab test report but the dispute is with regard to the accreditation of the Laboratory from which the respondent No.3 has obtained the lab test report. There can be no quarrel with the fact that

a report has to be obtained from a Laboratory, which is competent or qualified to perform the test specified in the Trial Directives. Accreditation of a laboratory would be in respect of one or more disciplines. Merely because a Laboratory is accredited in a particular discipline, would not imply that the Laboratory can issue reports with regard to disciplines completely unconnected with the discipline in which the Laboratory is accredited. For example, a laboratory may be accredited in the discipline of pathology that would not entitle the laboratory to issue certificate with regard to mechanics or mechanical functioning of a machine.

9. In the present case, the respondent No.3 has obtained accreditation from NABL. Three accreditation certificates have been placed on record. To ascertain whether EON Testing Lab is accredited in the required discipline, one would need to examine the three certificates that have been placed on record. The first accreditation certificate No.T-3449 is a certificate, which is in the discipline of CHEMICAL TESTING. The scope of accreditation mentioned in the annexure to the Certificate has three products/materials of tests specified therein, i.e. (I) BUILDING MATERIALS, (II) PETROLEUM and (III) PAINTS AND SURFACE COATINGS along with their sub-categories. The second certificate No.T-3450 is in the discipline of MECHANICAL

TESTING. The product/material of test specified therein is BUILDING MATERIAL along with its sub-categories i.e. Soil and Rock Testing. The third certificate No.T-3451 is in the discipline of ELECTRICAL TESTING. The product/material of test specified therein is (I) CABLES AND ACCESSORIES (II) WIRING ACCESSORIES along with their sub-categories. Perusal of the three accreditation certificates show that though the certificates have been issued in the discipline of chemical testing, mechanical testing and electrical testing, the same pertained to the product/material relating to building materials, cables accessories, paints etc. The product/material of test and their sub-categories show that the accreditation is in respect of construction of buildings etc.

10. The correspondence placed on record by the respondent No.1 with NABL does not advance the case of the respondent No.1. Further, the argument of the respondents, that the Board of Officers has also examined the product of Respondent No. 3 in respect of the Trial Directive No. 3 and found it to be compliant holds no merit. Trial Directive No. 03 specifically requires the submission of a Lab Test Report of a national/international accredited lab. The report cannot be from a Laboratory, which is not accredited in the discipline in which the product/material falls. The three certificates produced to show accreditation of EON Testing Lab by NABL do not help the

case of the respondents inasmuch as the respondents have failed to bring on record anything to show that EON Testing Lab was accredited to test products other than building material etc. as mentioned in the scope of accreditation annexed with the certificates of accreditation. We, thus, hold that the lab test report submitted by the respondent No.3 in support of its bid failed to satisfy the requirement of Trial Directive No. 03 and therefore the bid submitted by the respondent No.3 is clearly non-compliant.

11. The prayer of the petitioner that the petitioner be declared as the only qualified technical bidder would not be the natural consequence of our holding that the bid of the respondent No. 3 is non compliant. It would be open to the competent authority to take an appropriate decision in the matter.

12. In view of the above, the writ petition is allowed to the limited extent of holding that the bid submitted by the respondent No.3 is non-complaint. We clarify that we have not examined or opined that the product of the respondent No.3 is non-compliant. We have only held that the lab report submitted by the respondent No.3 is not from an accredited laboratory in the requisite discipline and thus does not satisfy the requirement of Trial Directive No. 03 and therefore it could not have been accepted, which makes the bid of the respondent No.3 non-compliant.

13. The writ petition is accordingly disposed of leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

MAY 11, 2016
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