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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2683/2024 and CM APPL. 10961/2024, CM APPL. 10962/2024, CM APPL. 10963/2024, CM APPL. 10964/2024**

M/S R.K ENTERPRISES

..... Petitioner

Through: Mr. Shantanu Sagar, Mr. Prabhat Ranjan Raj, Mr. Sidharth Sarthi, Mr. Anil Kumar and Mr. Gunjesh Ranjan, Advocates.

versus

GAIL GAS LIMITED

..... Respondent

Through: Mr. N. L. Ganapathi and Ms. Rini V. Tigga, Advocates along with Mr. Nitin Gupta, Chief Manager (Contract and Procurement) and Mr. Kunal Dubey, Chief Manager (Law) for Gail Gas Limited.

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Date of Decision: 26th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a direction to set aside the termination order bearing no. GAIL/GAS/NOIDA/5871/NKG/2023-24/10 dated 15th February, 2024 ('impugned termination order') issued by the Respondent and, a further direction to quash and set aside the Tender No. GAIL/GAS/NOIDA/6252/NKG/2023-24/92 dated 6th February, 2024



(‘impugned tender’) issued by the Respondent.

2. The Respondent has issued the impugned tender for hiring of services for forecourt management in COCO CNG Station at Meerut, Dewas and Mandideep GA’s.

2.1. The Respondent had earlier issued Tender No. GAIL/GAS/NOIDA/5871/NKG/2023-24/10 dated 14th June, 2023 (‘tender dated 14th June 2023’) inviting bid for hiring of services for forecourt management in COCO CNG Station at Sonipat, Meerut, Dewas and Mandideep GA’s. The Petitioner participated in the said tender process. The Respondent issued separate Fax of Acceptance(s) (‘FOAs’) dated 17th October, 2023 in favour of the Petitioner for forecourt management in COCO CNG Stations for the following: -

- a) Group-02 [Shatabdi Nagar and Ganga Nagar CNG Stations at Meerut] at an estimated contract value of Rs. 2.32 Crores, approximately.
- b) Group-03 [Lohiya Nagar and Vedvyaspuri CNG Stations at Meerut] at an estimated contract value of Rs. 2.58 Crores, approximately.
- c) Group-04 [Dewas] at an estimated contract value of Rs. 1.16 Crores, approximately.
- d) Group-05 [Mandideep] at an estimated contract value of Rs. 81.43 Lakhs, approximately.

2.2. In furtherance of the FOAs, the Petitioner on 19th October, 2023 executed four separate contract(s) for each of the above COCO CNG Stations and submitted the same to the Respondent.

2.3. The Respondent issued a common show cause notice dated 5th



January, 2024 ('SCN') stating that upon a complaint received regarding the contract(s) awarded to the Petitioner, it has been observed that the credentials submitted, by the Petitioner, for evaluation of the Technical Criteria as well as Financial Criteria pertain to a proprietorship firm namely, M/s R. K. Enterprises ('RKE Proprietorship'), whereas, the bidder is a partnership firm with the same name i.e., M/s. R.K. Enterprises ('RKE Partnership'). It was stated that upon perusal of the financial documents of RKE Proprietorship, it appeared that the said proprietorship firm was still functioning and had not ceased its activities. It was stated that since it appears that both RKE Proprietorship and RKE Partnership continued to co-exist, the documents of RKE Proprietorship could not have been considered for determining the eligibility of RKE Partnership and therefore, the Respondent called upon the Petitioner to show cause why the contract(s) awarded vide FOAs dated 17th October, 2023, to the Petitioner, were not liable for termination.

2.4. The Petitioner filed its reply on 19th January, 2024 to the said Show Cause Notice and clarified that the RKE Proprietorship has merged with RKE Partnership; and no bidding has been submitted on behalf of the said proprietorship after the incorporation of RKE Partnership. It was stated that RKE Partnership consists of the erstwhile proprietor Mr. Ram Nivas Yadav and his immediate family members. It was stated that in these facts, the newly constituted partnership firm was entitled to rely upon the financial and technical credentials of the erstwhile proprietorship firm. It was clarified that the bank account of the erstwhile proprietorship firm was alive only for the purpose of financial reconciliations including compliances with tax authorities; and the said bank account would be closed in FY 2023-24. It



was clarified that the statutory registration under GST has been obtained for RKE Partnership firm.

2.5. The Respondent after considering the reply of the Petitioner opined that since the bank account of the RKE Proprietorship is still alive, it cannot be considered that RKE Proprietorship has dissolved and merged into RKE Partnership. In view of the said finding, the Respondent terminated the FOAs vide impugned termination order dated 15th February, 2024 invoking clause 2.17.3 of the General Conditions of the Contract ('GCC'). In addition, the said order recorded that Respondent will initiate action against the Petitioner under relevant provisions of the tender documents.

2.6. The Respondent during the pendency of the SCN proceedings, before passing the impugned termination order, however, on 6th February, 2024, re-issued the impugned tender for the same subject works for all the four locations.

2.7. The Petitioner has assailed the issuance of aforesaid impugned tender and the impugned termination order in the present proceedings.

3. Learned counsel for the Petitioner states that a bare perusal of the partnership deed dated 10th November, 2021 would show that the RKE Partnership constituted of Mr. Ram Nivas Yadav, the erstwhile proprietor, his wife, namely, Mrs. Nita Yadav and his son, namely, Mr. Sachin Yadav. He states that as recorded in the recitals of the said Partnership deed, the firm was constituted in view of the failing health of the proprietor and the new partners are immediate family members. He states that the partnership deeds categorically record that the partnership firm is taking over the business of the proprietorship firm and in future, all business will be carried on in the name of the partnership firm alone.



