

\$~30

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

Date of decision: 28th November, 2019

+ W.P.(C) 12275/2019

M/S SA INDIA (SAI)

..... Petitioner

Through: Mr. Abhay Kumar and Mr. Kumar
Milind, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Amrita Prakash, CGSC with Mr.
Harishankar Sharma and Mr. Kushal
Agarwal, Advocates for UOI/
respondents no.1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S.SISTANI, J. (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal at the admission stage itself.
2. This petition has been filed by the petitioner under Article 226 of the Constitution of India. The petitioner seeks the following prayers:

“a) Issue an appropriate writ/order/direction by setting aside the award of the Bid Number: GEM/2019/B/317453 dated 09.08.2019 to the respondent No.4 for providing Male Security Guards at CGHS dispensaries of the South Zone office of Central Government Health Scheme (CGHS) for a period of 12 months and 5 days, which are located at different places around Delhi and NCR by declaring the same as arbitrary, illegal, unreasonable

and null and void and to allow the petitioner to participate in the fresh tender; and

b) Issue any other appropriate Writ, order or direction, as this Hon'ble Court may, in the facts and circumstances of the case, deem fit and proper.

3. Some necessary facts which are required to be noticed for disposal of this writ petition are that respondent No.3 invited tender vide Bid Number: GEM/2019/B/317453 on 09.08.2019 for providing Male Security Guards at CGHS dispensaries of the South Zone Office of Central Government Health Scheme (CGHS) for a period of 12 months and 5 days, which are located at different places around Delhi and NCR. The petitioner participated in the tender but its bid was rejected, which has led to the filing of the present writ petition.
4. Learned counsel for the petitioner submits that the bid of the petitioner has been illegally held to be non-responsive, whereas the petitioner meets all tender conditions. He submits that the respondents have incorrectly relied upon Clause No.4 to keep the petitioner from being the successful bidder. Clause 4 reads as under:

“4. Office of the Service Provider is required to be located at a place near to the consignee(user) for sake of better co-ordination, smooth services and other administrative factors. In support, service provider will give details of office address, landline number, contact person and his mobile number along with bid failing which their offer will not be considered.”

5. Learned counsel for the petitioner contends that this clause is being misread; and even otherwise, the clause is vague and does not convey

as to what will qualify as a place 'near' the consignee (user). He further submits that the bid of the petitioner has been rejected as the office of the petitioner is located in Faridabad; without noticing however that the petitioner is also working from Delhi, which is evident from the license issued by the Government of NCT of Delhi under the Private Security Agencies Regulation Act, 2005 (PSARA) where the Delhi address of the petitioner's office has also been mentioned.

6. Learned counsel for the respondents, who enters appearance on advance copy, while relying on clauses 4 and 5 of the tender conditions, submits that the said clauses/conditions have been introduced in the tender for the following reasons : firstly, that as a matter of policy it has been decided that services will be availed by an enterprise which is based in the State of Delhi, such credentials being validated through the bidder's Udyog Aadhaar registration; and secondly, that for ease and efficiency of the services to be rendered, it has also been decided that the location of the service provider should be near the place of the user department, so as to facilitate better coordination and smoother services. Clause 5 of the tender conditions reads as under :

“5. Procurement under this bid is reserved for purchase of Services from : Micro and Small enterprises from the State of Bid Inviting Authority whose credentials are validated online through Udyog Aadhaar for that product category.”

7. Learned counsel further submits that although the license under the PSARA furnished by the petitioner has given an 'additional address' of

village Tehkhand in Delhi, however all other documents furnished by the petitioner, including the principal verification document viz. the Udyog Aadhaar Registration, as stipulated in the conditions of the tender, show that the petitioner, which is sole proprietorship concern, is based in Faridabad, Haryana. Reliance in this regard is placed on an Experience Certificate dated 02.02.2019 issued by ICAR putting the address of the petitioner on record and a Certificate issued by a Chartered Accountant, which also mentions the same Faridabad address of the petitioner. Additionally, she submits that the Udyog Aadhaar registration also mentions the address of the petitioner as being at Faridabad.

