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

% Judgement delivered on: 25th April, 2017

\+ **W.P.(C) No.5296/2016 & CM No.22140/2016**

VISHAL AND COMPANY

..... Petitioner

Through : Mr.D.K.Rustagi, Ms.Medha Arya, & Mr.Apoorv Rastogi, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Mr.Amit Mahajan, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. The petitioner seeks a direction that it should be given the supply order in terms of the tender conditions in its favour.

2. The brief facts are that the Central Government issued notice calling for tenders from eligible bidders for supply of 16,300 blazers. The tender notice spelt out the specifications in respect of the fabric and other dimensions. It is not disputed that the petitioner participated in the process; its bid was technically and otherwise evaluated. Although the petitioner had bid for a higher amount, but during negotiations, it agreed to supply the goods per piece price at the rate

of `3,841/- excluding VAT at the rate of 5%. The petitioner in these circumstances assumes that as and when the respondent needed the articles, the supply order would be issued, in its favour.

3. The petitioner also alleges that contrary to its reasonable and legitimate expectations, the respondents have proceeded to procure the articles of clothing locally with the sole aim of defeating its rights. It is submitted that the petitioner being the lowest bidder was asked to be in preparedness to supply the goods at the shortest notice. This in turn meant that it had to plan the logistics and supply material.

4. In these circumstances, the shifting of policies by the respondents could be explained with its aim of helping others. Learned counsel emphasised and highlighted that the respondents were duty bound to issue notice to the petitioner both on the issue that supplies were not necessary (with reasons thereof) and the petitioner should have also been provided with a fair opportunity to participate in the tender and other purchases resorted to locally.

5. Learned counsel also highlighted that the opaque system and practices adopted by the respondents is not only arbitrary but encouraging corruption.

6. The respondent in its counter affidavit highlighted that the specifications published did not spell out any particular brand and that more importantly, the introduction of the petitioner as lowest bidder did not automatically result in its expectations that orders would be placed. The respondents relied upon the tender conditions especially

clause No.4 which reads as under:-

> *"4. This RFP is being issued with no financial commitment and the Buyer reserves the right to change or vary any part thereof at any stage. Buyer also reserves the right to withdraw the RFP, should it become necessary at any stage."*

7. The facts of this case would show that the petitioner was made aware right from the inception that RFP was issued with no financial commitment and the Central Government reserved the right to change or vary any part of its offer. Concededly, no contractual commitment was forthcoming. The petitioner is also aware of it and therefore, limits its challenge to unfair treatment, having regard to the doctrine of the legitimate expectation. It follows up in the argument that the respondents were duty bound to disclose that no procurement would be made and that procurements were being made locally, for the right to participate.

8. The Court is of the opinion that the claim in these proceedings is not merited. The mere selection of the petitioner as the lowest tenderer, was carried out with caution that the respondents made no financial or any kind of commitment. The petitioner is also mindful of this and finds no reference to actual commitments made by the respondents, through contracts or any other financial commitments with third parties, which may have caused the petitioner any prejudice. All that seems to have been happened was that the petitioner expected that in the normal course of affairs, supply order for 16,300 blazers shall be followed. Such expectations cannot be

termed as unreasonable in commercial terms. However, it cannot at the same time crystallise into a commitment or lead to legitimate expectations.

9. The expectations in these circumstances would have been in the context of what was informed i.e. the Central Government might or might not have proceeded to procure in accordance with the advertised items, or not at all. Therefore, that it chose to and procured locally at reduced cost, in any case cannot be termed as contrary to the public interest. On the other hand, procuring locally unless otherwise shown to be unfair, in the circumstances, resulted in lowering of cost which itself promoted the public interest.

10. For the above reasons, no relief can be granted in the petition. The petition and pending miscellaneous application are dismissed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 25, 2017
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