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

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Judgement delivered on :19th April, 2017

+ **W.P.(C) 1642/2017 & CM Nos.7307/2017, 14728/2017**

SARTHAK ENTERPRISES AND ORS Petitioners

Through : Mr.Jayant Bhushan, Sr Advocate
with Mr.Vivek Gupta & Mr.Ketan
Paul, Advocates.

versus

NATIONAL COUNCIL FOR EDUCATIONAL
RESEARCH TRAINING (NCERT) AND ORS Respondents

Through : Mr.R.K.Singh and Ms.Deepa Rai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S. RAVINDRA BHAT, J (Oral)

1. The petitioners grievance is that the tender conditions that were amended by corrigendum issued upon their representation, has arbitrarily shortened the time granted for inspection of the equipments that the respondents wish to procure.

2. The brief facts are that on 22.12.2016, the National Council for Educational Research Training (NCERT) issued one e-Tender for the procurement of 16 educational kits containing 833 items which are to be used as teaching aids. The tender envisaged inspection by the manufacturers, who wished to bid. A months inspection time was

given to inspect and for fabrication / manufacture of items that prospective vendors wished to bid for. The last date for submitting the bid was 23.01.2017. A section of vendor/manufacture who used to supply these educational equipments / aids previously were aggrieved by an eligibility condition indicated in the tender conditions for the first time, *inter alia*, the concerned bidder should have supplied to the extent of at least 50 per cent of the minimum turnover for the last three years from the government sector, public sector or autonomous bodies of the Central or the State Governments. Some of them represented to the NCERT which on 23.01.2017 accepted their request. The NCERT however granted only a week's time for inspection of the equipment, fabrication and submission of the bids and last date indicated in the corrigendum issued on 23.01.2017 varied to 30.01.2017. The petitioners represented against that, but unavailing and therefore approached this Court.

3. The petitioners argue that granting one month's time to those who fulfilled the criteria which has since been deleted i.e. 50% turnover procurement by the government agencies has resulted indirect indiscrimination. Even though the NCERT has addressed grievance nevertheless they have been provided only one week time to inspect and manufacture the items and submit tenders for items that they wish to bid for. It is also contended that unlike in the previous tender, NCERT has insisted upon production of the environmental clearance certificate. The petitioners' grievance here is that they belong to 'White Industry Category' where such environmental clearance or documentation is inessential.

4. The respondent – NCERT resist these proceedings and contend that one week's period is sufficient for inspection as well as for fabrication / manufacturing of the teaching aids, given that many petitioners who addressed representations are past suppliers. As far as the aspect of environmental clearance certificate is concerned it is submitted that in the affidavit that this may not be insisted upon if the vendors indicate that they are 'White Industry Category' and an appropriate document or certificate indicating this is made in support of the tender.

5. During the course of hearing, this Court was of the opinion that extension of time only by one week has directly resulted in discriminating the petitioners, as compared with those who fulfilled the deleted criteria i.e. at least 50% turnover in the government sector. Although, essential grievance of the petitioners is that such condition should be deleted has been addressed, it has direct consequences or impact upon them. There shortened period for inspection and fabrication of these teaching aids which has undoubtedly impacted adversely.

6. Learned counsel for respondent / NCERT upon instructions, submitted that having regard to the urgency appropriate orders may be made by this Court towards ensuring complete justice to the eligible and those wishing to submit their bids. At the same time, he emphasises that there is urgency in the matter since teaching aids are to be procured and made available to the schools latest by the second week of May, 2017.

7. This Court is of the opinion that shortening of the period given is clearly discriminatory. By granting one week's time through the corrigendum to those who had not supplied to the government sector, to the beneficiaries in effect are being treated differently from those who had so supplied. The latter were given a months' time for manufacturing and inspection. However, instead of directing the respondents to issue an appropriate corrigendum granting the same benefit, the Court is of the opinion that all eligible manufactures may be provided an opportunity of furnishing their bids by giving them two weeks time to inspect, fabricate/manufacture and tender for the equipments that they would like to supply. Ordinarily, the Court would have directed parity of the terms which would have meant to those receiving the benefit of deleted condition (the eligibility of 50% turnover for the last three years in the government sector) would have also been granted one month's time, but however having regard to the nature of the procurement, the Court deems appropriate in the larger interest of general public to issue following directions to the respondent :-

- i) The corrigendum shall be issued indicating clearly that those eligible by virtue of the first corrigendum issued on 23.01.2017, would be given two weeks time to inspect and fabricate the equipment that they would wish to bid for;
- ii) Two weeks time would be reckoned from the date of the publication of the corrigendum;

- iii) The corrigendum shall clearly indicate the kind of certificate that the manufacturer should possess and furnish i.e. if they fall under 'White Industry Category' the nature of the certificate or basic document;
- iv) The tender finalisation process shall await the bids to be submitted pursuant to these directions.
- v) The respondent – NCERT shall ensure that samples which were made available for inspection till 30.01.2017 are available for inspection forthwith in compliance with this order.
8. It is also directed that the corrigendum shall be issued in the National dailies on all India basis besides in the official website of the NCERT to ensure widest participation.
9. The writ petition and pending miscellaneous application are allowed in above terms.
10. Copy of order be given dasti under signature of Court Master.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 19, 2017

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