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

% **Date of decision : 07.01.2022**

+ **W.P.(C) 7849/2021** and C.M. No. 24402/2021

SHREE DURGA INDUSTRY & ANR. Petitioners

Through: Mr. Rajarshi Dutta, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with
Ms. Anubha Bhardwaj, Adv. for Resp./ UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J (ORAL)**

1. The present writ petition has been filed by the petitioner assailing the petitioner's technical disqualification in the tender process, in respect of RFP bearing No. A/59961/EC Net (Jute)/DGOS/OS-P1/Proc Sec dated 28th October, 2020, communicated to the petitioner vide communication dated 23.07.2021.
2. Briefly stating the facts giving rise to filing of the present writ petition are as under:-
3. Petitioner No.1 is a registered partnership firm and petitioner No.2 is the partner of petitioner No.1. Petitioner No.1 firm is registered with the respondent authorities as vendor for supply of various items vide



General Registration dated 09.04.2018, which has been renewed from time to time. The last registration of the petitioner was made vide Registration No. 677 dated 09.04.2018 for 71 items which was valid till 08.04.2021.

4. Respondent No.1 is Ministry of Defence and Respondent No.2 is Directorate General of Ordnance Services, and is part of Integrated Headquarters of Ministry of Defence, Ordnance Services (General Stores & Clothing) also known as (GS&C). Respondent No.2 issued the aforesaid Request for Proposal (RFP) dated 28.10.2020, for procurement of certain goods, namely, EC NET (Jute) 16x11M Large Mesh 75 mm Square (hereinafter referred to as ‘the goods’).

5. The RFP was divided into 5 parts, which read as follows:-

“Part-I Contains General Information and Instructions for the Bidders about the RFP such as the time, place of submission and opening of tenders, Validity period of tenders, etc.

Part-II Contains essential details of the items/services, required, such as the Schedule of Requirements (SOR), Technical Specifications, Delivery Period, Mode of Delivery and Consignee details.

Part-III Contains Standard Conditions of RFP, which will form part of the Contract with the successful bidder.

Part-IV Contains Special Conditions applicable to this RFP and which will also form part of the contract with the successful bidder.

Part-V Contains Evaluation Criteria and Format for price bids.”



6. The critical dates with regard to the tender process were as under:-

“1. Critical Dates The critical dates with respect to the tender No. A/59961/EC Net (Jute)/DGOS/OS-PI/Proc Sec are as follows: -

CRITICAL DATE SHEET

<i>Sl. No.</i>	<i>Item</i>	<i>Date</i>	<i>Time</i>
<i>(a)</i>	<i>Published Date</i>	<i>28.10.2020</i>	<i>1700 hrs.</i>
<i>(b)</i>	<i>Bid Document Download</i>	<i>28.10.2020</i>	<i>1700 hrs.</i>
<i>(c)</i>	<i>Clarification Start Date</i>	<i>28.10.2020</i>	<i>1700 hrs.</i>
<i>(d)</i>	<i>Pre bid meeting</i>	<i>NA</i>	<i>NA</i>
<i>(e)</i>	<i>Bid Submission Start</i>	<i>28.10.2020</i>	<i>1700 hrs.</i>
<i>(f)</i>	<i>Clarification End Date</i>	<i>12.11.2020</i>	<i>1000 hrs.</i>
<i>(g)</i>	<i>Bid Submission End</i>	<i>01.12.2020</i>	<i>1230 hrs.</i>
<i>(h)</i>	<i>Bid Opening Start</i>	<i>02.12.2020</i>	<i>1230 hrs.</i>

7. The petitioner being desirous of submitting its proposal against the said RFP, submitted its bid along with all the documents and information within the timeline prescribed above. The technical bid was submitted by the petitioner on 29.11.2020 within the bid end date under the RFP, and was duly accepted by the respondent on 12.01.2021.
8. The petitioner firm received a communication that the Technical Evaluation Committee (TEC), during evaluation of technical bid of the petitioner, found that certain documents were not submitted. The petitioner was required to submit the said missing documents by 22.01.2021. The petitioner, on receiving the communication dated 12.01.2021, submitted the required documents by 20.01.2021. In the said letter, the petitioner also informed that the registration of petitioner No.1 shall expire on 08.04.2021, and a renewal application with increased production capacity has already been applied for. The



petitioner stated that the same would duly be produced on the petitioner receiving it from the appropriate authority.

