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

+ **W.P.(C) 5164/2024 & CM APPL. 21109-21110/2024**

SANKALP RECREATION PVT LTD

..... Petitioner

Through: Mr. Anupam Lal Das, Mr. Shoeb Alam, Senior Advocates with Mr. Anupam Dwivedi, Advocates

versus

UNION OF INDIA THROUGH MINISTRY OF RAILWAYS AND ANR

..... Respondent

Through: Mr. Vikram Jetly, Ms. Shreya Jetly, Advocates for R-1/UID and Ms. Rashi, GP

Mr. Tushar Mehta, Solicitor General of India with Mr. Saurav Agrawal, Standing Counsel, Mr. Anshuman Chowdhury and Mr. Shivam Chaudhary, Advocates for IRCTC/R-2

Mr. Jayant Mehta, Senior Advocate with Mr. Rajat Aneja, Mr. Jasmeet Singh, Mr. Mahinder Singh, Mr. Saif Ali, Mr. Pushpendra S Bhadoria, Mr. Vijay Sharma, Mr. Anurag Sarda, Ms. Diva Sehgal, Mr. Aditya Sharma and Mr. Pranav Menon, Advocates for R-3

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Date of Decision: 26th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

**MANMOHAN, ACJ : (ORAL)****CM APPL. 21110/2023 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 5164/2024 & CM APPL. 21109/2024

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the award of E-Open Tender No. 2024/IRCTC/P&T/CLUSTERIFEB/SER/CLT/A-2 ('impugned tender') by Respondent No. 2 in favour of Respondent No. 3, on the ground of denial of equal opportunity and level playing field by Respondent No. 2 to the Petitioner herein.

2. It is stated that Respondent No. 2 had issued the impugned tender for provision of onboard catering services in trains, for a period of five (05) years further extendable up to two (02) years. As per the NIT, the last date for submission of technical bids was 1st March, 2024 up to 12:00 hours and date of opening of technical bids was 1st March, 2024 at 12:15 hours.

2.1. It is stated that as per the Techno-Commercial Eligibility Criteria prescribed in the impugned tender document, the bidders were mandated to submit certain annexures/documents along with their respective technical bids.

2.2. It is stated that the Petitioner has submitted its bid on 01st March, 2024, annexing therewith all the necessary and requisite documents and annexure(s); however, the Petitioner's bid was rejected on account of deficiencies in the documents submitted under the head 'Mandatory Criteria'



and the Petitioner was not afforded an opportunity to make good the deficiencies in its bid. The Petitioner's documents being Annexure-D and Annexure-E were found to be deficient.

2.3. It is stated that however, the Petitioner learnt that Respondent No. 3 herein was permitted to make good the deficiency in the document submitted as Annexure-G to the bid *vide* e-mail dated 30th March, 2024 and has since been declared as the highest bidder; and awarded the contract.

2.4. It is stated that the opportunity granted to Respondent No. 3 should also have been extended to the Petitioner herein and this denial of equal opportunity is violative of the settled principles governing award of contract in a tender process; and therefore, the present petition has been filed seeking cancellation of the letter of award issued by Respondent No. 2 in favour of Respondent No. 3.

3. Mr. Anupam Lal Das, learned Senior Counsel for the Petitioner states that the Petitioner fulfils all the eligibility criteria required under the impugned tender and has submitted its bid on 1st March, 2024. He states that the documents marked as Annexure-D and Annexure-E in the bid were duly submitted by the Petitioner. However, the said documents have been rejected by Respondent No. 2 on the ground that the information furnished in Annexure-D and Annexure-E is not reflected in the UDIN certificate(s) available on ICAI portal. He states that no opportunity was granted to the Petitioner by Respondent No. 2 to re-submit a fresh Annexure-D and Annexure-E with a fresh UDIN number on the basis that these are mandatory documents.

