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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 7352/2018**

Date of decision: 18th July, 2018

JYOTI SAMAJIK SEWA SANSTHA AND ORS. Petitioners
Through: Mr. Tanmaya Mehta & Mr. Vishnu
Prabhakar Singh, Advocates.

versus

GOVT OF NCT OF DELHI AND ANR. Respondents
Through: Mr. Rishikesh Kumar, ASC & Mr. Prem
Sagar Pal, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This writ petition impugns terms of “notice inviting tender” vide NIT No.41/EE,C-7/DUSIB/2018-19 published on 25th June, 2018.

2. Similar issue and contentions were raised and rejected in Writ Petition (C) No. 5909/2018, *Shakti Jan Sudhar Samiti and Others versus Govt. of NCT of Delhi and Others*, wherein the new and amended eligibility criteria fixed vide NIT dated 14th /15th May, 2018, viz., the earlier NITs was challenged. After detailed and elaborate consideration, the writ petition was dismissed primarily recording the following reasons:-

“7. It is evident from the above discussion that the challenge in this petition is with respect to the conditions in the NIT. Undoubtedly, the NIT has increased the financial threshold with respect to

the eligibility (the minimum turnover prescribed is equivalent to 200% of the estimated cost). Likewise, with respect to similar works, a percentage of the works, advertised has been prescribed both in terms of 3 years, 2 years or the past year. *Per se* this cannot be considered as arbitrary or discriminatory since it is settled law that the drafting of tender conditions cannot be ordinarily judicially reviewable unless it is patently unreasonable or arbitrary. The reason given by DUSIB for increasing the threshold, in the present case, is the radical change it has proposed vis-a-vis the cleaning of toilets being a public facility. Apart from the fact that the number of facilities and seats have been increased, the DUSIB has also directed use of mechanized technology for cleaning purposes. Furthermore, it has for the first time prescribed a standard with respect to the number of personnel who have to be employed by the contractor. Given all these comparables, the prescription of a high financial threshold or an equally commensurate similar work (in terms of average turnover) in the opinion of the Court is not in any manner unfair. As far as the objection with respect to non-compliance with CVC guidelines goes, the Court is of the opinion that the manual itself indicates that the CVC meant an illustrative guideline and not conclusive or determinative in all aspects. In the present case, the procurement is for services which are not of a commercial character but rather, for the welfare of the people of Delhi. Given these facts, the drafting of eligibility conditions which may tend to minimise the petitioner's chances to bid successfully, cannot automatically result in arbitrariness.

3. The aforesaid reasoning will be equally applicable to the assertions and contentions raised by the petitioners.

4. The first contention raised by the petitioners is that the experience requirement, i.e., the bidders should have completed three similar works each costing not less than 40% of the estimated cost put to tender or two similar works each not costing less than 60% of the estimated cost put to tender or one similar work of aggregate cost not less than the amount equal to 80% of the estimated cost put to tender, is onerous and would favour only big players and would exclude non-governmental organizations like the petitioners. The aforesaid conditions refer to the requirement that the bidder should satisfy one of the three criteria of having successfully completed the work(s) during last seven years. Estimated cost of work in the NIT is Rs.15.11 crores. We do not think that the aforesaid criteria and given the length or time of seven years can be treated as parlously unreasonable, preposterous or arbitrary so as to attract correction by judicial review on the ground that it violates Article 14 of the Constitution. Similar clause, if not more stringent in the NIT dated 14th /15th May, 2018 as recorded in paragraph 2 of the judgment in ***Shakti Jan Sudhar Samiti and Others*** (supra) was upheld. Eligibility conditions being similar, the challenge should be rejected following the ratio in ***Shakti Jan Sudhar Samiti and Others*** (supra).

5. The second contention is that though the NIT in question permits aggregation and consortium to submit bids, it unreasonably stipulates that number of consortium members shall not exceed three. We do not perceive and believe that the aforesaid term by any stretch is patently unreasonable and arbitrary so as to violate and fringe Article 14. Three is a reasonable number. Larger aggregations may have their own issues and problems, which can be foreseen. In any case, aggregation and consortium number(s) would fall squarely within the realm of policy. Reference was

made by the petitioners to paragraph 5 of the decision in *Shakti Jan Sudhar Samiti and Others* (supra), wherein it is recorded that experience of the lead partner/participant would be taken into account for the purpose of determining financial turnover as well as execution of similar works and consortium members could be one or more. We do not think the terms and conditions of the NIT restricting the consortium members to three would violate the judgment or the reasoning given in *Shakti Jan Sudhar Samiti and Others* (supra). NIT under challenge permits counting of experience of all consortium members, subject to fulfillment of certain conditions.

6. The third contention raised by the petitioners is that the NIT is for 57480 WCs. Estimate of cost of the work is Rs.15.11 cores. Cost per WC would be about Rs.2,600/- per month. NIT states that Goods and Service Tax would be reimbursable. Our attention was drawn to letter dated 28th February, 2018 by which competent authority had accepted the quotation/negotiated rate of Rs. 1299/- per WC per month.

7. The aforesaid contention overlooks the fact that the estimated cost is a tentative cost. Bidders would have to give bids lower than the said amount. Person giving the lowest bid would be entitled to award of work. Obviously, respondents have the facts and figures with regard to cost and the lowest bids in earlier NITs. They would keep all aspects including earlier bid in mind while accepting and awarding tender. As per the NIT, tenders were to be opened on 10th July, 2018. Present writ petition was filed on 13th July, 2018.

8. Recording the aforesaid, we dismiss the present writ petition, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 18, 2018
VKR/MR

