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

% ***Date of Judgment: 22nd May, 2019***

\+ **<u>W.P.(C) 12303/2018 & CM APPL. 47702/2018</u>**

SUJA SUNIL ..... Petitioner

Through: Mr. Anunaya Mehta and Mr. Akshay Deep Singhal, Advocates

versus

MINISTRY OF RAILWAYS AND ORS. .....Respondents

Through: Mr. Jagjit Singh, Senior Standing Counsel for respondent-Railways
Mr. Misbahuddin Siddiqui, Advocate for respondent No.3

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

<u>G.S. SISTANI</u>, J. ***(ORAL)***

1. Challenge in this writ petition is to the rejection of the bid of the petitioner by the respondents. Some necessary facts which are required to be noticed for disposal of this writ petition are that the petitioner is a woman entrepreneur having ten years' experience in conducting catering stalls of the respondents, all over India. A Tender was invited on 8th June, 2018 seeking bids for allotment of sixteen catering stalls (Special Minor Units-SMU) at New Delhi, Delhi Junction and Anand Vihar Terminal Railway Station over Delhi Division of Northern Railway for a period of five years. The petitioner submitted her bid on 17th July, 2018. The bids were opened on 18th July, 2018. Three bidders were selected including the petitioner. The petitioner

was informed that the Bidding Committee had disqualified the highest bidder. The petitioner was the second highest bidder. It may be observed that on 14th September, 2018, the petitioner had filed a writ petition bearing No.9705/2018 challenging the condition issued by the respondents to provide Audited Accounts for the year 2017-18. The petitioner subsequently learnt that her bid had been rejected, but no grounds were disclosed.

2. Mr. Anunaya Mehta, learned counsel appearing for the petitioner, submits that after the highest bidder was disqualified, the petitioner being the next highest bidder should have been awarded the tender, but the Tender has been awarded in favour of the next highest bidder and the difference between the two is over rupees one lakh. He submits that the discrepancies, which have now been pointed out, are frivolous and extremely minor and these are being relied upon only for the sake of disqualifying the petitioner and giving benefit to the next highest bidder.

3. Mr. Jagjit Singh, learned senior standing counsel appearing for the respondent-Railways, while relying on his counter affidavit submits that amongst others, the petitioner failed to comply with the tender conditions inasmuch as the following documents were either not filed or were not in compliance with the tender conditions. In this regard, reliance is placed on paragraphs No.12 & 13 of the counter affidavit, which we reproduce below:-

> *12. That the tender of the Petitioner was rejected by the tender committee on the following reasons:*
>
> *a) The Petitioner had not enclosed FSSAI certificate;*
>
> *b) Experience as per Clause 3.2.1 was also not found suitable in accordance with the terms and conditions of tender. Following are the details of requirement of Clause 3.2.1 and the observations of tender committee;*

3.2	***Experience of Catering Business (Essential):*** *Para 3.2.1: **Minimum three years of experience** in catering business. It has to be supported by certificate / letter of experience / allotment from concerned agencies for the last three years duly certified by Chartered Accountant.*	*The bidder has submitted following documents in support of minimum **three years of experience** in catering business:* *1. Notary attested copy of ISO 22000:2005 Certificate NO.AN17FSH154 dated 05.01.20147 valid upto 05.01.2020 in favour of M/S. Suia Catering (SN 260). It is not certified by the Chartered Accountant.* *2. Notary attested copy of letter of acceptance issued by Sr. DCM Chennai Division, SR for award of license for Sweet Stall at Chennai Egmore Railway station issued vide letter No.M/C- 79/SMU-6/SS/MS dated 20.01.2015 (SN 265-267). However, it is not certified by Chartered Accountant.* *3. Notary attested copy of letter of award issued by Sr. DCM/Palghat, Southern Railway for catering trolley at Soranpur Railway Station, issued vide letter No.J/C.79/Tender-2015/SRR-109/IV dated 22.01.2016 (SN 268-271).* *This is also not certified by Chartered Accountant.* *4. Notary attested copy of allotment letter issued by Regional Manager/ Ernakulam/IRCTC/ER/ Non-Dept./SMU/08 dated 13.10.2008 on PFNo.2 at Thalassery Railway station (SN 272-273). This is also no certified by Chartered Accountant.* *5. Notary attested copy of allotment letter issued by Sr. DCM. PGT, Southern*

