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

Date of decision: 18th February 2020

+ W.P.(C) 1724/2020 and C.M. No.5997/2020 (*interim relief*)

KHERA TOURISTS SERVICE Petitioner
Through: Mrs. Latika Chaudhary, Advocate.

versus

SPORTS AUTHORITY OF INDIA Respondent
Through: Mr. N.K. Aggarwal, Advocate.

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)

This is a writ petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing of the allegedly illegal procedure adopted by the respondent while rejecting the technical bid of the petitioner, without specifying any reason, which the petitioner contends is arbitrary and against the principles of natural justice.

2. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.

3. The respondent advertised an e-tender inviting bids for hiring of DLY cars for the Sports Authority of India, Head Office Building, Jawaharlal Nehru Stadium, New Delhi. The petitioner submitted its online bid on 09.12.2019.

4. Admittedly, all the documents sought to be relied upon by the petitioner could not be uploaded. More particularly, the petitioner uploaded only 6 Registration Certificates ('RCs') instead of 25 RCs which were required as per the tender document.

5. After some hearing in the matter and perusal of the record produced by the respondent, Mrs. Latika Chaudhary, learned counsel for the petitioner is satisfied that since the bid submitted by the petitioner was incomplete, there is no infirmity in the decision of the respondent in rejecting the petitioner's bid.

6. She however submits that another bidder who had also submitted an incomplete solvency certificate, since the certificate did not bear any date, was given an opportunity by the respondent to rectify the error. She further submits that since such an opportunity was not granted to the petitioner, the respondent has acted in an arbitrary and fanciful manner ; and has been biased towards the petitioner.

7. Learned counsel for the respondent submits that the respondent was well within its rights to seek clarification on the bids. Reliance is placed upon clause 7.3.5 of the Manual for Procurement of Bids 2017 issued by the Ministry of Finance, Department of Expenditure. We reproduce clause 7.3.5 below:-

"7.3.5 Clarification of Bids/Shortfall Documents

During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to

be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder."

8. He further submits that in the petitioner's case, several relevant documents were not uploaded, while in the other bidder's case referred to, the only issue was that while the solvency certificate issued by a nationalized bank had been uploaded, however the same was without a date; and an opportunity was accordingly granted to rectify this error. Counsel for the respondent submits that the two issues cannot be equated, as providing a copy of the RC is an essential tender condition; and the petitioner admittedly failed to provide copies of the required number of RCs, while the example which has been given by the petitioner is of a case where only the date was missing on a document issued by a third party, which was subsequently permitted to be rectified.

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

10. In the foregoing backdrop, we find that there is no infirmity in the decision-making process of the respondent, as admittedly vital documents were not uploaded by the petitioner; and thus the petitioner's bid was correctly rejected. We are also satisfied with the explanation rendered by counsel for the respondent in allowing the other bidder to provide the date on the solvency certificate which was issued by a nationalized bank and which was uploaded alongwith other documents.

11. Accordingly, we find no grounds to interfere by way of this petition. The writ petition and pending application is accordingly dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 18, 2020

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