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

\+ W.P. (C) 4743/2020 & C.M. No.17111/2020

M/S KULDIP TOURIST TAXI SERVICE ..... Petitioner
Through: Mr. Rajeev Saxena,
Mr. Sumit K. Batra,
Mr. Naunidh S. Arora and
Mr. Manish Khurana, Advocates.

versus

CENTRAL POLICE ORGANIZATION & ANR. ..... Respondents
Through: Ms. Nidhi Raman, CGSC with
Mr. Abhishek Khanna, GP for R-1.
Mr. Ramesh Singh, Standing Counsel with
Ms. Bhawna Kataria, Advocate for GNCTD.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **10.08.2020**

HEARD THROUGH VIDEOCONFERENCING

1. This writ petition has been filed by the petitioner praying, inter alia, to issue an appropriate writ/order or direction, declaring the bid document dated 28.01.2020 as having been expired by efflux of time; to issue an appropriate writ/order or direction declaring the Corrigendum dated 13.02.2020 as null and void in view of the GEM Guidelines/FAQs which provide that terms and conditions can be amended/altered only if no seller participates in the bid; and/or to direct the respondents to issue a fresh bid document for inviting bids from prospective bidders to cater to the need of cars required for VVIP Pilot and Escort vehicles.

2. Shorn of details, the brief facts leading to the controversy are as follows:-

a) The respondent No.2 published Bid Document being GEM/2020/B/521816 dated 28.01.2020, inviting bid from companies/ partnership firms/agencies for the work of providing cars to be used by the Delhi Police for VVIP services and QRT teams round the clock.

b) As per the bid, 350 vehicles were to be provided by the bidder. The bids were to be submitted by 18.02.2020.

c) However, a Corrigendum was issued by the respondent No.2 on 13.02.2020 wherein, the total quantity of vehicles required for the purpose of providing cars to be used by the Delhi Police for VVIP services and QRT teams round the clock was increased from 350 to 400 cars (350 Ertiga + 50 Innova). The said quantity was to be apportioned in 05 Vendors in the ratio of 30:25:20:15:10 at the rates achieved with L-1 Vendor. As per the apportionment/splitting clause, total 400 Nos. Cars (350 Nos. Ertiga & 50 Nos. Innova) was to be distributed between 05 Vendors as L-1 30%= Total 120 Nos. Cars (i.e. 105 Nos. Ertiga +15 Nos. Innova), L-2 25%= Total 100 Nos. Cars (i.e. 88 Nos. Ertiga +12 Nos. Innova), L-3 20%=Total 80 Nos. Cars (i.e. 70 Nos. Ertiga+10 Nos. Innova), L-4 15%= Total 60 Nos. Cars (i.e. 52 Nos. Ertiga +08 Nos. Innova), L-5 10%= Total 40 Nos. Cars (i.e. 35 Nos. Ertiga+05 Nos. Innova).

d) On 20.04.2020, the Government e-Marketplace (hereinafter referred to as "GeM") approved the request of the respondents to extend the bid life cycle by a further period of 90 days. Consents of the bidders were also taken in this regard. The said extended period was to expire on 25.07.2020.

e) Thirteen entities participated in the bidding process. The petitioner did not participate in the bidding process. The bids were opened on 19.05.2020.

f) The respondents finalized the price bid with L-2-L-5 bidders consenting to work on L-1 rate. Out of 13 participants, L-1 to L-5 were identified.

g) After finalising five bidders, the proposal for financial sanction was sent to the Police Headquarter on 11.06.2020.

h) The Police Headquarter thereafter, forwarded the proposal to the Ministry of Home Affairs on 27.07.2020.

