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

Date of Decision: 25th September, 2023

\+ **W.P.(C) 12654/2023 & CM APPL. 49890/2023, CM APPL. 49891/2023**

NEW BHARAT OFFSET PRINTERS & ORS. ..... Petitioners

Through: Ms. Neha Kapoor and Mr. Kaushal Mehta, Advocates.

versus

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING (NCERT) ..... Respondent

Through: Mr. Ashok Kumar and Ms. Chhavi Arora, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioners, operating printing presses across various locations throughout India, are registered as Micro, Small, and Medium Enterprises ("**MSMEs**"). Over the past several years, they have engaged in contractual work, specifically, printing books for the Respondent, National Council of Educational Research and Training ("**NCERT**"). Collectively, they have established an association known as the N.C.R.T. Printers Association (hereinafter "**the Association**"). The crux of their grievance emanates from

the tender dated 31st August 2023 issued by NCERT,[1] which, precludes them from participating therein due to vintage of the printing presses they own.

FACTUAL BACKGROUND SET OUT BY PETITIONERS

2. To elucidate the perceived irrationality and arbitrariness inherent in the stipulations of the impugned tender, the Petitioners delve into historical context. They emphasize that until the year 2017, the NCERT had not incorporated any condition pertaining to the model year of printing machines as a mandatory eligibility criterion within its tenders. It was only in 2017 that such a criterion was introduced by NCERT, mandating that the printing machines be of a make no earlier than the year 1990. This stipulation compelled numerous printers to import machines from Germany and Japan, necessitating loans secured against substantial collateral, inclusive of personal properties, to cover the acquisition costs—which escalated into crores of rupees. They procured machines dating from the year 1990 or later, under the legitimate and reasonable expectation that these machines would yield returns on their investments for at least one or two decades, given that the model year condition was being introduced for the very first time.

3. However, much to their dismay, in 2021, NCERT issued another tender introducing once again a criterion concerning the year of manufacturing for the printing machines, stipulating that the machines should date from the year 1995 or later. At this juncture, the Petitioners,

[1] E-Tender Reference No.F.16-01/2023PUB(PW) – for Empanelment of Offset Printers and Formulation of Schedule of Rates for Offset Printing and Allied Services for 2023.

along with other members of the Association, being aggrieved by the said condition, submitted a representation to NCERT. Fortunately, this representation resonated with them, culminating in the issuance of a corrigendum, which allowed the awarded contractor to operate machines dating from the year 1990 for the initial two years of the contract, thereby affording them with a grace period to upgrade to machines of the model year 1995 or later.

4. On 31st August 2023, NCERT issued the impugned tender notification, which revised the eligibility criteria to stipulate that the printing machines must mandatorily be of the year 2000 or later. Petitioners contend that the said condition overlooks the fact that the criterion for a model year of 1990 was introduced as recently as 2017. It also fails to account for the economic setbacks triggered by the COVID-19 pandemic, emphasizing that the printing industry had faced a lull in business for the preceding two years. Thus, adhering to such criteria would pose a substantial challenge for the printers, particularly those categorized as MSMEs.

5. The Petitioners also expressed grievances regarding other conditions in the impugned tender, including the enhancement of the required bank guarantee from 25% in the year 2017 to 50% of the value of the paper supplied by NCERT to the printer. During a pre-bid meeting convened on 11th September 2023 for the tender in-question, the Petitioners, representing the Association, articulated requests for the retraction of stipulations concerning the model year of the printing machines, enhanced bank guarantee amount and EPF requirements. However, the requests proved to be fruitless.

