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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **W.P.(C) 787/2024, CM APPL. 3396/2024 & CM APPL. 3397/2024**
SHIVA INDUSTRIES Petitioner

Through: Mr. Rakesh Tikku, Sr. Advocate with
 Mr. Ashesh Lal and Mr. Raghav
 Parwatiyar and Mr. Abhinav Anand,
 Advocates.

versus

UNION OF INDIA MINISTRY OF DEFENCE & ORS.

..... Respondents
 Through: Ms. Shiva Lakshmi, CGSC with Mr.
 Vishal Singh and Mr. Madhav Bajaj,
 Advocates.

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Date of Decision: 23rd January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

CM APPL. 3396/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 787/2024

1. The present petition has been filed under Article 226 of the Constitution of India challenging the tender conditions imposed by Respondent No. 2 i.e., Command Logistics Management Officer in RFP No. 23-24/HQ MC/2023/OTE/01 ('Request For Proposal' or 'RFP') dated 29th September, 2023.



1.1. The Petitioner seeks a direction for relaxation of the requirement of past performance and turnover in view of the fact that the Petitioner is an Micro and Small Enterprises ('MSEs') and for this purpose, places reliance on the policy circular No. 1 (2) (1)/2016-MA, dated 10th March, 2016 ('policy circular') issued by Respondent No. 3 i.e., Secretary of Government of India, Ministry of Micro & Small Medium Enterprises. The Petitioner more specifically impugns the order dated 11th January, 2024 passed by Respondent No. 2 rejecting the Petitioner's representation dated 30th December, 2023 seeking implementation of the aforesaid circular policy circular.

2. Learned Senior counsel for the Petitioner states that Respondent No.2's RFP inviting bids for the subject tender expressly acknowledges the mandate of the policy circular.

2.1 He states that in view of the said circular, the Petitioner herein being a MSE is entitled to relaxation of the criteria of prior experience and turn over by Respondent No. 2.

2.2 He states that the non-consideration of the Petitioner's bid is in violation of the policy circular as well as paragraph 7 of Respondent No. 2's RFP.

2.3 He states that in the impugned letter dated 11th January, 2024, Respondent No. 2 has failed to deliberate upon the effect of the policy circular as recorded in its own RFP.

2.4 He states that the Petitioner herein is a MSE but not a Startup and this distinction has not been appreciated by Respondent No. 2. He states that the reliance placed by Respondent No. 2 on the office memorandum dated 20th September, 2016 issued by Ministry of Finance is in applicable to the



Petitioner herein as it is not a Startup.

3. Learned counsel for Respondent No. 2 i.e., Command Logistics Management Officer, states that the discretion to grant relaxation in certain eligible conditions to a MSE has been specifically reserved by the tendering authority in the RFP.

3.1 She states that in view of the fact that items, which are subject matter of procurement in the subject tender are of critical nature, the tendering authority has resolved that no relaxation on the eligibility condition of past experience or turn over can be extended to any bidder.

3.2 She states the decision to not grant relaxation to the Petitioner is in exercise of discretion reserved to the tendering authority under the policy circular dated 20th March, 2016 issued by Ministry of Finance.

3.3 She states that notwithstanding the aforesaid submissions on merits, the Respondents also have an objection to the maintainability of the present writ petition on account of lack of territorial jurisdiction.

3.4 She states that in addition to the fact that the tender was issued at Nagpur and bids were invited at Nagpur; as per clause 24 (c) of the special conditions applicable to this RFP, the Courts at Nagpur will have exclusive jurisdiction.

4. In response, learned senior counsel for the Petitioner states that he admits that the tendering authority is located at Nagpur and the RFP was also issued at Nagpur. He states that he does not dispute the binding nature of Clause 24(c) relied upon by the Respondents. He states that the jurisdiction of this Court has been invoked as the Petitioner is seeking a direction to Respondent No. 2 for compliance of the policy circular issued by Respondent No. 3.



Analysis and Finding

5. This Court has considered the submissions of the learned counsels for the parties and perused the record.

6. Pertinently, in the writ petition, there is no paragraph, pleading, facts for invoking the territorial jurisdiction of the Courts at Delhi.

6.1 The subject matter of the writ petition is the alleged violation of RFP issued by Respondent No. 2 at Nagpur and the decision dated 11th January, 2024 issued by Respondent No. 2 rejecting the representation of the Petitioner. Respondent No. 2 is located at Nagpur. The enforcement of the policy circular issued by Respondent No. 3 is sought by the Petitioner at Nagpur. All correspondence, between Petitioner and Respondent No. 2 has been made at Nagpur.

6.2 The Supreme Court in *Kusum Ingots & Alloys Ltd. v. Union of India*¹ has categorically held that situs of the office of the Ministry (Respondent No.3 in present case), which issues the executive instruction does not confer jurisdiction upon the Court. In the same judgment, the Supreme Court held that even if a small part of the cause of action arises within the territorial jurisdiction of the High Court, the same by itself cannot be determinative factor compelling the High Court to decide the matter on merits; in view of the doctrine of forum conveniens. The said doctrine has also been deliberated upon and settled by the Full Bench of this Court in *Sterling Agro Industries Ltd. v. Union of India & Ors.*²

7. We are therefore, of the considered opinion that the present petition is not maintainable on account of doctrine of forum conveniens as the material

¹ (2004) 6 SCC 254.

² 2011 (124) DRJ 633 (FB)



part of the cause of action has arisen at Nagpur. The present petition along with pending applications stands dismissed, reserving liberty to the Petitioner to approach the appropriate High Court in accordance with law.

8. It is made clear that this Court has not expressed any opinion on the merits of the case. The rights and contentions of the parties are left open.

9. Pending applications stands disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 23, 2024/rhc/sk

Click here to check corrigendum, if any