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jdt. **31.01.2024**
jb.

W.P.A. 726 of 2024
(Shri Manjee Yadav vs. Union of India & Ors.)

Mr. Saptarshi Roy
Ms. Kakali Das Chakraborty
... For the Petitioner
Mr. Prabir Bhowmick
Ms. Smita Das De
Ms. Sangita Das
... For the Union of India

Heard learned counsels for the parties.

The disqualification notice issued by the respondents on 6th September, 2023 is impugned in the present writ petition.

It is contended on behalf of the petitioner that the petitioner was declared as the highest bidder in a tender notification for leasing of 3.9 tonne FSLR-I of 13021 Ex Howrah to Raxul. The respondent authorities served a notice of disqualification of the bid upon the petitioner on the ground that the petitioner failed to upload the profit and loss account which would tantamount to negligence in bidding procedure. Earnest money deposited by the petitioner was also forfeited by the authority.

Learned counsel for the petitioner submits that the petitioner uploaded all the required documents including the profit and loss account for the year ended 31st March, 2021 after which the bid was registered in terms of clause 1.4 of the Freight Marketing Circular no. 11 of 2022. However, the petitioner is unable to substantiate that the profit and loss account was uploaded by him. The petitioner seeks refund of the earnest money since no false or invalid document was found to be uploaded by him.

Per contra, learned counsel for the respondents submits that though the petitioner declared his annual turn over to be Rs.64,32,450/-, the supporting document uploaded by him was to the tune of Rs.23,64,018/- whereas the turn over requirement for the specific bid was Rs.50,00,000/-. Also, since the petitioner declared his annual turn over to be Rs.64,32,450/- whereas the balance sheet uploaded by him showed annual turn over Rs.23,64,018/- , the petitioner can be said to have practised fraud upon the authority by misleading it in submitting false/invalid documents. As the documents submitted by the petitioner do not specify the minimum turn over value required for the bid, the bid was rejected and the earnest money forfeited.

Clause 1.2 of the Freight Marketing Circular no. 11 of 2022 is required to be set out since both the parties have placed reliance on the conditions laid down therein.

> "1.2 The entity shall be required to upload the Audited Balance Sheets and P & L Account Statements of the last three Financial Years in their

> profile in IREPS before start of bidding in the auction in which they want to participate. Railways shall verify the Audited Balance Sheet and P & L Account Statement uploaded in the profile in IREPS of the successful contractors anytime after acceptance of the bid or during the currency of contract, and if the information about the Financial Eligibility is found to be false/misleading, or the documents uploaded by the firm are found to be false/invalid, then the allotment of lot shall be cancelled or, if the contract has been issued, the same shall be terminated forfeiting the EMD/Security Deposit without any further notice."

The said clause demonstrates that upon verification of the documents uploaded by the petitioner if it is found that information of the financial eligibility is false/misleading or documents uploaded are false/invalid then allotment of lot shall be cancelled and the earnest money forfeited. The order of disqualification of bid states that since the petitioner failed to upload a valid document viz. P & L accounts which tantamounts to negligence in bidding procedure, the bid was cancelled and earnest money forfeited. In the report in the form of affidavit submitted subsequently, the respondents have taken a different stand that the petitioner did not upload the profit and loss account with his bid. Strangely, though the respondents have cancelled the bid due to failure of the petitioner to upload the P & L account statement, they have subsequently stated that the supporting documents uploaded by the petitioner did not comply with the turnover requirements for the bid, meaning thereby, that supporting documents were in fact uploaded by the petitioner. The P & L account statement of the petitioner demonstrates that the turnover was in excess of the requirement of the bid. It is not the case of the authority that the information about the annual turn over given by the petitioner was false/misleading or the documents uploaded by him were found to be false/invalid, thereby calling for a punitive action against the petitioner. The only ground for cancellation of bid, as recorded by the authority is negligence in bidding procedure. Therefore Clause 1.2 of the Freight Marketing Circular 11 of 2022 is not applicable in so far as the bid submitted by the petitioner is concerned. Even if it is held that the profit and loss account statement was not uploaded by the petitioner along with the bid, the same does not call for any punitive action by the authority including forfeiture of the earnest money in terms of Clause 1.2 of the Circular.

In view of the above, this Court is inclined to hold that the petitioner is entitled to refund of the earnest money to the tune of Rs.7,76,738/- deposited by him from the authority due to cancellation of bid.

The writ petition is accordingly allowed.

The concerned authority being 4th respondent herein, is directed to refund the earnest money deposited by the petitioner to the tune of Rs.7,76,738/- within four weeks from date.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)