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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON : JULY 19, 2017

+ **W.P.(C) 10304/2015 & CM APPL.25647/2015**

SARV SEWA SANGH

..... Petitioner

Through : Mr.Davinder Kumar with Mr.Sumit
Kumar and Mr.Sudhir Kumar Singh,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr.Dev P.Bhardwaj, CGSC with
Mr.Satya Prakash Singh, Advocates for
R-1/UOI.

Mr.Mukti Bodh, Advocate, for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner participated in a tender issued by respondent No.2- Rajghat Samadhi Committee (hereafter 'Committee'), a statutory body created by an Act of Parliament, namely, Rajghat Samadhi Act, 1951. By inclusion of Clause 10 in of the General Instructions and Guidelines of the tender, Gandhi Hindustani Sahitya Sabha (hereafter the 'Sahitya Sabha'); the third respondent, was given an opportunity to match the highest bid.

2. Rajghat Samadhi Act, 1951 was enacted for the administration and control of the Samadhi of father of the Nation (Mahatma Gandhiji) and for upkeep and maintenance of the 'Samadhi' which is of monumental importance and is a part of the welfare activities of the State as enshrined in Article 49 of the Constitution of India.

3. Respondent No.2 is a centrally controlled institution. Respondent No.3 is an organization that is occupying the bookstall space situated in the parking area of Respondent No.2 for the last several years i.e. since 22.04.1976 on license basis to conduct sale of books, publication etc. relating to Gandhiji, Father of the Nation at annual licence fee of ₹1/-. Thereafter in 2005, the lease was changed to a Licence Agreement. However, the Sahitya Sabha continued with that licence in an uninterrupted manner. For the first time in 2015, the Committee issued an advertisement, calling for bids from interested parties with the intention of licensing the premises. The essential conditions were that the intending licensee should have published and sold books/magazines/newsletters and other literature including diaries on Gandhiji or related to Gandhiji for the past five years.

4. The petitioner's grievance is that when, for the first time a tender notice was issued and he was declared as L-2, L-1 gave up its bid in favour of the existing licensee i.e.Sahitya Sabha. This led to the initiation of the fresh tender process on 16.10.2015. The tender conditions included following stipulations:

"The present occupant of the bookshop viz. Gandhi Hindustani Sahitya Sabha can also take part in the tender process. They will also be given the opportunity to match the highest bid (H-1) if they desire to continue their operation at the bookstall."

5. It is contended by the petitioner – who claims to have been declared as second highest bidder i.e.L-2 that the stipulation confers arbitrary and discriminatory advantage upon the Sahitya Sabha without any rationale. The counsel argued that the Sahitya Sabha, in fact, participated in the tender process and filed its bid @ ₹7,600/- p.m. whereas he (i.e.the petitioner) had quoted the licence fee of ₹10,001/- p.m. This being the clear position, the petitioner ought and should have been awarded the tender but was not so awarded due to the discriminatory condition.

6. The Committee and Union of India justified the impugned condition by saying that the Sahitya Sabha had carried out noble service over sixty years. It is highlighted that the Sahitya Sabha had paid nominal licence fee of ₹1 and was engaged in altruistic and charitable work which induced the Committee to add a condition stipulating that the highest bidder's offer could be matched by the Sahitya Sabha.

7. Learned counsel for the Sahitya Sabha submitted that the organization was engaged predominantly in a charitable work to aid poor and destitute women and support their livelihood. It was submitted that the Committee took this aspect into consideration while adding the preferential condition under Clause 10 which cannot be characterized arbitrary or discriminatory.

8. Counsel further submitted that Clause 10 cannot be viewed in a straightjacket manner and has to be seen as an attempt by the State to achieve certain social and noble goals, dreamed by Mahatama Gandhi.

9. It is evident from the above discussion that the Sahitya Sabha was the sole licensee of the premises which according to the Committee used to propagate the ideals and ideas of Gandhiji for the last 60-65 years. That objective i.e. the use of premises to propagate the ideas through sale of literature relating to Gandhiji subsists. The question is, however, whether in order to achieve that objective, the Committee favouring the Sahitya Sabha as an existing licensee over six decades by including Clause 10 is justified under Article 14 of the Constitution.

10. Whatever be the consideration in the past, once the Committee decided to issue a tender inviting bids from interested and eligible parties and indicated the necessary criteria (the organization engaging itself in the sale of books/magazines/newsletters and other literature including diaries on Gandhiji or related with Gandhiji for the past five years), the field was open for all those who fulfilled it. The tender conditions too, uniformly stipulate eligibility criteria and the procedure for furnishing the offers. In these circumstances, intention of giving some kind of preference to the existing licensee, *per se*, cannot be characterized as discriminatory. However, what is to be seen is if the preference by way of an exclusive right can be given only to Sahitya Sabha to match the bid of the highest bidder, if they desire to continue their operation at the bookstall. In so stipulating that the exclusive right to match the bid was that of the Sahitya Sabha regardless as to how proximate it was or was not to the next highest bidder is not justified.

11. The Gandhi Peace Foundation had earlier placed the highest bid and thereafter withdrew it. In the present case, the petitioner had a clear disadvantage which resulted in violation of Article 14. Until on the

point of time, the Committee decided not to licence the premises to anyone but the Sahitya Sabha at a licence fee of ₹1 p.a., it could not have been faulted for doing so as it apparently had sound reasons. However, once it decided to call for tenders, its intention was to licence the premises on the basis of applications on a uniform criteria. The first stage of discrimination was to include a preferential clause. The effect of this discrimination clause becomes evident when the Sahitya Sabha (regardless of whether it is L-2, L-3 or L-5) was permitted to match the highest bidder over a facility denied to all others.

12. Having regard to these circumstances, this Court is of the opinion that in the event, Sahitya Sabha is permitted to match the petitioner's bid, the petitioner should also be granted one opportunity to improve that offer. This in the court's opinion would introduce an element of parity that is lacking in Clause 10.

13. In view of the above conclusion, the respondents are, hereby directed to take necessary steps and process the tender further by first inviting Sahitya Sabha for matching the highest bidder i.e. matching or improving the petitioner's bid; thereafter the petitioner shall be accorded an opportunity to improve the bid of the Sahitya Sabha, if it so chooses.

14. The process shall be completed expeditiously. The Committee shall ensure that the bid which is highest under the process is awarded the tender. However, it is clarified that the opportunity of improving the bid given to the petitioner shall be one time opportunity- just like the one chance given to the Sahitya Sabha to improve the petitioner's bid.

15. The Writ Petition and all pending application(s) stand disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P.GARG
(JUDGE)**

JULY 19, 2017/sa

