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

% *Date of Judgment : 30th October, 2019*

+ W.P.(C) 3910/2018

M/S TELECON INDIA AND ORS. Petitioners

Through Mr. Pankaj Kumar Singh, Advocate

versus

RAILWAY BOARD AND ORS. Respondents

Through Mr. Jagjit Singh, Senior Standing
Counsel with Mr. Vipin Chaudhary,
Advocate for the Railways.

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.
2. The three contractors, petitioners herein, who are engaged in the business of mechanised cleaning of railway stations and trains and on-board housekeeping, have challenged the eligibility criteria, more particularly the weightage formula and the criteria of minimum qualifying marks for the technical bid as contained in Clauses 1.2.2.1, 1.2.2.2 and 1.2.2.3 of the Standard Bid Document for Mechanised

Cleaning and Housekeeping of the Stations and Trains dated 23.08.2017.

3. Mr. Pankaj Kumar Singh, learned counsel for the petitioners, while referring to the aforesaid clauses submits that the aim, objective and purpose of the respondents seems to be to oust small players and negate fair competition, resulting in the petitioners and other similarly situated persons, who have been providing services for years, being left-out in future contracts.
4. After we had heard the matter at some length, learned counsel for the petitioners submits that the petitioners would be satisfied if they are permitted to make a representation to the respondents; and a direction is issued to the respondents to consider such representation in the light of the submissions made before us and as contained in the writ petition. This submission however, is made without prejudice to the petitioners' rights and contentions.
5. Having regard to the submissions made, it is not necessary for us to notice the detailed facts, except to say that as per tender conditions, 35% marks are to be awarded for the 'turnover'/criterion, the relevant clause being reproduced below:

“1.2.2.1 Evaluation of Technical bid:

....

S.No.	Weightage	Technical Criteria	Documentation	Scoring
2	35%	Turnover (in last three and current Financial Year)	As per audited balance sheet certified by the CA.	(a) 100 marks– More than 25 times advertised value of work (b) 70 marks– 10 – 25 times advertised value of work

		(Less than 1.5 times the value of work is not eligible)		(c) 50 marks– 5 – 10 times advertised value of work (d) 30 marks– 1.5 – 5 times advertised value of work
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6. It has been contended by the learned counsel for the petitioners that a 35% weightage to ‘turnover’ is disproportionately large having regard *inter-alia* to the Central Vigilance Commission (CVC) Guidelines of 2002 and 2004. We reproduce below some of the relevant portions of the CVC Guidelines of 2002:

“OFFICE MEMORANDUM

Subject: Prequalification criteria (PQ)

The Commission has received complaints regarding discriminatory prequalification criteria incorporated in the tender documents by various Deptts./Organisations. It has also been observed during intensive examination of various works/contracts by CTEO that the prequalification criteria is either not clearly specified or made very stringent/very lax to restrict/facilitate the entry of bidders.

2. The prequalification criteria is a yardstick to allow or disallow the firms to participate in the bids. A vaguely defined PQ criteria results in stalling the process of finalizing the contract or award of the contract in a non-transparent manner. It has been noticed that organizations, at times pick up the PQ criteria from some similar work executed in the past, without appropriately amending the different parameters according to the requirements of the present work. Very often it is seen that only contractors known to the officials of the organization and to the Architects are placed on the select list. This system gives considerable scope for malpractices, favouritism and

corruption. It is, therefore, necessary to fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

3. Some of the common irregularities/lapses observed in this regard are highlighted as under:-

- i) For a work with an estimated cost of Rs.15 crores to be completed in two years, the criteria for average turnover in the last 5 years was kept as Rs.15 crores although the amount of work to be executed in one year was only Rs.7.5 crores. The above resulted in prequalification of a single firm.
- ii) One organization for purchase of Computer hardware kept the criteria for financial annual turnover of Rs.100 crores although the value of purchase was less than Rs.10 crores, resulting in disqualification of reputed computer firms.
.....”

7. Learned counsel for the petitioners has contended that the Railways should reconsider the matter; and stipulating a turnover criteria of Rs.250 crores for a tender of average estimate of Rs.10 to Rs.12 crores would be highly exorbitant and would be squarely hit by the CVC Guidelines. Reliance is placed by the learned counsel on the judgments in *M/s. Dhingra Construction Co. v. Municipal Corporation of Delhi and Others* reported as AIR 2005 Delhi 247 and *Gharda Chemicals Limited v. Central Warehousing Corpn* reported as (2005) 118 DLT 159, both the judgments of a Division Bench, in which this Court has taken note of the CVC Guidelines.

8. Mr. Jagjit Singh, learned counsel for the respondents has opposed the present petition, submitting that there is no infirmity in the tender document. He submits that initially, Railways has started a pilot project for 50 major Railway Stations in the country, to be ultimately applicable to approximately 407 Railway Stations of 'A-1' and 'A' categories. The aim, objective and purpose of the Railways is to ensure that cleanliness levels are raised to a much higher level than presently existing by engaging the best available contractors in the country. He further submits that 'turnover' is only one of the criterias; and that there is also a 20% weightage given to previous work done, 20% for the number of years in operation and 25% for the size of workforce. It is also contended that the CVC Guidelines would not apply since those pertain to 'pre-qualification', which is not the case with the weighted criteria for bid-evaluation.
9. We have heard the learned counsels for the parties.
10. After the arguments were concluded, learned counsel for the petitioners submits that the writ petition may be disposed of with liberty to the petitioners to make a representation before the respondents, without prejudice to their rights and contentions.
11. In view of the above submission, we are of the view that no further orders are required to be passed in the matter. However, we direct that should a representation be made by the petitioners, the respondents would consider the same within eight weeks of the making of representation, unaffected by any observations made in this order.
12. The writ petition is disposed of in the above terms.

CMs.APPL 15422/2018, 25672/2018 & 31825/2018

13. The applications also stand disposed of in view of the order passed in the writ petition.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 30, 2019

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