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

Decided on: 20.12.2018

\+ **W.P. (C) 8041/2018**

\+ **W.P. (C) 9274/2018**

FRONTLINE (NCR) BUSINESS SOLUTIONS PRIVATE LIMITED ..... Petitioner

LUXRA ENTERPRISES PVT. LTD. ..... Petitioner

versus

INDIAN AGRICULTURAL RESEARCH INSTITUTE AND ANR. ..... Respondents

Present:- Mr. Saurabh Prakash, Mr. Kunal Gosain & Mr. Utsav Jain, Advs for petitioner in W.P. (C) 8041/2018.
Mr. M.S. Vinaik, Adv. for petitioner in W.P.(C) 9274/2018.
Mr. Gagan Mathur & Mr. Varun Kumar, Advs. for Respondent no. 1 in W.P.(C) 8041/2018.
Mr. Rajesh Kumar Gogan & Mr. Perala Upendra Sai, Advs. for R-2 in W.P.(C) 8041/2018 & 9274/2018.
Mr. Vivek Goyal, CGSC with Mr. Pawan Pathak, Adv. for R-3/UOI in W.P. (C) 9274/2018.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (OPEN COURT)

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1. These two petitions concern the same tender for security services issued by the Indian Agricultural Research Institute [hereinafter referred to

as "IARI" - respondent no. 1 in both the petitions]. They were, therefore, heard together and are disposed of by this common judgment.

2. The petitioners in both the petitions participated in the tender and are aggrieved by the award of contract to the second respondent namely, Mi2c Security and Facilities Pvt. Ltd. (hereinafter "MSF") by a letter dated 31.07.2018. The petitioner in W.P.(C) 8041/2018, Frontline (NCR) Business Solution Pvt. Ltd. (hereinafter referred to as "Frontline") was the existing contractor for the services in question. By a communication dated 25.07.2018, its contract was extended for two months [from 01.07.2018 to 31.08.2018] or until finalization of the new tender. It challenges another communication dated 31.07.2018, by which it was directed to hand over charge to the successful tenderer. It appears from the record that, although Frontline's technical bid was accepted, its financial bid was not found to be in conformity with the tender documents and relevant instructions. The petitioner in W.P. (C) 9274/2018, Luxra Enterprises Pvt. Ltd. (hereinafter referred to as "Luxra"), on the other hand, was one of the five bidders whose financial bids were also found compliant, but was unsuccessful on an evaluation of the financial bids.

3. The tender was issued by IARI on 16.10.2017. The schedule published therein required bids to be submitted electronically between 17.10.2017 and 17.11.2017. The technical bids were to be opened on 18.11.2017. Although the tender notice did not contain the date of opening the financial bids of the qualified bidders, it is not disputed that at the time of opening of the technical bids, IARI fixed the date of 31.01.2018 for opening of the financial bids.

4. Both the petitioners before us have submitted that the tender process adopted by IARI was irregular, inasmuch as the financial bids were not opened on the date fixed and bidders were also not informed or permitted to participate in the process. They have relied upon the screen shots of the e-procurement portal where the tender was hosted to demonstrate that the financial bids were shown as not having being opened until 31.07.2018. The petitioners have also placed on record copies of a "Tender Summary Report" and "Summary Statement of Financial Bids of Technical Responsive Firms opened on 31.01.2018 on CPPP" and "Comparative Statement of Financial Bids of these Five Firms" which are said to have been downloaded from the procurement website. They submit that the signatures on these documents bare the dates 04.07.2018 and 31.07.2018, belying the claim of IARI that financial bids were opened on 31.01.2018. They have also drawn our attention to Clauses 9 and 10 of the tender notice which permits a tenderer to be present at the time of opening the bids electronically, or to visualize the process online without being physically present at IARI.

5. In order to examine the correctness of these contentions, we have gone through the original record of the IARI relating to the tender in question. The record reflects that the financial bids were in fact opened on 31.01.2018 after which a committee was constituted to evaluate the bids and finalize the tender. It appears that the deliberations of the committee concluded on 04.07.2018, which is when the comparative statement of financial bid of the five firms was prepared and signed by the members. After the processing of the committee's recommendations, MSF was awarded the contract on 31.07.2018 and Frontline was simultaneously

directed to hand over charge to MSF. The detailed deliberations of the committee and subsequent consideration of the matter at various levels within IARI have been placed before us.

6. It appears from the record that, although the tender process was in fact conducted in the manner announced by IARI, the portal on which the tender process was electronically hosted was not updated with the relevant details and thus reflected an inaccurate picture. This has not just led to the petitioners being misled and deprived of the opportunity to participate in the tender opening process, but has also given rise to doubts in their minds about the transparency and integrity of the process adopted by IARI. However, as we have come to a conclusion on perusal of the original record that the process was in fact conducted in accordance with the tender schedule published and was not otherwise tainted by substantive irregularities or malpractices, we do not consider this a fit case for setting aside the entire tender process. The judgments of the Supreme Court *inter alia* in *Jagdish Mandal vs. State of Orissa* (2007) 14 SCC 517 and *Michigan Rubber (I) Ltd. vs. State of Karnataka* (2012) 8 SCC 216 caution the Courts to restrict interference in tender processes only to situations where manifest arbitrariness or malafides are demonstrated and such interference is warranted in the public interest. We therefore, do not consider it appropriate to interfere with the present tender on this ground, while cautioning procuring agencies to be more careful about the integrity and accuracy of the e-tender process so as to attain the objective of transparency and efficiency and avoid confusion, suspicion and consequent litigation.