3. Relying on Clause 4 (xiii) (e) read with (g) of the General Terms and Conditions which states that bid life cycle is the period within which a buyer has to complete the entire life cycle i.e. technical evaluation, financial evaluation and order creation of bid process which is 90 days from the date of bid publication, which can be extended up to 120/150 or 180 days in exceptional cases, the petitioner has filed the present petition contending that since the tender process commenced on 28.01.2020, the life cycle of the bid expired on 26.07.2020 and since the contract has not yet been allotted to any entity, the entire tender process must be set aside. The petitioner has also challenged the Corrigendum dated 13.02.2020 contending that there was major deviation in the tender condition and such a major alteration, whereby the entire process of evaluation had been changed, could not have been permitted once the tender had been floated.

4. The writ petition came up for hearing on 30.07.2020. On the said date, Mr. Ramesh Singh, Standing Counsel (Civil) for the GNCTD, had stated that he had received a copy of the petition only on 29.07.2020 and had sought some time to take instructions. At his request, the matter was adjourned for today.

5. Mr. Rajiv Saxena, learned counsel for the petitioner argues that the life cycle of the bid had expired on 26.07.2020 and the said period cannot be extended under any circumstances. He further contends that the tender ought to have been awarded up to 26.07.2020 and since the respondents failed to do so, the entire tender has to be scrapped. He relies upon Clause 4 (xiii) (e) and (g) of the General Terms and Conditions to buttress his arguments.

6. *Per contra*, Mr. Ramesh Singh, learned Standing Counsel (Civil), GNCTD disputes the *locus standi* of the petitioner to maintain this writ petition on the ground that it did not even participate in the bid process at all. He further submits that on 19.05.2020, out of thirteen participants, five bidders had been identified who had given letters of confirmation to the respondents that they will supply the vehicles at the rate offered by L-1. He submits that after 19.05.2020, the respondents had initiated the process of issuing the letter of allotment and the said proposal had been forwarded to the Police Headquarter on 11.06.2020 who had in turn, forwarded the proposal to the Ministry of Home Affairs on 27.07.2020. He explains that the delay has occurred primarily due to the COVID-19 pandemic. He states that the grievance, if any, could have been raised only by the thirteen bidders and it is not open to the petitioner to challenge the tender process. Mr. Singh also contends that only the five bidders who had confirmed that they

will supply vehicles at the rate quoted by L-1, can have any grievance that they are being pegged down to the price offered by L-1 and any increase in price due to the delay in finalising the procedure, would act to their detriment. However, none of them have raised any grievance. Since the petitioner has not participated in the bidding process, it cannot maintain present petition which is not a public interest litigation.

7. The short question which arises for the consideration of this court is as to whether the entire tender process should be scrapped in the light of Clause 4 (xiii) (e) and (g) of the General Terms and Conditions. The said clauses are reproduced as under:-

> *"4.* ***Enabling provisions of Rule 149 of General Financial Rules – 2017***
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> *Enabling provisions of Rule 149 of General Financial Rules - 2017 as amended vide Ministry of Finance OM dated 02.04.2019 regarding procurement through GeM and necessary guidelines and terms and conditions thereon:*
> *GeM portal may be utilized by the Government buyers for on - line purchases as under:-*
>
> *xxxx*
>
> *xiii.* ***e - Bidding and Reverse Auction (RA) on GeM***
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> *xxxx*
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> *(e) Bid Life Cycle: Bid Life Cycle is the period within which a buyer has to complete the entire life cycle i.e. technical evaluation, financial evaluation and order creation of Bid process.* ***By default, it is 90 days from the date of Bid publication. This can be configured to 120 / 150 or 180 days in exceptional cases through catalogue Management System (CMS) for a particular product category (not for a particular Buyer or Bid).***
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> *xxxx*