9. On 01.03.2021, the petitioner applied for Supplier's Assessment for (ECNET Sand Bag & Twine Jute) Registration, and Renewal of MPC with additional items with the Senior Quality Assurance Officer, SQA (GS), Hastings, Kolkata- 700072.
10. On 23.07.2021, the petitioner received an electronic mail, communication informing that the petitioner's bid has been rejected for the reasons "RFP non-compliant". The petitioner vide letter dated 27.07.2021 registered its protest against the unilateral rejection, and asked the respondent authorities to provide details for the petitioner being declared non-compliant. Since no reasons were given, the petitioner has filed the present writ petition.
11. When the matter came up on 05.08.2021 before this Court, we expressed our disapproval of the absence of any reason for the rejection of the petitioner's bid in the aforesaid communication, and observed as under:-

"3. The petitioners are aggrieved by the rejection of the petitioner's Technical Bid submitted in response to Tender ID 2020_ARMY_390723_2 dated 23.07.2021. A perusal of the rejection order shows that the petitioners have not been communicated any reasons whatsoever on which the petitioners' tender was found to be non-compliant.

4. We have found this to be the trend in several tenders issued by the Government and its instrumentalities. This modus-operandi adopted by the Government and its instrumentalities is wholly incorrect and we disapprove of the same. In times when more and more transparency is being professed with a view to



keep arbitrariness, corruption and favouritism at bay, we are sorry to state that the Government and its instrumentalities are being coy in disclosing the reasons for which a bidder is disqualified. Apparently, this is being done to ward off challenge to its disqualification by the bidder. However, what is not being appreciated is that lack of communication itself leads to doubts arising in the mind of the bidder, and initiation of litigation by him to assail his disqualification. However, if reasons for disqualification were to be communicated at the earliest, it is likely that the disqualified bidder may accept the same and not assail the same in a Court of law. Even if assailed, the Court – when it hears the matter at the preliminary stage would have, before it, the reasons for disqualification/ rejection of the bid of the petitioner/ bidder, and the Court may either not find merit in the challenge, or may not interfere with the bidding process.

5. Thus, we are of the view that the Tender Inviting Authority should invariably, while rejecting the bid of a bidder on technical grounds, communicate the grounds on which the Technical Bid has been rejected/ non-compliant. If the same is done, it would save the bidder the harassment of having to approach the Court only to find out the reasons of the rejection of the Technical Bid, and would also save time of this Court. It would also reduce the obstruction with the bidding process, which results on account of the interim orders that the Court passes, to prevent presenting a fait accompli to the petitioners qua the tendering process.

6. During the hearing, Mr. Bhardwaj – who appears for the respondents on advance notice, has been trying to provide all kinds of justification for rejection of the petitioners' Technical Bid but there is nothing before us today to deal with his submissions.

7. We, therefore, direct the respondents to file their counter-



affidavit disclosing the reasons for rejection of the petitioners' bid. The counter affidavit be filed within two weeks, as prayed for. The respondents shall also place on record the complete file notings showing the evaluation of the petitioners' bid by the Technical Evaluation Committee, till their bid was rejected. Rejoinder thereto, if any, be filed within a week thereafter.

8. *List on 01.09.2021. No further adjournment shall be granted on the next date.*

9. *We are informed that the Financial Bids have been opened but the contract has not yet been awarded. Till the next date, the respondents shall not award the contract in question."*

12. However, on 01.09.2021 we modified the interim order as under:-

"Since the petitioner, admittedly, would not be the L-1 Bidder, the interim order dated 05.08.2021 is modified to the extent that the respondents shall be free to proceed to operate the contract with the L-1 Bidder. However, they shall not indulge in any commercial activity with the L-2 Bidder – as presently declared."

13. The respondents filed their counter affidavit on 31.08.2021 to which the petitioners also filed their rejoinder, but since the same were not on record, no effective hearing could be held on 01.09.2021 and 06.12.2021. We have now heard learned counsels and proceed to dispose off this petition.

