

\$~39

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

+ W.P.(C) 9656/2017 & CM Nos.39280-39281/2017

AAXIS NANO TECHNOLOGIES PVT LTD Petitioner
Through: Mr. A.J. Bhambhani, Sr. Adv. with
Mr. Rajat Arora, Adv.

versus

UNION OF INDIA AND ANR Respondents
Through: Mr. Ajay Digpaul, CGSC for UOI
with Mr. S.K. Kataria, Under Secretary.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
01.11.2017

%

1. Notice.
2. Mr. Ajay Digpaul, Standing Counsel accepts notice for the Union of India.
3. In view of the order, the petition was heard finally.
4. The writ petitioner's grievance is that though its tender for procurement of 584 Digital Water Level Recorders (DWLR) was accepted, without any rhyme or reason, the Central Ground Water Board procuring agency cancelled the letter of acceptance.
5. The tender for the articles was issued on 22.12.2006; a pre-bid meeting was held between the agency, on the one hand, and the representatives of the bidders,

on the other, on 03.01.2017. Later, pre-bid clarifications/addendum was issued on 21.03.2017, in the light of the points urged in the pre-bid meeting. The addendum also relaxed certain eligibility conditions. The last date of receipt of bids was 29.03.2017 and the opening of the technical bid/proposal was 30.03.2017. Two bids were apparently received before the last date i.e. last date which was extended.

6. Eventually, the tender was awarded to the petitioner, after the price bid was opened and accepted on 19.06.2017. The letter of acceptance was issued by the Board/respondent on 08.09.2017 to the petitioner, communicating its acceptance. The petitioner also had to furnish a bank guarantee for Rs. 84,89,700/-. These terms were complied with by the petitioner on 22.09.2017. According to the bid terms, the work i.e. the supplies were to be completed within 120 days from the issuance of a letter of commencement of work.

7. The petitioner complains that having received the acceptance letter, it started the process of procurement of the DWLRs i.e. Digital Water Level Recorders and had advanced amounts to its vendors.

8. In these circumstances, on 24.10.2017, it received a letter of cancellation of the acceptance letter dated 08.09.2017 received earlier by it. Its grievance is that the acceptance of the contract having been completed, the tender could not be cancelled and that, in any event, respondent did not afford any opportunity of hearing or even a show-cause notice prior to their decision.

9. The respondents have produced the relevant records leading up to the cancellation (of the acceptance letter) dated 23.10.2017. Apparently, the cancellation was based upon the result of an internal enquiry, conducted by its officials on the basis of complaints received with respect to certain irregularities in regard to the fixation of tender conditions and the award of the final bid to the

petitioner. These records clearly indicate that no opportunity of hearing was afforded to the petitioner; the petitioner was not even apprised of the allegations levelled against it.

10. Having regard to the position on the record, that no opportunity of hearing was afforded and even no show cause notice was issued, the cancellation letter dated 23.10.2017 cannot be sustained and is hereby quashed.

11. At the same time, the respondents shall, however, issue a show-cause notice to the petitioner as to why any action, which they propose, ought not to be taken. The representation/reply of the petitioner as well as the submissions made on its behalf, in the hearing to be conducted pursuant to the proceedings in that regard, shall be taken into account while passing a reasoned order that shall be communicated to the petitioner. This process shall be completed within three weeks from today.

12. Depending upon the outcome of the hearing and the final order, respondent shall take appropriate action either towards restoring the contract or in re-tendering the process. In the event of the latter, all remedies, available to the petitioner in accordance with law, are open. In the meanwhile, the respondents shall not issue a fresh tender till a reasoned speaking order is made and communicated to the petitioner.

Copy *Dasti* under the signatures of the Court Master.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 01, 2017/kks