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

Date of Decision: 13.11.2019

+ W.P.(C) 11866/2019

M/S PREM CATERERS

..... Petitioner

Through: Mr. Rajmangal Kumar,
Advocate with Mr. Satyendra
Kumar, Advocate.

Versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Mr. Vikram Jetley, CGSC for
respondent No.1.
Mr. R. Ramchandran, Advocate
for respondent No.2.

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)

The present petition is directed against the decision taken by respondent No.2 by which the tender for running a staff canteen at the Nehru Yuva Kendra, New Delhi, has been awarded to respondent No.3.

2. The stand of the petitioner is two-fold. Firstly, that the petitioner has been successfully running the canteen in question since 2018. Secondly, the petitioner points-out that though the tender was initially for a period of one year, even after the period of one year expired, having regard to the fact that petitioner's services were

satisfactory, his contract was extended twice and is now valid upto 14.11.2019.

3. Counsel for the petitioner submits that the bid of the petitioner has been rejected on the ground that the experience certificates as required by the tender conditions from a Ministry/Govt. Department were not provided. Counsel for the petitioner submits that the petitioner had requested respondent No.2 itself to provide his experience certificate of running the staff canteen and a communication with regard to the same was addressed to respondent No. 2 in the month of August 2019 but no certificate has been provided. He contends that the fact that he has been successfully operating a canteen with respondent No.2, is in any case, within their knowledge and thus no separate, formal experience certificate should be required. As far as the second certificate as required by the tender conditions is concerned, he submits that he has been successfully providing tea, coffee, snacks, lunch, dinner etc in the office of a former President of India for the last two years, and a certificate to that effect has been provided. Reliance in that regard is placed upon certificate dated 28.08.2019 filed on record.

4. Counsel for respondent No.2 has appeared on advance copy. The original file has also been produced and the same has been perused.

5. Respondent No.2 points-out that the bid of the petitioner has been rejected since he has not qualified the technical bid. Reliance is placed on tender notice dated 19.08.2019, condition No.1 of which we reproduce below:-

“1. The contractor should have experience of operating such canteen satisfactorily in at least two establishments of Ministries/Departments of Govt. of India.”

6. Counsel for respondent No.2 submits that even assuming that the petitioner has been successfully running the canteen of respondent No.2 and thus a formal certificate may not be necessary, a second certificate as required has not been furnished since the certificate relied upon from the office of a former President of India would not satisfy the tender condition, since a former President's office is not an establishment of any Ministry nor any department of the Government of India. He further submits that the petitioner is also not L-1 since in his bid, for certain items he had only quoted “M.R.P.” and not the actual price, thereby making it impossible to compare the complete price with other bidders.

7. We have heard counsel for the parties and considered their submissions.

8. Tender condition No.1 makes it clear that the bidder should have experience of operating a canteen specifically in at least two establishments of Ministries/Departments of Government of India. Other things apart, the petitioner has clearly failed to comply with this tender condition. In the absence of requisite certificates it cannot even be said that he was operating the canteen of respondent No.2 ‘satisfactorily’. Merely because his contract was extended pending issuance of a fresh tender, that alone cannot be reason to infer satisfactory performance by the petitioner. In any case, no second certificate has been furnished.

9. Resultantly, we find no merit in the present petition. The writ petition is accordingly dismissed.

C.M. No.48626/2019

10. Since the writ petition is disposed of, this application is also disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 13, 2019/Ne