14. The reasons disclosed by the Respondents for the disqualification of the Petitioner is disclosed in the following terms:-

"On scrutiny of documents, it was noticed that validity of CQA Registration in respect of the Petitioner was only valid upto 08 Apr 2021. Accordingly, this office took the initiative & advised the Petitioner vide letter dated 23 Feb 2021 to forward renewed registration/new registration certificate in time as Registration is



required to be valid while placement of Supply Order (SO).

As per Para 11.1, 11.2 & 4.4 of JSG 015: 2018, registration status of manufacturers who do not apply for renewal prior to expiration of their original registration validity, will be deemed lapsed. Renewal of registration is carried out on the basis of manufacturer's declaration. All renewal cases must be presented to AHSP/Registration Authority by the Manufacturer 90 days in advance but not less than 60 days prior to the expiry of previous registration. If request for renewal by the firm is not submitted as stated above, the name of manufacturers will be removed from the compendium of registered manufacturers and no requests/representation from the manufacturer(s) will be entertained thereafter. Further, no show cause is required to be issued to the manufacturers in such cases.

The petitioner approached SQAE (GS) Kolkata vide letter dated 01 Mar 2021 for renewal of registration No 677 dated 09 Apr 2018.

CQA (T&C) Kanpur confirmed vide letter dated 04 Mar 2021 that the Petitioner had submitted documents on 01 Mar 2021 & that since the firm failed to submit the documents 60 days prior to the date of expiry of the validity of registration certificate i.e. 08 Apr 2021, and that the case was being taken for general registration & the documents were under scrutiny at SQAE (GS), Kolkata.

Second TEC (Stage-I) Meeting was held on 22 Mar 2021, wherein the Petitioner was provisionally declared as RFP Compliant since registration was valid during opening of bids & firm had already applied for registration. However, it was also recommended that CQA (T&C) be approached once again to confirm renewal / general registration of the Petitioner since it was about to expire. Second TEC (Stage-II) meeting was to be conducted after receipt of confirmation from CQA (T&C).

This office repeatedly approached CQA (T&C) vide letter dated 05 Apr 2021, 17 May 2021, 07 Jun 2021 and 15 Jun 2021 to confirm the renewal/general registration of the petitioner's firm, since case was getting delayed.



CQA (T&C) vide letter dated 24 May 2021 intimated that the CV of M/s Shree Durga Industry against general registration is under process. CQA (T&C) vide letter dated 03 Jun 2021 intimated that the firm had not submitted CV documents by due date (i.e. 02 Dec 2020) against the subject tender. However, firm later submitted application on 22 Feb 2021 to SQAE (GS) Kolkata for inclusion of additional goods including subject goods against General registration certificate No 618 dated 04 Sep 2020 which was valid upto 28 Sep 2023 and that their CV was closed. CQA (T&C) vide letter dated 15 Jun 2021 again intimated that the CV case of the Petitioner against general registration is closed vide letter dated 03 Jun 2021, due to non submission of deficient documents in stipulated time period.

Second TEC (Stage-II) Meeting was held on 24 Jun 2021, wherein Representative of Directorate General of Quality Assurance (DGQA) recommended that the status of RFP compliance be held in abeyance till advice received from HQ DGQA (Stores) for confirmation regarding registration of the Petitioner.

CQA (T&C) Vide letter dated 28 Jun 2021 again intimated that case of CV against General Registration of the Petitioner's firm has been closed on 03 Jun 2021. Also, that the Petitioner vide their letter dated 28 Jun 2021 had again applied for General Registration stating that the Covid-19 pandemic has created hindrance and blocked their ways to fulfil the requirements in stipulated time. CQA (T&C) also intimated that fresh application of the Petitioner was taken into consideration against General Registration and the same was under process.

However, HQ DGQA vide email dated 29 Jun 2021 had confirmed that as on date Petitioner's firm was not registered and therefore, the Petitioner be considered as CV Non Compliant.

Second TEC (Stage-III) Meeting was held on 09 Jul 2021, wherein it was recommended that the Petitioner's firm be declared "RFP Non Compliant" as per advice of DGQA representative who stated that requisite documents were not submitted by the Petitioner in time. Five other firms were also



declared RFP Non Compliant due to various reasons. However, only four other firms were found compliant in all levels.