(g) The Seller participating in the e-bidding / RA may offer any one of their product(s) already listed on GeM. ***The bid submitted under e-Bidding / RA shall remain valid for 15 days (or as stipulated by the Buyer in the bid document) from the Bid Opening Date (till 24.00 Hrs IST). Bid Validity can be further extended with mutual consent between Buyer and Seller subject to the condition that total Bid Life Cycle cannot go beyond the stipulated time limit as per GeM CMS.*** *The products offered in e-Bidding / RA can not be withdrawn by the Sellers from GeM during the bid validity period. The Buyer reserves the right to postpone/cancel the e-bidding and intimation thereof will be sent by e-mail / GeM to the Bidders. Any amendment / corrigendum to the e-bid invitation issued by the Buyer will be made online and shall be uploaded on the GeM. The participation by the Seller in e-bidding shall be construed as his / her acceptance for all the Terms and Conditions as outlined in the e-bidding including GTC, STC and ATC. However, the Buyer shall have right to decide the technical and commercial acceptability of the individual bids based on eligibility criteria and compliances as stipulated in the bid document. The technical parameters shown in the bid are from a particular catalogue as selected by the buyer while applying initial filters in selection of the product. The sellers are free to bid for same, equivalent or superior specifications catalogue / products. In the public interest, buyers will evaluate such bids based on their requirements / end use and bid parameters and will accordingly technically accept or reject the bids on merits." (emphasis added)*

8. The petitioner has not been able to demonstrate as to how the Corrigendum dated 13.02.2020 had affected its rights for the simple reason

that it has not even participated in the tender process. Having failed to participate in the bidding process, it does not have the *locus standi* to challenge the same.

9. Admittedly, there were 13 participants in the tender. On 19.05.2020, out of 13 bidders, 5 bidders were identified who had expressed their willingness to offer the vehicles at the price quoted by L-1. As stated above, the total quantity of 400 cars (350 Nos. Ertiga+50 Nos. Innova) are to be apportioned amongst 5 Venders in a particular ratio, i.e., L1 30%= Total 120 Nos. Cars i.e. 105 Nos. Ertiga +15 Nos. Innova, L-2 25%= Total 100 Nos. Cars i.e. 88 Nos. Ertiga +12 Nos. Innova, L-3 20%=Total 80 Nos. Cars i.e. 70 Nos. Ertiga+10 Nos. Innova, L-4 15%= Total 60 Nos. Cars i.e. 52 Nos. Ertiga +08 Nos. Innova, L-5 10%= Total 40 Nos. Cars i.e. 35 Nos. Ertiga+05 Nos. Innova. The process of the consideration of the bid was, therefore, over on 19.05.2020, when the five bidders had given their willingness to supply the vehicles in the above said ratio. Post 19.05.2020, what was left to be done was only the conclusion of the procedural formalities of getting permissions from various authorities.

10. We may note that Mr. Ramesh Singh, learned Standing Counsel (Civil), GNCTD, has very fairly pointed out that the entire process is to be approved by GeM which is the National Public Procurement Portal and unless the process is approved, the contract will not be entered into. Be that as it may, the issue is as to whether at this juncture, in exercise of the jurisdiction under Article 226 of the Constitution of India, the court should strike down the entire tender process as being violative of Clause 4 (xiii) (e) and (g) of the General Terms and Conditions, as quoted hereinabove.

11. We do not find any merit in the argument of learned counsel for the

petitioner that the entire Bid process be scrapped for the simple reason that the petitioner did not participate in the tender process. The delay in finalising the contract does not cause any prejudice to the petitioner when it did not participate in the tender process. As noted above, Mr. Ramesh Singh, learned Standing Counsel (Civil), GNCTD, has stated that in any event, the GeM portal, which is a Section 8 (Non-Profit) Company registered under the Companies Act, 2013 and operates, monitors and supervises all the business transactions on the portal, will examine as to whether the life cycle of the tender had lapsed or not. If appropriate clearance is declined by GeM, then the respondents will have no option but to scrap the tender. In that eventuality, the petitioner will also get an opportunity to participate in the fresh tender process, along with others.

12. For the aforesaid reason, we do not find any reason to entertain this petition, that too by a party who has not participated in the bidding process. The writ petition is dismissed *in limine* as unmerited along with the pending application.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 10, 2020
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