		Railway vide letter N0.J/C.79/CS/SPR/SCS dated 04.08.2017 for catering stall PGT/80 at PF No.4/5 at SRR for a period of three months (SN 274). This is also not certified by Chartered Accountant. *All the above documents are not certified by Chartered Accountant, hence the documents submitted by the bidder are considered not acceptable.*

13. That besides the same, the Petitioner had not fulfilled requirement of Clause 3.5 of the tender condition and the observations of tender committee are here as under. –

3.5	***Additional Mandatory requirement:*** *Para 3.5.1: All additional mandatory requirements have been enlisted at Annexure-2, Chapter 1 of Section B of the Bid document. This includes Permanent Account Number, GSIN Registration, FSSAI etc.*	*The bidder has submitted:* *1. The bidder has submitted notary attested copy of Aadhar card No.580618147200 in the name of Smt. Suja Sunil W/o Sh. P.K. Chirakkakode, Vellanikkara P.O. Madakkathara Village Vellankikkara, Thrissur, Kerala-680654 (SN-338).* *2. The Bidder has submitted notary attested copy of PAN Card, having NO.BLQPS9659P in the name of Smt. Suja Sunil D/o Sulochana (SN-337).* *3. The Bidder has submitted Notary attested copy of GSTIN 32BLQPS9659PIZSSN334 to 336) in the legal name of Smt. Raramel Sunil Suja and Trade name M/S. Suja Cattering businsess address 18,389, Muthedath House. SMP Junciton, Shoranur, Palakkad, Kerala whereas name of the bidder in Annexure-2, PAN Card, Aadhar Card and Caste Certificate is SUJA SUNIL, hence this*

		documents is not acceptable. *4. The bidder has not submitted FSSAI certificate required as additional mandatory requirements. Hence, the documents furnished are considered not acceptable.*

4. Mr. Singh further contends that in catering business, furnishing three years' Experience Certificate would be vital. The certificate filed by the petitioner was not in terms of tender condition, as the same was not certified by a Chartered Accountant and only a notarized copy was submitted. He submits, similarly, an FSSAI Certificate is extremely important and a mandatory requirement for catering contracts but it was not filed. It is also submitted that the PAN Card, GST Card and Aadhaar Card submitted by the petitioner contained different names and thus, the petitioner was rightly disqualified. IT Returns for Financial Year 2017-2018 were not filed.

5. In response to the submissions made by Mr. Singh, Mr. Mehta submits that the submission of FSSAI Certificate was not a mandatory requirement. The same does not find mention in the list of the documents as per Chapter-3 of the Eligibility Criteria of Bidders. The Experience Certificate submitted was duly notarized. Similarly, the Income Tax Returns for the Financial Year 2017-18 could not have been filed as the financial year had not ended.

6. We have heard the learned counsel for the parties. Chapter-3 pertains to the Eligibility of Bidders and the relevant clauses of this Chapter are 3.2, 3.2.1, 3.3.2, 3.5 and 3.5.1. The same are reproduced as under: -

3.2 Experience of Catering Business (essential)

3.2.1 Minimum three years of experience in catering business. It has to be supported by certificate/letter of experience/allotment from concerned agencies for the last three years duly certified by Chartered Accountant.

3.3 Minimum Annual Turnover from Catering Business (mandatory)

3.3.1 For SMU at 'A1' & 'A' category stations, the Bidder should have a minimum annual turnover of two (2) times of Indicative License Fees in any one of three preceding financial years.

3.3.2 For SMU at 'B' & 'C' category stations, the Bidder should have a minimum annual turnover equal to the Indicative License Fees in any one of three preceding financial years.

