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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10253/2017 & CM Nos.46286/2017, 12621/2018

SUNIL YADAV

..... Petitioner

Through: Mr. Prashant Bhushan, Mr. M.M. Singh & Mr. S.K. Pal, Advocates

versus

INDIAN INSTITUTE OF TECHNOLOGY, DELHI..... Respondent

Through: Mr. T. Singhdev & Ms. B. Das,
Advocate for respondent No.1

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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30.08.2018

This writ petition under Article 226 of the Constitution of India has been filed by Sunil Yadav, praying for the following reliefs:-

“(a) Pass writ of certiorari or such other appropriate writ, direction, order directing the respondent to produce its records pertaining to NIT dated September 6, 2017 bearing No.IITD/ISTA(SP-1227)/2017 pertaining to operation of the cafeteria at first floor, Synergy Building at its premises.

(b) Pass writ of mandamus or such other appropriate writ, direction, order directing the respondent to recall the Corrigendum Cancellation of Tender dated November 10, 2017 and to complete the tender process initiated by NIT dated September 6, 2017 bearing No. IITD/ISTA(SP-1227)/2017 pertaining to operation of the cafeteria at first

floor, Synergy Building at its premises as per law.

(c) costs of this petition; and in that behalf

(d) pass such further orders and/or directions as this Hon'ble Court may deem fit, appropriate and proper in the facts and circumstances of the present case.”

2. The respondent has produced before us the original Minutes of the Committee for evaluation of the technical bids received for running the cafeteria at first floor, Synergy Building, Indian Institute of Technology, New Delhi.

3. Five bids were considered. Two bids were found to be ineligible, as the parties had not enclosed plan with the bid documents. Bids given by three left in fray, including the present petitioner, were examined and evaluated by the Committee as per its criteria mentioned in the Notice Inviting Quotation ('NIQ'). As per annexure-I under the heading “evaluation of bids”, 40 marks were to be given for planning and development of cafeteria space and 10 marks were to be given for the variety of food offered by the bidder. The Committee had awarded marks for planning and development of cafeteria space as well as variety of the food. The Committee, upon valuation, had opined that none of the bidders fulfil the criteria as per the NIQ. Accordingly, the Committee had thereupon decided not to conduct site visit.

4. During the pendency of the present writ petition, a Division Bench of this Court had passed the order dated 4.4.2018, which reads as under:

“Learned counsel for the respondent-Indian Institute of Technology, Delhi (IIT) submits that a final opportunity may be granted to the respondent to take a decision whether to go for a tender or to enter into negotiations with the IRCTC or other such Public Sector Institutions or Organisations. The respondent shall decide this issue and report to the Court before the next date of hearing.

List on 4th May, 2018.”

5. Thereafter, on 6.7.2018, this Bench had passed the following order:

“Learned counsel for the respondent states that a Memorandum of Understanding dated 12.6.2018 has been executed by the respondent with the Coffee Board of India for running students’ cafeteria. Our attention is also drawn to the order dated 4.4.2018 passed by the Division Bench. It is further stated that the Coffee Board functions under the administrative control of the Ministry of Commerce and Industry, Government of India.

Let an affidavit to the above effect be filed within ten days.

Relist on 30.8.2018.

Original records should be available in the Court at the time of hearing.”

6. First respondent has filed an affidavit, stating that they have entered into a Memorandum of Understanding (‘MoU’) with the

Coffee Board of India ('Coffee Board') - a statutory organisation constituted under Section (4) of the Coffee Act, 1942. The Coffee Board operates food outlets, including outlets at Parliament, Udyog Bhawan, Jawahar Lal Nehru University and in Bengaluru and Mumbai. Coffee Board functions under the administrative control of the Ministry of Commerce and Industry, Government of India.

7. Learned counsel for the petitioner submits that the respondent has not enclosed copy of the MoU with the affidavit. This is correct. However, the original MoU was shown to us in Court today. We direct the respondent/IIT to furnish a copy of the said MoU to learned counsel for the petitioner within one week.

8. Another contention on behalf of the petitioner is that the MoU postulates appointing a franchise by tendering process. Appointment of a franchisee, it is submitted, would be arbitrary as the Coffee Board would not operate and run the cafeteria but a contract would be awarded by them to a third party on a revenue sharing basis.

9. Learned counsel for the respondent/IIT submits that the Coffee Board has expertise in the area and, therefore, the respondent has decided to avail and take their help. Coffee Board as a State would follow the law and be transparent. Coffee Board, we would record, is not impleaded as a party to the present writ petition.

10. In case the petitioner has any objection and want to challenge and question the MoU, he would be entitled to challenge the same in accordance with law. However, as far as the present petition is concerned, in view of the reasons and explanation for cancellation of tender, we do not find justification and reason to allow the petition

and direct allotment pursuant to the earlier and now cancelled tender inquiry.

11. Recording the aforesaid, the writ petition is disposed of. The pending applications are also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 30, 2018
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