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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3639/2020, CM APPL. 12977/2020 & CM APPL.
12978/2020

M/S ASEPTIC PROJECTSS Petitioner
Through: Mr. Ajit Sharma, Advocate.

versus

M P SINGH & ORS Respondents
Through: Ms. Shiva Lakshmi, CGSC for R-1 to
R-3.
Mr. Dayan Krishnan, Senior
Advocate with Mr. Aditya Vikram
Jalan and Ms. Urvashi Misra,
Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **22.06.2020**

1. The hearing was conducted through video conferencing.
2. The petitioner seeks the following reliefs:

“a. Issue a writ, order or direction in the nature of writ of mandamus, certiorari or any other appropriate writ, order or direction directing the Respondent DRDO to initiate an inquiry against M/s Dyna Filters Pvt. Ltd. and thereafter black list and ban the said entity in terms of the provisions of DRDO Procurement Manual 2016;

b. Issue a writ, order or direction in the nature of writ of mandamus, certiorari or any other appropriate writ, order or direction directing the Respondent DRDO to proceed with processing of the Tender dt. 11.09.2019 with the remaining bidders;

c. Award costs in favour of the Petitioners and against the Respondent; and/or

d. Pass any other order(s)/direction(s)/writ as this Hon'ble court may deem fit and appropriate in the facts and circumstances of the present case."

3. Prayer "b" is not pressed because the tender has since been withdrawn apropos prayer "b".
4. According to the learned counsel for R-1 the said respondent had satisfied itself of the eligibility qualification of respondent no. 4, on the basis of a Certificate issued by the Institution of Veterinary Biological Products, Pune (at page 93 of the writ petition), which, *inter alia*, details the work of R-4 as under:

"Construction of Viral Vaccine and Poultry Vaccine Laboratory Building including supply, installation, testing, commissioning and validation of HVAC process and lab equipments, clean room BSL II and BSL III Level Lab, electrical and other associated works at the Institute of Veterinary and Biological Products as per cGMP Norms on Turn Key Basis, Aundh, Pune.
..."

5. In the column Performance Report apropos respondent no. 4, the certificate records 'Satisfactory' and the Overall Performance as 'Outstanding'. Subsequently, another Certificate for Completion of Work was received by respondent no.1 apropos the said project. It reads, *inter alia*, as under:

"...

This is to certify that the work of Construction of Viral Vaccine and Poultry Vaccine Laboratory Building

including supply, installation, testing commission and validation of HVAC process and lab equipments, clean room BSL II and BSL II level Lab., electrical and other associated works at the Institute of Veterinary and Biological Products as per cGMP NORMS on Turn Key Basis, at Aundh, Pune has been entrusted to M/s Dyna Filters Pvtl. Ltd., Pune vide this office agreement no. B1/C.E.-01/2014-15, dated 22/08/2014, and completed on 10/06/2018. The work includes Civil work executed by subcontracting to Synergy Infrastructure Pvt. Ltd., Lab Machinery and Equipments, Electrical – Supply, Installation, testing, commissioning and validation of HVAC, etc
.... ”

6. In effect, respondent no.1 had satisfied itself apropos the eligibility qualification of respondent no.4. The petitioner now states that the requirement for a bidder was that the project should have been duly commissioned after its completion but according to it, the, therefore, respondent no. 4 has misled the Government. The learned counsel for the petitioner refers to an RTI reply (at page 101 of the writ petition), which intimates that the said Pune project is still underway. The RTI reply, reads *inter alia*, as under:

“
With respect to the above mentioned subject, this office is in receipt of your application under Right to Information Act, 2005 vide inward no. 3 on date 15-01-2020. In this regard, this is to inform you that as per the information requested by you, the work of the Poultry and Virology Laboratory is still incomplete.
..... ”

7. The learned counsel for respondent no.1 and Mr. Dayan Krishnan, the learned Senior Advocate for respondent no.4, submit that

prima facie the said RTI reply cannot be a cause to be agitated in a writ petition because it does not show what was the information sought under the RTI application and in any case, the tender notice has now been withdrawn. They submit that the petitioner can have no cause for grievance apropos the procedure adopted by R-1. The learned Senior Advocate for respondent no. 4 further submits that petitioner is an unsuccessful bidder in the tender which has now been withdrawn.

8. In view of the above, the petitioner wishes to withdraw this petition with liberty to pursue its grievance, as may be, with respondent no. 1 or appropriate legal remedy. The petitioner will not circulate the details of the petitioner's bid to any party except to R-1 or in legal proceedings, if it so chooses, lest the goodwill of respondent no. 4 be prejudiced.
9. The petition, along with pending applications, is dismissed as withdrawn in terms of the above. Liberty granted.
10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsel through email.

NAJMI WAZIRI, J

JUNE 22, 2020/RD/AB