The bidder shall submit the relevant information in Annexure 5 and also submit audited balance sheet and profit and loss account or Income Tax returns of previous three (3) financial years i.e. 2015-2016, 2016-17 and 2017-18, duly certified by the Chartered Accountant.

3.5 Additional Mandatory Requirements

3.5.1 All additional mandatory requirements have been enlisted at Annexure-2, Chapter 1 of Section B of the Bid document. This includes Permanent Account Number, GSTIN Registration, FSSAI etc.

7. It is not in dispute that the minimum three years' experience certificate in the catering business was submitted by the petitioner, but it was not duly certified by the Chartered Accountant. It is the stand of learned counsel for the petitioner that it does not stand to reason as to why the Experience Certificate was required to be certified by the Chartered Accountant when the Experience was with the Railways. We find no force in this submission, as the terms of the Tender are not to be finalized or read into by the Court and it is to be left to the wisdom of the Authority, who has drafted the tender

conditions. Admittedly, the three years' Experience Certificate, which, in our view, is an extremely requirement for a catering tender, was not in accordance with the tender conditions. We also find that although the audited balance-sheet may not have been prepared for the year 2017-2018, but the petitioner could have provided the Profit and Loss Accounts or the Income Tax Returns, to comply with the tender condition No.3.3.2. We also find that Condition No.3.5.1 refers to FSSAI Certificate. A reading of Condition No.3.5.1 would make it clear that even if it did not form part of Annexure-II, the language suggests that Permanent Accountant Number, GSTIN Registration and FSSAI Certificate were to be furnished. In this case, FSSAI Certificate was also not furnished by the petitioner.

8. As far as the objections raised by Mr. Singh regarding discrepancy in the name of the petitioner in the GST Certificate, Aadhaar Card and PAN Card are concerned, we feel that a careful reading of the three documents would show that it would not be difficult for the respondents to decipher that the three documents pertain to the same person. Merely, because in one document the father's name of the petitioner has been added, would not lead to the conclusion that the three documents pertained to three different persons. More so, when the name of her proprietary concern, being Suja Catering, remain unchanged.

9. Law with regard to dealing with the matters pertaining to Tenders is clear in the case of ***Tata Cellular v. Union of India,*** *(1994 (6) SCC 651).* In para 74 of this judgment, the Apex Court has highlighted that the Court may interfere only in the decision making process and not the decision, which is finally rendered. The same is reproduced as under: -

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself.
77.The duty of the court is to confine itself to the question of legality. Its concern should be:
(i) Whether a decision making authority exceeded its powers?
(ii) Committed an error of law,
(iii) Committed a breach of rules of natural justice,
(iv) reached a decision which no reasonable tribunal would have reached or,
(v) Abused its powers.
Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.
(ii) Irrationally, namely Wednesbury unreasonableness.
(iii) Procedural impropriety.
The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact in R.V. Secretary of State for the Home Department, ex Brind Lord Diplock (1991) 1 AC 694, Lord Diplock refers specifically to one development namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should "consider whether something has gone wrong of a nature and degree which requires its intervention."

10. In this case, we find that on account of the discrepancies, which we have detailed above, the tender of the petitioner was rejected, and thus there is no infirmity in the decision making process which requires interference by this Court.

11. Mr. Mehta submits that in case of ***Quippo Oil and Gas Infrastructure Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr.,*** *reported at 230 (2016) DLT 384 (DB),* Delh*i* High Court has taken into account that there are

two types of documents viz. Ancillary and Essential Documents. He contends that the irregularities pointed out by the respondents are regarding the documents which are ancillary and not essential documents. While we have no quarrel with this proposition of law, we are of the view that this proposition would not apply to the facts of the present case, as Experience Certificate and FSSAI Certificate would be essential documents. Similarly, the Account Statements would not fall under the ancillary documents.

12. For the reasons aforegoing, we find no grounds to entertain the writ petition and it is accordingly dismissed. The pending application being CM APPL. 47702/2018 also stands dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 22, 2019
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