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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13305/2018, C.M. Appl. No. 51738/2018**
SANCHAR COMMUNICATION SYSTEMS

..... Petitioner

Through: Mr. S.K. Gupta, Mr. Manish Gupta,
Advocates

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Jagjit Singh, Mr. Preet Singh,
Advocates for respondent No. 1 and 2
(Railways)

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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10.12.2018

W.P.(C) 13305/2018, C.M. Appl. No. 51738/2018

The petitioner complains of arbitrary conduct on the part of the respondents in regard to procurement of 1485 Analog Transceiver-Handheld device (known in popular parlance as “walkie-talkie”), wherein the tender specifications, spelt out and named a particular brand i.e. “Model TK-2317/3317” i.e. product of “Kenwood” as the only acceptable standard. The petitioner contends that this specification falls foul of the prescribed procedure, contained in Rule 144 of the Manual for Procurement of Goods 2017. Rule 144 of Manual for Procurement of Goods 2017 states as follows:

"The procedure to be followed in making public procurement must conform to the following yardsticks:-

a) The description of the subject matter of procurement to the extent practicable should –

1. ...

2. Not indicate a requirement for a particular trade mark, trade name or brand ..."

In this case, Northern Railway, furnished its rates pursuant to tender notice of 07.09.2018, on the 13th September 2018, after bid opening – the petitioner being found technically disqualified, its bid was rejected. The list of bidders who qualified finally include Micromap Electronic Systems Pvt. Ltd., MES Technology Inc. and Sanchar Telesystems Pvt. Ltd. It is contended that the petitioner's final bid was not opened for arbitrary considerations. The petitioner refers to representations made to the Senior DGM, Northern Railway on 11.10.2018, wherein it protested the amendment of publication of the tender which specified a particular product for purchase.

In this case, the pleadings would suggest that the petitioner's tender was rejected in mid September 2018, immediately after it was opened and found to be technically non-compliant. Although it represented and protested notably on 11.10.2018, it appears to have not taken any legal steps. Pleadings also suggests that the successful tenderer was awarded the contract sometime in mid September 2018 itself. In these circumstances, given the limited nature of procurement, and the issuance of purchase order, the delay of three months in approaching the court and seeking redress, in the opinion of this court

is fatal to the proceedings. This court also notices that in the past similar procurements were resorted to by the respondents Railways where the delivery period indicated in the final orders was six months. It would therefore not be unreasonable to infer that like in such cases, the contract or final purchase order, as the case may be, is for a limited duration.

For the above reasons this court is of the opinion that the petition ought not to be entertained, it therefore is dismissed.

The writ petition as well as pending application are disposed of.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 10, 2018

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