3.1. He states that as a matter of fact, no business whatsoever has been bid for by RKE Proprietorship after the constitution of the RKE Partnership. He states that the reliance placed by the RKE Partnership on the technical and financial credentials of the RKE Proprietorship in the tender process was lawful and permissible in view of the takeover and in this regard, he relies upon the judgment of the Supreme Court in *New Horizons Limited and Another v. Union of India and Others*¹.

3.2. He states that with respect to the operation of the bank account as explained in the reply dated 19th January, 2024, the said bank account was necessary for tax compliances with statutory authorities and settlement of financial accounts in past transactions. He states that the proprietorship firm has taken steps to close its bank account and cancel its registrations.

3.3. He states that there was no misrepresentation or concealment of facts by the Petitioner while submitting its documents in pursuance of the tender dated 14th June, 2023. He states that Mr. Ram Nivas Yadav has been operating RKE Proprietorship for the last twenty-two years and has been conducting business with the Respondent for the last twenty years. He states that all facts were truly disclosed in the financial and technical credentials. He states that the conclusion drawn by the Respondent that the RKE Proprietorship firm as well as the RKE Partnership firm were co-existing is incorrect.

3.4. He states that the impugned tender was issued on 6th February, 2024 even prior to the issuance of impugned termination order dated 15th February, 2024. He states that this shows that the termination was pre-

¹ 1995 (1) SCC 478 para 23



determined as the submissions of the Petitioner in its reply dated 19th January, 2024 have not been considered in its correct perspective.

4. In reply, learned counsel for Respondent states that the Petitioner herein has participated in the impugned tender issued on 6th February, 2024 and submitted its bid. He states that the Petitioner has also filed with the Respondent, an agreement dated 15th February, 2024 executed between RKE Proprietorship and RKE Partnership recording the terms of takeover of the former's business.

4.1. He states that in view of the admitted fact that the bank account of RKE Proprietorship was active and was being used for receiving payments in the past transactions, the Respondent concluded that RKE Proprietorship continues to exist separately from the RKE Partnership and therefore, the Petitioner herein could not have relied upon the credentials.

5. We have considered the submissions of the learned counsel for the parties and perused the record.

6. The partnership deed dated 10th November, 2021 records that the three partners of the said firm are Mr. Ram Nivas Yadav, his wife Mrs. Nita Yadav and his son Mr. Sachin Yadav and their share in the partnership is 29%, 51% and 20%, respectively. The recitals of this partnership deed, record that Mr. Ram Nivas Yadav is carrying on business under sole proprietorship and has proposed the partnership in view of his health issues.

7. The Petitioner has stated that no new business has been carried out by the RKE Proprietorship after the execution of the partnership deed dated 10th November, 2021 and the operation of the bank account was necessary to comply with the statutory requirements arising out of tax audits with income tax departments and GST departments. It has been stated that the bank



account was also required for settling the financial transactions for the past executed transactions.

8. The Respondent has not refuted the submission of the Petitioner that to its knowledge, no new contracts have been bid for by RKE Proprietorship after 10th November, 2021.

9. In the aforesaid admitted facts, we are of the considered opinion that participation of the Petitioner in the tender process in pursuance to the tender dated 14th June, 2023 by relying upon the technical and financial credentials of RKE Proprietorship was not actuated by malice. In view of the facts noted hereinabove, there was no concealment or misrepresentation by the Petitioner with respect to the merger and takeover of the RKE Proprietorship business by RKE Partnership. The Petitioner was entitled in law to rely upon the financial and technical credentials of the proprietorship firm in view of the fact that Mr. Ram Nivas Yadav is admittedly a partner in RKE Partnership i.e., the Petitioner firm and this is also in conformity with the law laid down by the Supreme Court of India in *New Horizons Limited and Another v. Union of India and Others* (supra).

10. The necessity for the continuing operation of the bank account of the RKE Proprietorship after 10th November, 2021, has been reasonably explained by the Petitioner. The submission that the said bank account is required by RKE Proprietorship for concluding statutory audits has not been rebutted by the Respondent. In our opinion, the relevant consideration for Respondent is that RKE Proprietorship has not bid for any new tenders after the incorporation of RKE Partnership and, therefore, no new business has been contracted by the RKE Proprietorship after the takeover. Further, the learned counsel for Petitioner on instructions states that the said bank



account will be closed within three days from today. We are, therefore, of the opinion that Respondent is not entitled to initiate any coercive action or penal proceedings or punitive action as per Clause 39 of Instructions to Bidder ('ITB') or any other relevant provisions of the tender document against the Petitioner on account of the impugned termination order. The relief sought at prayer clauses (i) and (iv) are allowed in the aforesaid terms.

11. However, with respect to the issuance of the impugned tender dated 06th February, 2024, we are not inclined to quash the said tender as the Petitioner has already participated in the said tender before filing of the present writ petition.

12. The Petitioner during arguments has stated that he would be satisfied if a direction is issued to the Respondent to consider the bid of the Petitioner without being influenced by the impugned termination order dated 15th February, 2024. The said prayer of the Petitioner is reasonable and we accordingly, mould the reliefs sought in prayer clauses (ii) and (iii) of the present petition and hereby, direct the Respondent to consider the bid submitted by the Petitioner in pursuance to the tender dated 06th February, 2024, impartially and without being influenced by the termination order dated 15th February, 2024.

13. With the aforesaid directions, the present petition is allowed and the pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 26, 2024/rhc/MG