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

+ W.P.(C) 5963/2018

R. S. LABOUR AND TRANSPORT CONTRACTOR Petitioner
Through: Mr.Jasbir Singh Malik, Advocate

versus

FOOD CORPORATION OF INDIA AND ANR. Respondent
Through: Mr.Manoj, Standing Counsel with
Ms.Aparna Sinha, Advocate for
R-1/FCI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **07.01.2019**

W.P.(C) 5963/2018 & CM APPL. Nos.23226 & 47119 of 2018

1. By the application [CM APPL. 47119/2018], the respondent No.1/Food Corporation of India [hereafter referred to as "FCI"] seeks permission to issue fresh tenders.

2. We have heard learned counsel for the parties on the application as well as the main writ proceedings. The petitioner's grievance was that despite serious objections as to the eligibility of the respondent No.2 [who was ultimately granted the contract and declared as the successful tenderer], the FCI awarded the tender [issued on 23.03.2018] for transportation of

foodgrains and allied materials etc., within and around FSD Mayapuri, Delhi Region. The petitioner, a registered firm, applied and bid for the contract – the tender was predicated upon a contract in force for two years. It appears that on 02.05.2018, FCI uploaded the status of the tender and confirmed that there are only two bids. The petitioner's grievance is that the respondent No.2, who defaulted in many respects, was found to be technically feasible and eligible to be awarded the contract.

3. Various grounds were urged in respect of the writ petition; on the first date of hearing i.e. 29.05.2018, the Court expressed its reservation with respect to the award of contract to the respondent No.2 and restrained FCI from proceeding ahead and granting the contract. This order has remained undisturbed and continues to bind the parties, even today. In the application [CM APPL. 47119/2018], the FCI submits that having regard to the objections articulated in this writ petition with respect to the eligibility of the respondent No.2, it is proposed to retender the contract. The petitioner, of course, opposes this move and contends that if the respondent No.2 was not eligible, it was logical to award the contract to them, as they are the sole eligible bidder. This Court is unpersuaded with this submission. In this case, there were undoubtedly serious objections with respect to the respondent No.2's eligibility, however, as far as the rates are concerned, undoubtedly, that party offered better rates. The elimination of the respondent No.2 would ordinarily mean that the petitioner could have been granted the contract by the respondent No.1. However, if the FCI, given the totality of circumstances and the reservations expressed by the Court, formed an opinion that it would be in the larger public interest to re-tender

and invite fresh bids, that decision *per se* cannot be characterised as illegal or malafide, only because it does not suit or injures the interest of the petitioner. At this stage the petitioner has only a right to be considered if they fulfil the eligibility conditions. As of now, the petitioner's rights are inchoate and have not crystallized into any enforceable entitlement.

4. For these reasons, this Court is of the opinion, that there is no merit in this argument. The respondents are hereby granted liberty to re-tender the contract, provided the eligibility conditions are appropriately amended.

5. The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 07, 2019

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