After approval was received from Competent Financial Authority (CPA) on Second TEC (Stage-III) Meeting minutes, the result was uploaded & Commercial Bids of four compliant firms was opened on 23 Jul 2021 on Defence Procurement Portal.”

15. The submission of the learned counsel for the petitioner is that the petitioner had duly applied for the registration, and it was for the respondent to grant that registration. The respondent delayed issuance of registration to the petitioner, and now – for the same reason, have rejected the technical bid of the petitioner. The submission is that the Petitioner cannot be made to suffer for the aforesaid omission on the part of the Respondent.
16. Learned counsel for the petitioner has further submitted that the petitioner was only required to apply for the registration and submit the required documents, which he so did on 20.01.2021. Granting of registration certificate was not in petitioner's hand, and, therefore, there was nothing more which the petitioner could have done. It is the submission of the learned counsel for the petitioner that the bid of the petitioner was rejected only 10 days prior to the grant of the registration certificate. The Petitioner now has the registration, which is effective from 10.08.2021 to 09.08.2024. Hence, the entire conduct of the respondent smacks of *mala fides*, favouratism and bias.
17. We have heard learned counsel for the parties and gone through the records.
18. Para 11.1, 11.2 & 4.4 of JSG 015: 2018 (4th revision supersedes JSG015-03:2007), according to which the petitioner was required to



have registration certificate, reads as under:-

“4.4 Renewal of Registration

Renewal of registration will be carried out on self-declaration basis by the firm stating that there is no change in the manufacturing capacity and other administrative and technical Parameters against which it was previously registered. Documents should reach AHSP 90 days in advance but not less than 60 days before expiry along with Registration Certificate (Appendix ‘F’ refers). All manufacturers who have submitted renewal documents within above mentioned time will be deemed to be registered till renewal action is completed.

11.1 Registration status of manufacturers who do not apply for renewal prior to expiration of their original registration validity will be deemed lapsed. Renewal of registration is carried out on the basis of manufacturer’s declaration as stated in Para 4.4. All renewal cases must be presented to AHSP/ Registration Authority by the manufacturer 90 days in advance but not less than 60 days prior to the expiry of previous registration.

11.2 If request for renewal by the firm is not submitted as stated above, the name of manufacturers will be removed from the compendium of registered manufacturers and no requests/ representation from the manufacturer(s) will be entertained thereafter. Further, no show cause is required to be issued to the manufacturers in such cases.” (emphasis supplied)

19. As is clear from the above, the onus was on the Petitioner to get the registration certificate renewed. The Petitioner’s Registration certificate lapsed on 08.04.2021, and it was the Petitioner who failed to submit the Renewal documents, at least 60 days prior to expiry of validity of Registration Certificate i.e., on or before 07.02.2021. The Petitioner applied for fresh General Registration, only on 01.03.2021. There was, admittedly, no application made for renewal of registration prior to this



date, as petitioner himself, in his supplementary affidavit, has stated:

“a. 01.03.2021: The Petitioner No.1 applied for renewal of its Registration Certificate being No.677 dated 09.04.2018...”

20. Even when the Petitioner applied for renewal of registration, he failed to submit the requisite documents. The Ministry of Defence, vide letter dated 09.04.2021 informed the petitioner that there were deficiencies/ shortcomings in the documentation filed by the Petitioner, which reads as follows:

“Tele: 2223-0520/0610

Fax: 033-2223-0862

Email: sqaegskol-dgqa@nic.in

Govt. of India, Min. of Defence (DGQA)

Senior Quality Assurance Estt (GS)

Hastings, Kolkata – 700 022

B/107/17/TC/05

09 Apr. 2021

M/s Shree Durga Industry,

4, Tottee Lane, Flat No. 5B,

5th Floor, Kolkata-700016

Email: sethigoldi64@gmail.com

REGISTRATION OF YOUR FIRM

1. *Ref: Your letter No.SD/2020-21/011 dated 01 Mar. 2021.*
2. *Capacity verification documents for Gen Registration submitted by you have been scrutinized by higher authority and **the following deficiencies/shortcomings are observed:-***
 - a) NCAGE certificate is not submitted.*
 - b) Proof of registration of partnership deed is not submitted*
 - c) Copy of factory license is not submitted*
 - d) Instead of latest electricity bill, firm has submitted “Notice of Disconnection”*
 - e) Annual turnover of last three years in CA certificate is not matching with the values in balance sheet.*
 - f) CA certificate, wherever the firm is sick unit or not is not submitted.*
 - g) Authorization certificate of authorized signatory does not possess any adate.*
 - h) Proof in r/o manufacturing of item in last two years is not submitted.*



