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

\+ W.P.(C) 13860/2018

R K FOOD PRODUCT'S ..... Petitioner

Through: Mr. Jitender Mehta, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Sunil Malhotra & Mr. Veera Mehra, Advocates. for R-2

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

O R D E R

% **20.12.2018**

CM Appl. Nos. 54138-54139/2018*(exemption)*

Exemption allowed, subject to all just exceptions.

W.P.(C) 13860/2018 & CM Appl. 54137/2018

1. The petitioner's grievance is that its tender for on-board catering in a train (no. 22109-10 AC Express) issued by the Indian Railway Catering And Tourism Corporation Ltd. (hereinafter, "IRCTC") was rejected. Notice Inviting Tender (NIT) was issued in this case on 25.08.2018. Apparently, the tender specification underwent eight corrigendums. Ultimately, the tenders were taken on record and evaluated.

2. IRCTC on 29.11.2018 informed the petitioner that its bid was rejected

as it was disqualified. The petitioner represented enquiring as to the reasons. The respondent IRCTC wrote back to the petitioner on 04.12.2018, listing three reasons – that in terms of para 2.1 of the instruction to tenders, Annexure 1 was to be filed, scanning and uploading the technical bid. It was stated that the documents [Annexures] contain declarations which were to be filled but this had not been in the case of the petitioner.

3. The petitioner's bid was non-compliant in as much as balance sheet & profit and loss account statement for 2015-16 & 2016-17 was required to be submitted alongwith the bid. Only the balance sheet for 2016- 2017 had been uploaded whereas, the profit and loss statement of 2016-17 had not been submitted.

4. It is urged by the petitioner that the so-called deficiencies are inconsequential and that the IRCTC had the power to waive the defects in view of the general conditions empowering it to do so [as "minor non-conformity or irregularity"].

5. The respondent IRCTC which is represented draws to the notice of the Court the fact that the uploading of profit and loss account for the last three completed financial years as well as the balance sheets, appear under the heading "mandatory criteria", therefore, cannot be waived on account of minor non-conformity.

6. Having considered the submissions and the tender conditions the Court is of the opinion that the requirement of furnishing profit and loss account for the three years concerned cannot be termed as "minor non-conformity" as they appear under the heading "mandatory criteria". If the IRCTC were to grant waiver or condone the non-filing, and accept it after the

date of last submission, it would be in fact violating Article 14 of the Constitution as its conduct would amount to departure from the laid down or prescribed criteria on the basis of which the valid tenders are to be and were, in fact judged.

7. For the foregoing reasons, there is no merit in the writ petition. It is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 20, 2018
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