7. In addition to this the above ground, learned counsel appearing for Luxra has argued that MSF was not entitled to the award of the contract as it did not provide for payment of the notified minimum wages to all categories of guards to be deployed. Specifically, it is submitted that MSF ought to have bid at the same rate for "security guard with arms" and "security supervisor" and at any rate, ought to have paid "security guard with arms" at least at the minimum wages specified for semi-skilled workers.

8. The tender notice contemplated three categories of guards to be deployed, viz. "security guard", "security supervisor", and "security guard with arm". The tender conditions (Clause 7) expressly required that the manpower deployed must be capable of reading and writing Hindi and English with a minimum qualification of matriculation or equivalent for security guards and security guards with arms. A minimum qualification of class 12 pass or equivalent was required for security supervisor. The tender conditions also required the contractor to pay minimum wages to all the manpower employed and the contractor was vested with the responsibility of ensuring compliance with all labour laws.

9. Although the tender document did not itself specify the quantum of the minimum wages, it was stated that the same would be determined in accordance with the orders of the State Government. However, a table marked "Annexure-A" and entitled "Present Minimum Wages (liable to change as per State Government's orders") was enclosed with the tender documents. In the said table, the minimum wage with effect from 01.04.2017 were shown as ₹19,590/- per month for security guard, and ₹21,300/- per month for security supervisors and security guards with arms.

The bid submitted by Luxra admittedly did not provide for wages at this level but instead ₹13,584/- for a guard, ₹14,958/- for a gunman and ₹16,468/- for a security supervisor. It is submitted on behalf of Luxra that Annexure-A indicated an equivalence between security supervisors and security guards with arms and that MSF had in fact shown different wages for these two categories. Learned counsel appearing for IARI and MSF, on the other hand, submitted that the level of wages provided in Annexure-A was not intended to stipulate the minimum wages which were required to be paid to each category of manpower, but left the actual level of wages to the discretion of each bidder, subject only to compliance with the legal requirement relating to minimum wages. Having examined the tender documents, we do not find any indication of the equivalence or quantum of wages in the tender documents, other than in Annexure-A. In our view, the inclusion of Annexure-A in the tender documents was certainly capable of leading to some confusion and ambiguity as to the requirements of the tendering authority. However, it is the admitted position that Luxra itself had not bid in accordance with the wages specified in Annexure-A. We are, therefore, not inclined to examine this contention further at its instance.

10. Luxra's alternative argument was that armed security guards ought to have been regarded at least as semi-skilled, and the bid of MSF was lower than the minimum wages for semi-skilled workers, as contained in the relevant notification of the Government of NCT of Delhi. For this purpose, learned counsel drew our attention to a notification dated 03.03.2017, where the monthly minimum wages were fixed by the said Government at ₹13,350/-, ₹14,698/- and ₹16,182/- for unskilled, semi-skilled and skilled workers respectively. However, in the absence of any condition to the

above effect in the notice inviting tender, or any direct notification dealing with security guards, it cannot be assumed that armed security guards were required as a matter of law to be paid the wages notified for semi-skilled workers. Although this is not conclusive for the purpose, we note that even the educational qualification specified in the tender notice in respect of security guards with arms was the same as that for other security guards, whereas security supervisors alone were required to possess a higher qualification. We find no provision in the tender document [other than Annexure-A, dealt with above] as to the rate of wages required to be paid to each category or the manner of determination of wages. The responsibility for payment of minimum wages in accordance with State notifications was laid upon the tenderer and the tenderer bore the risk of any non-compliance with relevant legal obligations. We, therefore, reject the contention of Luxra based on the level of wages offered by MSF.

11. Learned counsel appearing for Luxra has cited the judgment of this Court in *Mi2c Security and Facilities Pvt. Ltd. vs. Government of NCT and Ors.* 205 (2013) DLT 288 (DB), wherein this Court had quashed the award of a similar tender for security services. We find that the Court in that case came to a finding that the tendering authority had accepted the same wages being quoted for security guards and security supervisors, had failed to consider the viability of a bid without service charges and had overlooked a proposal to pay provident fund and pension at rates which were lower than the legally permissible rates. The present case is not one where such manifest arbitrariness has been demonstrated, and the said judgment, is therefore, of no assistance to the petitioners.

12. In the facts and circumstances aforesaid, we are unable to grant any relief to the petitioners. The writ petitions are disposed of with the observations above. No orders as to costs.

PRATEEK JALAN, J.

S. RAVINDRA BHAT, J.

DECEMBER 20, 2018
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