- i) Procees flow chart indicating the detailed step by step manufacturing of store depicting the involvement of M/c and No. skilled manpower, is not given item-wise separately.*
 - j) Monthly production capacity along with method followed for calculation of MPC is not given separately for all items.*
 - k) Source of raw material purchase agreement of items (from Sr. No 1 to 56), is not given*
 - l) Moisture metre required as per to existing norms is not submitted by firm*
 - m) Plateform type weighing machine is not submitted by the firm, same is required as per norms.*
 - o) Declaration for procurement of Jute raw material is not found attached.*
3. *You are therefore, requested to submit above deficient documents/ clarification in duplicate duly stamped and signed by authorised signatory latest by 23 Apr 2021 to further process your case.*

(DK Pujari)
SSO-I
For SQAQ

Copy to :
The Controller
CQA (T&C)
Kanpur-208004

For information please” (emphasis supplied)

21. The above communication shows that the Petitioner not only made the application, highly belatedly, but very casually, as a large number of documents were not filed with the application. Due to the deficiencies in the documentation submitted by the Petitioner, the issuance of registration certificate was delayed. The delay cannot be attributed to the respondents. It was the petitioner who was lackadaisical and negligent in making and pursuing its application for renewal of registration certificate. Thus, it is amply clear that the Petitioner is now blaming Respondent for its own mistakes.
22. The contention of the Petitioners that the application for renewal was



submitted on 01.03.2021, and thus should be considered as valid registration on the date of opening of tender is misconstrued. The petitioner was guilty of applying late and that too with incomplete documentation. As per combined reading of rules reproduced by us above, the petitioner should have applied for renewal of registration certificate at least 60 days before expiry of the Registration certificate, to be able to claim the benefit of continuity, which he failed to do.

23. It is an admitted fact that the petitioner did not have the valid registration certificate before the bid finalisation. It was for the petitioner to have the requisite documents in his power and possession at the time of submitting tender bids, which admittedly, the petitioner did not have. Respondent, in fact, time and again informed the petitioner regarding its short comings.
24. The respondent has been more than indulgent towards the petitioner. Vide letter dated 12.01.2021, the respondent granted time to the Petitioner to submit deficient document upto 22.01.2021. The Respondent vide letter dated 23.02.2021 advised the petitioner to forward the renewed registration certificate in time. The respondent has, thus, given approximately 120 days' time to the petitioner to obtain that registration certificate. However, the petitioner did not produce the valid/ renewed registration certificate on the date the tender was evaluated, and despite repeated letters and opportunities given by the respondent, the petitioner was unable to submit the same. Thus, it is clear that there was no malafide/ bias against the said Petitioner. In fact, the conduct of the Respondent was lenient in granting approx. 120 days to the Petitioner for supplying Renewal/General Registration of the



Petitioner's firm.

25. In view of the above, entertaining and allowing this Writ petition would tantamount to altering the terms of the tender. Most importantly, it will amount to Petitioner reaping rewards for its own complacency. Others, who did not participate due to their not having valid registrations for the entire relevant period, would stand discriminated if this relaxation is given to the Petitioner.
26. In ***W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451***, the Supreme Court emphasised on maintaining sanctity and integrity of process of tender/bid and also award of a contract and observed “.....adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our Constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules.”
27. Further, it is a well settled rule of administrative law that an executive



authority must be rigorously held to the standards by which it professes its actions to be judged, and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. The Supreme Court in ***Ramana Dayaram Shetty v. The International Airport Authority of India & Ors., (1979) 3 SCC 489***, applying this rule held that:

“Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Seton(l) where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall



perish with the sword.”

28. For the reasons as above, we find no merit in the writ petition and the same is dismissed.

JASMEET SINGH, J

VIPIN SANGHI, J

JANUARY 07, 2022/ ‘ms’