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W.P.A. 12351 of 2021

Thermo Fisher Scientific India Pvt. Ltd. & anr.
Vs.
Union of India & anr.

Mr. Jishnu Saha,
Mr. Suddhsatwa Banerjee,
Mr. S. Ganguli,
Mr. Somdutta Bhattacharyya,
Mr. Atarup Banerjee
... For the petitioners

Mr. Sahasrangshu Bhattacharjee,
Mr. Siddhartha Lahiri,
Ms. Amrita Pandey
... for respondent nos.1 and 2.

Mrs. Malabika Saha,
Mr. Gunjan Kumar Singh,
Mr. Subhankar Das
... for respondent no.3.

The writ petitioners participated in a Notice Inviting Tender (NIT) dated 8th May, 2021 issued by the Geological Survey of India (GSI) for supply of three Laser Ablation High Resolution (ICPMS) machines. The intending bidders were required to submit technical bids which were to be opened on 29th June, 2020 at 2 p.m. It is only thereafter that financial bid was to be opened.

In terms of the Clause 23 of NIT, demonstration was required to be offered of the make and model of the machine to be supplied for the each bidder within thirty days of such intimation failing which the technical bid would be disqualified.

By the communication dated 8th October, 2010, the writ petitioners were directed to arrange for actual

physical demonstration of the machine quoted and offers in its bid between 1st November, 2020 and 5th November, 2020 (i.e. within 30 days of the said letter).

By a further communication dated 25th December, 2020 it was recorded by the respondent-G.S.I. that the petitioners had given a demonstration with an available model which was not the one offered by the respondent in its technical bid.

The petitioners were however granted further time till 15th January, 2021 to give a practical demonstration of the make and model of the machine offered by them in their bid/tender.

By a communication dated 29th December, 2020, the writ petitioners requested the respondent authorities that more time until 30th January, 2021, for giving a virtual demonstration of the equipment. Admittedly, practical demonstration was not even offered.

The respondents in reply, by communication dated 5th January, 2021 extended the time to give practical demonstration until 20th January, 2021. This was not done by the petitioner. In fact there is no record of any readiness or willingness by the petitioner to give practical demonstration at any time thereafter.

Correspondence ensued made between the parties. In a minutes of meeting of the TEC dated 28th June, 2021 it was recorded that the private respondent no.3 had given a second practical demonstration whereas the

petitioners had not even offered a practical demonstration and were only willing to give a virtual demonstration.

In the facts and circumstances of the case, this Court is of the view that the writ petitioners were playing with the respondents in offering virtual demonstration repeatedly, when the respondents required a practical demonstration of the offered machine.

Hence, the respondents, G.S.I., cannot be faulted in rejecting the petitioners' technical bid/tender.

The argument made by the Counsel for the petitioner that the respondent-GSI waited until June, 2021 to take a final decision in the matter and it is disadvantageous to the GSI and unfair to the petitioners to have only one bidder left to compete for the contract, is not acceptable. The petitioner cannot be allowed to take advantage of its own wrong.

This Court sees that the petitioners have been deliberately misleading and blowing hot and cold with, the G.S.I. in offering only virtual demonstration of its machine as against the practical demonstration repeatedly asked for.

The writ petition must therefore fail and dismissed with costs assessed at Rs.25,000/- payable by the petitioners to the G.S.I. within 7 days, in default whereof, the G.S.I. would be at liberty to take appropriate steps to

recover the same from the petitioners in accordance with law.

(Rajasekhar Mantha, J.)