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

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Date of decision: 05.07.2019

+ **W.P.(C) 6822/2019**

GORKHA SECURITY SERVICES

..... Petitioner

Through: Mr. S.B. Upadhyay, Sr. Advocate
with Mr. Mahavir Rawat and
Mr.Nishant, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through: Ms.Shobhana Takiar and Ms. Shweta
Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

G.S. SISTANI, J. (ORAL)

C.M. Appl. No. 28504/2019

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

W.P.(C) 6822/2019 and C.M. Appl. No. 28503/2019 (for stay)

1. This is a petition under Article 226 of the Constitution of India. The petition relates to an online tender, which was invited through e-tendering on behalf of Delhi Development Authority (DDA), Sports Wing, for the work of providing security guards, watch and ward and security surveillance of Yamuna Sports Complex, DDA, Surajmal Vihar, Delhi.

2. On 16th April, 2019, online tenders were invited on behalf of DDA (Sports Wing) through E-tendering mode. The tender was to be uploaded in

two parts viz. ‘Technical Bid’ and ‘Financial Bid’. The period of contract was for 12 months. Last date of submission of the tender was 24th April, 2019. The Technical Bid was scheduled to be opened on 26th April, 2019. On 24th April, 2019, the petitioner uploaded its bid. On 26th April, 2019, the Technical Bid was opened and the petitioner was found successful amongst some other tenderers.

3. While issuing notice in the matter, the Vacation Bench by an order dated 21.6.2019 upon hearing the submissions of learned senior counsel who appeared for the petitioner observed that *prima facie* there was an ambiguity in the NIT while placing reliance on a judgment by a Division Bench of this Court in the case titled as ***Frontline (NCR) Business Solutions Private Limited vs. Indian Agriculture Research Institute 2016 (228) DLT 170***, and extracted the relevant paras, being paras 20, 23 and 24. The respondents were restrained from taking further steps with respect to the said NIT.

4. Mr. Upadhyay, learned senior counsel who is appearing in the matter has drawn the attention of the Court to Clauses 54 and 56 and the Notice Inviting Tender, while Ms. Takiar has drawn the attention of the Court to the Schedule of Quantity which forms part of the tender condition, more particularly the Note. We deem it appropriate to reproduce Clauses 54 and 56 and the Note.

“54. The rates quoted should not be less than the minimum wages of GNGTD rate or rates approved by the Competent Authority of DDA on the date of submission of the tender. In case the rates quoted are less than the minimum wages of GNCTD rate or rates approved by the Competent Authority of DA as on submission of the tender, then the tender shall not be accounted for at all, and action, as deemed fit, can

be initiated by DDA against the agency. The agency can also be debarred from further tendering in Sports Wing of DDA. The quoted rate should be corrected up-to two places of decimal; (Per day basis).

XXX

XXX

XXX

56. During the contractual period, if the minimum wages are revised by GNCTD/GOI, the additional increased amount shall be payable to the agency for onward payment to the engaged labours after it is approved by Competent Authority. The agency should submit bill for increased/revised wages within one month from the date of Notification of GNCTD/GOI. No bill for increased/revised wages shall be entertained if the agency failed to claim it within the above stipulated period until proof of payment of increased rates to the then labour employed through ECS is presented.”

- “Note:1. The quoted rate should be for per job 8 hrs duty.
2. Rates notified by GOI for Security Guards (without arms) shall be considered in the estimate.
3. Component of ESI, BPF & GST is included in the estimated cost wherever is applicable.”

5. While relying on condition 54, Mr. Upadhyay submits that there is an ambiguity in the NIT, which is evident upon reading this clause. Clause 54 allows a tenderer to quote not less than the Minimum Wages of GNCTD rates or rates approved by the competent authority of DDA on the date of submission of the tender. Mr. Upadhyay submits that the petitioner had quoted the GNCTD rates and on account of this he is likely to be rejected as other tenderers would have quoted the rates approved by the competent authority of DDA and would have derived an unfair advantage, over the petitioner.

6. Ms. Takiar submits that in fact the minimum wages of GNCTD are not available for security guards and thus the rates which are to be considered by the DDA are the rates approved by the Central Government (Competent Authority) and this stands clarified in the Note and Schedule of Quantity.

7. Ms. Takiar, has placed reliance on the counter affidavit filed by the respondent. The counter affidavit, though filed was not on record, a copy thereof was handed over in the Court. She places reliance on pages 16 and 17 of the counter affidavit to show that the petitioner had in fact quoted an amount of Rs.877.60 which was not as per the GNCTD rates, but in fact were the rates approved by the Government of India. She thus submits that the petitioner was not misled by any ambiguity in Clause 54 and was well aware that he had to quote as per the rates approved by the competent authority recognized by the DDA and which he did.

8. We have heard learned counsels for the parties. While there can be no quarrel with the proposition laid down in the case of *Frontline (NCR) Business Solutions Private Limited Vs. Indian Agricultural Research Institute, 2016 (228) DLT 170*, however, we find that the petitioner was in fact neither misled, nor any prejudice was caused to him on account of this ambiguity. While we do find it strange that if minimum wages of GNCTD regarding security guards are not available, why this was stipulated in Clause 54 at all. This only shows non-application of mind by the DDA while formulating the tender conditions. However, since admittedly the rates quoted by the petitioner are as per the rates approved by the competent authority of DDA, we find that no prejudice has been caused to him and there is no reason to entertain this petition.

9. We are also informed that the final tender has now been awarded.

10. The writ petition is accordingly dismissed. The application for stay also stands dismissed.

11. Mr. Upadhyay, at this stage, submits that he may be given liberty to challenge the award of the tender to another tenderer since this action has taken place after he has filed the writ petition. The petitioner may take recourse to such remedy as available, in accordance with law.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 05, 2019/AK/S

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