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

Date of decision: 13/09/2019

+ W.P.(C) 9940/2019

RATAN FOOD PRODUCTS

..... Petitioner

Through : Mr. Ninad Laud & Mr. Jitender
Mehta, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through : Mr. Jagjit Singh, Senior Standing
Counsel for Railways with Mr. Preet
Singh, Mr. Vipin Chaudhary,
Advocates.
Mr. Nikhil Majithia, Standing
Counsel for IRCTC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. By this petition filed under Article 226 of the Constitution of India the petitioner seeks issuance of writ of certiorari or any other writ or direction for declaring open E-tender No. 2019/IRCTC/Catering/Tejas trains dated 14.09.2019 issued by the IRCTC as illegal, arbitrary, unconstitutional, null and *void-ab-initio* and hence liable to be quashed.

2. Some necessary facts which are required to be noticed for disposal of this writ petition at the admission stage itself are that the Indian Railway

Catering & Tourism Corporation Limited (IRCTC) published the aforesaid open E-tender No. 2019 for appointment of service provider for providing catering and allied on-board services for trains running between Lucknow—New Delhi and Ahmedabad—Mumbai for two years extendable for one more year.

3. Although, the petitioner did not participate in the pre-bid meeting, it is contended by Mr. Laud, learned counsel appearing for the petitioner that the said E-tender is contrary to the Standard Bid Document (SBD) for Rajdhani or Shatabdi trains issued by the Ministry of Railways, Government of India comprising the eligibility and evaluation criteria of bidders inasmuch as, according to the Standard Bid Document, the bidder could either be an individual or a company registered under the Companies Act, 1956 or a partnership firm registered under the Partnership Act, 1932 or a group of entities *i.e.* consortium coming together to render desired services in relation to the license as per the General Conditions of Contract (GCC) ; however in the impugned E-tender the IRCTC has excluded consortium/joint venture entities from participating in the tender and hence, the impugned tender is in violation of the GCC.

4. It is submitted that in this regard the petitioner addressed a representation dated 07.09.2019 to the Group General Manager (Services), IRCTC seeking clarification of the legal terms in the aforesaid E-tender. However, IRCTC failed to give any reply to representation dated 07.09.2019.

5. The second grievance of the petitioner is that the tender document does not state or contain a bid value and hence it is not possible for any participant to comply with the tender condition which requires that the turnover as per the GCC has to be 1.5 times the ‘advertised bid value’. In support of his submission, reliance is placed on para 2.2, 2.2.1 and 2.2.1.1 of the General Conditions of Contract which we reproduce below :

“2.2 Qualification Criteria

2.2.1 Eligible Applicant

2.2.1.1 The Bids for this contract will be considered only from those Bidders [proprietorship firms, partnership firms, companies, corporations, consortia or joint ventures (JV hereinafter) etc.] who meet requisite eligibility criteria. In the case of a JV or Consortium, all members of the Group shall be jointly and severally liable for the performance of whole contract.”

6. Mr. Majithia, learned counsel for the respondents, who appears on advance copy, submits that the present writ petition is mis-conceived and is a gross abuse of process of court and that the petitioner has not even participated in the pre-bid meeting. It is contended that paras 2.2, 2.2.1 and 2.2.1.1 have to be read along with para 17.5 which reads as under :

“17.5 A Bid from JV/Consortium/Partnership Firm etc. shall be considered only where permissible as per the Bid/ Tender conditions”

which makes it abundantly clear that a bid from Joint Venture/Consortium partnership firm etc. is to be considered only where permissible as per the

Bid/Tender conditions ; and in the impugned tender the IRCTC has decided not to permit such entities to participate.

7. In view thereof, the submission made by counsel for the petitioner is without any merit. Additionally counsel for respondent No.2 submits that the GCCs are not applicable to the present tender for the reason that tenders for catering services in trains are governed by the Catering Policy of the Railways, issued by the Ministry of Railways from time-to-time. As far as objection with regard to there being no advertised bid-value is concerned, counsel for the respondents submits that Clause (9) of Annexure 'D' of the tender documents reflects that the minimum guaranteed Concession Fee per annum per train (excluding taxes) has to be Rs. 2.0 crore and any offer less than the amount of Rs.2.0 crore shall be rejected ; which therefore sets-down the advertised bid-value for purposes of testing the bidder's turnover.

8. We have heard learned counsel for the parties. Having regard to condition 17.5 aforesaid, in our view the submission of learned counsel for the petitioner with regard to the impugned E-tender is mis-conceived inasmuch as condition 17.5 specifically lays down that a bid by a joint venture/ consortium/partnership firm etc. shall be considered only where permissible as per the bid/tender conditions ; and in this case participation by such entities has not been made permissible under the tender conditions. This argument therefore is without any force and is liable to be rejected. The second ground raised is also without any merit in view of clause (9) of the tender documents as discussed above and, in our view, which would meet the requirement of the required turnover of the bidder.

9. Additionally, we record the submission of counsel for the respondent that the GCCs would not apply to catering tenders ; and we accept the submission to the extent that it would be applied uniformly to all catering contracts and the Railways would not take a different view in some other matter. We see no reason to dis-believe the submission made by counsel for the respondent on this aspect, recording further that this statement is made on instructions.

10. For the reasons aforesaid, we find no merit in the writ petition. The writ petition and applications are accordingly dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 13, 2019

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