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

Date of decision : 05.02.2018

+ **W.P.(C) 8051/2017 and CM APPLS.33142/2017 & 47466/2017**

M/S SUNSHINE ENTERPRISES Petitioner
Through **Mr. Amit Kumar, Mr. Amit Anand**
Tiwari and Mr. Shashwat Singh,
Advs.

versus

INDIAN COUNCIL FOR AGRICULTURAL RESEARCH
..... Respondent
Through **Mr. S.S. Lingwal, Adv.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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The petitioner had responded to a tender issued by the Indian Council for Agricultural Research (ICAR), calling for bids for the purpose of awarding the contract for security services at its premises NASC Complex and Krishi Vihar Colony. The tender was through a two bids process (technical and financial bid). The petitioner's grievance is that its bid was rejected on the alleged ground that it has not furnished particulars to indicate fulfilment of essential eligibility criteria.

2. The respondent, ICAR, in its notice inviting tender (NIT) of July, 2017, indicated the last date of submission of bid as 17.8.2017. The bids were to be opened on 18.8.2017 and were valid for 90 days thereafter. Other conditions such as furnishing of security deposit etc. were prescribed. Clause 7 of the NIT dealt with the submission of essential documents for technical evaluation. Clause 7(vii) stated :

“Documentary proof of minimum 100 nos. (Security Guards/Supervisors) registered under ESI &EPF”.

3. The petitioner’s bid claimed that it had work force of over 400 security guards and that, it answered all the technical eligibility conditions. In support of the bid, the petitioner furnished various documents and also declared copies of such documents to be true and correct. However, ICAR rejected its bid. In the counter affidavit filed by ICAR, it is contended that the documents submitted by the petitioner no way supported its claim, that over 100 security guards/supervisors were registered under the Employees State Insurance Corporation (ESIC). The petitioner’s claim is that the list provided in support of its tender mentioned the names, ESI registration number, as well as, EPF registration number of each employee/security guard.

4. Further to this Court’s directions, the respondent produced the original file. A perusal of the file would indicate that 20 bidders had submitted their tenders; 6 bids were rejected on the ground that the documents furnished were not technically complied with. The Tender

Evaluation Report of the ICAR, prepared by a committee formed for the purpose, was also shown to this Court. The “checklist of technical evaluation of bids for providing security guards” lists various criteria of eligibility and other minimum conditions spelt out in the NIT. These are 11 in number. In relation to the petitioner, the Committee noted that it had not provided “documentary proof of minimum 100 numbers (security guards/supervisors) registered under ESI.” On an overall consideration of the technical evaluation report of the tender committee and a comparison of the documents furnished by the petitioner in support of its bid, it is quite evident that with respect to ESI details, the petitioner only provided a list alongwith relevant registration numbers. However, as far as employees provident fund’s registration and compliance is concerned, the petitioner itself adopted a different approach-like in the case of all others (who went by the same approach for both ESI & EPF document) i.e. furnished the relevant details of actual payments made for the concerned month proximate to the bid, duly sourced from the website of ESI. Having regard to this fact i.e. the respondent ICAR adopted a uniform approach in judging and evaluating the tenders and the supporting documents, its decision to deem the petitioner’s bid as non-compliant, in the opinion of the Court, is neither unreasonable nor arbitrary. The petitioner’s argument that there was no specific consequence, in the absence of a given bidder providing specific documents in such regard, in the Court’s opinion, is not persuasive. If the primary material i.e. in the form of list of employees and the details of payments made to them both in respect of ESI and EPF were available

to others, surely the petitioner too could have sourced it likewise. Its omission to do so, deemed to be non-compliant, is based upon a reasonable interpretation of the tender conditions, which can hardly fall under Article 226, given its circumscribed mandate.

5. For the above reasons, the Court is of the opinion that there is no merit in the appeal; it is accordingly dismissed. All the pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 05, 2018

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