8. We have heard the learned counsels for the parties and have considered their rival submissions.
9. Learned counsel for the petitioner has strongly urged that the petitioner works from Delhi and Faridabad. Reliance is placed on the PSARA License issued by the Government of NCT of Delhi. It is contended that he fulfills all tender conditions. Learned counsel for the respondents however, submits to the contrary.
10. Clause 4 and 5 of the tender document, in our view, are clear and express. Clause 5 makes it clear that the procurement under the bid is reserved for purchase of services from Micro and Small Enterprises from the State of Bid Inviting Authority, which evidences that the intent, objective and purpose is to accept bids of bidders from the State of Delhi, which is a policy decision of the State Government that cannot be faulted. Additionally, clause 4 makes it clear that the service provider is required to be located at a place near the consignee (user),

which is a perfectly rational condition to facilitate better co-ordination between the service providers and the user department.

11. These two tender conditions have been tested by the respondents on the basis of the documents submitted by the petitioner. One of these documents is a working certificate, which reads as under:

“To Whom It May Concern

This is certified that the contract for providing Unskilled labour (Security Guards) has been awarded to M/s. SA India (SAI), 493, 09, Faridabad vide office order P-11(10)/Security/2016/6157-62 dated 15.10.2017 w.e.f. 16.10.2016 to 31.12.2017. The total value of work was Rs.2160550/-.

During the above period of contract the firm provided satisfactory Services to ICAR-Central Soil Salinity Research Institute, Karnal.

*Sd/-
(Ishwar Diyal)
Administrative Officer*

*M/s. SA India (SAI),
493, Sector 09,
Faridabad-121006.”*

12. Another document is a Certificate issued by the petitioner's Chartered Accountant, which reads as under:

“TO WHOM SO EVER IT MAY CONCERN

This is to certify that the M/s SA India (SAI), 493, Sector-9, Faridabad-121006 (Haryana) having annual turnover in the services of Security Service, Housekeeping & Supply of Manpower etc. during the last 6 financial years as follows.

<i>Assessment</i>	<i>Financia</i>	<i>Total turnover in</i>	<i>Profit in Rs.</i>	<i>Remark</i>
-------------------	-----------------	--------------------------	----------------------	---------------

<i>year</i>	<i>l Year</i>	<i>Rs.</i>		
2019-20	2018-19	48,767,150.00	1,463,616.10	<i>Provisional</i>
2018-19	2017-18	43,424,695.00	1,159,886.44	
2017-18	2016-17	26,122,583.00	933,521.06	
2016-17	2015-16	21,907,580.00	758,925.00	
2015-16	2014-15	18,596,547.00	697,393.69	
2014-15	2013-14	28,657,903.00	1,269.167.76	

**FOR SATIYA & ASSOCIATES
CHARTERED ACCOUNTANTS**

Sd/-

**ASHU SATIYA
(PROP.)
(M.No.539572)”**

13. The Udyog Aadhaar registration of the petitioner also shows the address of the petitioner as being in Faridabad. In fact even the memo of parties filed in the present petition also bears the Faridabad address of the petitioner, although in the cause title of the writ petition a Village-Tekhhand, New Delhi address has been shown as the address with the second address being of Faridabad, Haryana.
14. Keeping in view the aforesaid documents, it appears that the petitioner is carrying on his work of providing security services principally from Faridabad and not from Delhi. As discussed above, we find clauses 4 and 5 of the tender conditions to be rational, reasonable and non-arbitrary for the reason *inter alia* that a service provider would be required to be located at a place close to the user; and also, the stipulation of engaging an agency situate in Delhi is also rational, especially considering the requirement of the PSARA, more

particularly as per Section 13(1)(j) read with the Schedule attached thereto of compliance with local state laws.

15. In view of the above, we find no infirmity in the rejection of the petitioner's bid; and no merit in the writ petition. The writ petition is accordingly dismissed.
16. We make it clear that we have not expressed any opinion with regard to the validity of the license granted by the Government of NCT of Delhi to the petitioner.

CM APPL.50168/2019 (stay)

17. The application stands dismissed in view of the order passed in the writ petition.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 28, 2019

pst