6. In light of the aforementioned circumstances, Ms. Neha Kapoor, the

Counsel representing the Petitioners, invokes Article 14 and 19(1)(g) of the Constitution of India, 1950 contending that the introduction of a mandatory condition stipulating the model year of printing machines as 2000 or newer, is arbitrary. She further asserts that this specified model-year requirement is intrinsically discriminatory, as it fails to provide a level playing field to all printers. This condition, she argues, predominantly favours established printing enterprises/ large-scale printing enterprises and egregiously denies the Petitioners, and other small-scale printers, an equitable opportunity to compete. Ms. Kapoor further underscores that the Respondent, NCERT, has turned a blind eye to the financial commitments that the Petitioners had to undertake to procure the previously stipulated printing machines. The swift transition to a newer model-year requirement leaves the Petitioners in a precarious position, unable to replace their machines within a limited timeframe, hence rendering them ineligible under the said tender condition. NCERT's oversight also extends to the exorbitant costs associated with acquiring newer machines, which would inadvertently inflate the printing costs, thereby inflicting substantial financial strain on the contractors. Ms. Kapoor highlights the dichotomy in NCERT's policy, wherein on one side, it endeavours to curtail paper requisition costs, while on the flip side, it mandates the use of newer machines, which would inevitably augment the cost of printing. Moreover, Ms. Kapoor articulates that NCERT has not proffered any rationale for specifically selecting the model year 2000, insinuating that this stipulation appears to be calibrated to favour a narrow segment of printers. Furthermore, she points out that NCERT has overlooked the fact that a staggering 95% of the tender applicants are categorized as MSMEs, who, given the stringent tender conditions, would find it nearly impossible to secure loans for procuring the requisite machines. This harsh reality threatens to disenfranchise them from the tendering process, thereby depriving them of a fair and equitable opportunity to participate.

ANALYSIS AND FINDINGS

7. Having meticulously examined the factual matrix and the aforementioned contentions advanced by Ms. Kapoor, we remain unpersuaded.

8. The tender stipulations were delineated by NCERT to fulfill their specific requirements. The preference for bidders possessing printing machines from the year 2000 onwards reflects NCERT's aspiration to engage with participants equipped with more contemporary machines. By stipulating the manufacturing year of the printing machines, NCERT aims to ensure a standard of compliance and competence among the bidders. Ordinarily, a more recent manufacturing year would imply superior technology, greater efficiency, and enhanced compliance with contemporary standards of environmental conservation and safety. Therefore, it falls within the legitimate prerogative of NCERT to mandate a specific manufacturing year as a criterion for eligibility.

9. Furthermore, the impugned tender conditions do not appear to be arbitrary or whimsical. They bear a rational nexus to the objective sought to be achieved – which is to ensure the production of high-quality printed materials. This Court recognizes the importance of adhering to modern standards of printing which not only enhance the quality of the output but also ensure efficiency and timeliness of the process. This, in turn, aligns

with the broader objective of ensuring that educational materials are produced and distributed as per requisite standards, thereby serving public interest.

10. The contention of the Petitioners regarding the economic burden imposed by the impugned tender condition is acknowledged. However, it is imperative to balance the economic interests of individual bidders against the larger objective of achieving superior quality and efficiency in the printing of educational materials. The tender conditions, in specifying the manufacturing year of the printing machines, strive to attain a benchmark of quality which is deemed necessary by NCERT.

11. Moreover, the representation for removal of certain conditions made by the Petitioners during the pre-bid meeting was noted, but the decision to retain the impugned tender condition was presumably made after due deliberation. It is not within the purview of this Court to dictate the specific conditions under which a tender should be floated unless said conditions are proven to be in blatant disregard of the law or established principles of fairness and equality. The Petitioners have not substantiated how the impugned tender conditions are unreasonable or discriminatory to an extent that necessitates judicial intervention.

12. It is well-established jurisprudence that Courts ordinarily do not intervene in matters concerning tender contracts. The authority responsible for issuing the tender is, more often than not, best placed to determine its prerequisites and requirements. They have the right to delineate certain standards to ensure the competence and capability of potential contractors. Thus, the court's role in reviewing tender conditions is typically circumscribed, intervening only when there are manifest signs of

arbitrariness, glaring irrationality, or gross perversity. Adhering to these principles, we opine that the impugned tender condition, which stipulates the requirements of manufacturing year of the printing machines, are not intrinsically flawed. On the contrary, such conditions may serve the interest of efficacy and reliability, thereby justifying their imposition.

13. For the foregoing reasons, there is no ground or reason to entertain the present petition.

14. Dismissed, along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 25, 2023
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