4. He states that similarly, as per the tender condition 6(B), the



Petitioner was required to submit certified and notarised copy of documents showing its ownership of two operational kitchens. He states that though the Petitioner filed the requisite documents, however the same were inadvertently not notarised. He states that Respondent No. 2 has not permitted the Petitioner to make good this deficiency on the basis that these were mandatory documents.

5. He states that the missing information on the UDIN portal with regards to Annexures D and E, could have been updated and the notarisation of the ownership documents could have been made good, if the Respondent No. 2 had granted an opportunity to the Petitioner.

6. He states that the Petitioner is aware that Respondent No. 2 has not permitted any of the other bidders to re-submit Annexures B, D and E, if the information does not match with the respective UDIN certificate(s) available on the ICAI portal; and has disqualified them. He states that the ground for not providing an opportunity to rectify the deficiencies in the said Annexures, is that the said Annexures fall under the category of 'Mandatory Criteria'. He states that in this writ petition, Petitioner is not agitating its relief for seeking an opportunity to re-submit the missing information or file updated documents.

7. He states that however, the Petitioner has learnt that Respondent No. 2 has permitted Respondent No. 3, who is the successful bidder in the impugned tender process, an opportunity to make good the deficiency in Annexure-G of the tender document. He states that Annexure-G is the Integrity Pact, which is to be signed by the bidder, and Respondent No. 2 *vide* e-mail dated 30th March, 2024 informed Respondent No. 3 that



Annexure-G does not bear the signatures of the witnesses and instructed Respondent No. 3 to re-submit a duly filled and signed copy of the Annexure-G bearing signature of the authorised signatory and its witnesses.

8. He states that Annexure-G, Integrity Pact also falls under the category of 'Mandatory Criteria' and it ought to have led to the rejection of Respondent No. 3's technical bid. He states Respondent No. 2 could not have permitted Respondent No. 3 to make good the deficiency of missing signatures of the witnesses. He states that the 'Mandatory Criteria' begins with entry at Serial No. 6 and continues right until Serial No. 14 under the head Techno-Commercial Eligibility Criteria in the tender document. He states that the information sought at Serial Nos. 1 to 5 fall under the head 'General Information' as oppose to 'Mandatory Criteria' which is enlisted at Serial Nos. 6 to 14.

9. He states that the Note appearing in the box under the said conditions clearly states that no correspondence with respect to documents enlisted under the head 'Mandatory Criteria' will be entertained by Respondent No. 2. He states that the issuance of the e-mail dated 30th March, 2024 by Respondent No. 2 calling upon Respondent No. 3 to make good the deficiency in Annexure-G is contrary to this express direction in the Note. He also relies upon Clause 2.1 of the tender document under the head Evaluation of Bids.

10. He states that Respondent No. 2 has violated the principles of equal treatment and fairness by affording special treatment to Respondent No. 3 while denying the same opportunity to the Petitioner herein. He relies upon the judgment of the Supreme Court in *M/s Erusian Equipment &*



Chemicals Limited v. State of West Bengal and Another¹ and Reliance Energy Limited and Another v. Maharashtra State Road Development Corporation Limited and Others². He states that therefore, this Court may grant the relief of quashing the letter of award issued by Respondent No. 2 in favour of Respondent No. 3 and declare Respondent No. 3 as disqualified.

11. Learned Solicitor General appearing on behalf of Respondent No. 2 states that the Petitioner is misreading the Techno-Commercial Eligibility Criteria. He states that the Mandatory Criteria has been set out in the entry at Serial No. 6 for Cluster-A and Serial No. 7 for Cluster-B. He states that in the present petition, we are concerned with Cluster-A-2 and therefore, Serial No. 6 is relevant. He states that at Serial No. 6, the mandatory documents to be submitted with the bid are Annexures A to E. He states that the Note in the box at the end of the Techno-Commercial Eligibility Criteria table regulates the information sought for the mandatory documents.

12. He states that the documents and information required from the bidders at Serial Nos. 1 to 5 and Serial Nos. 8 to 14 are not in the Mandatory Criteria. He states that with respect to this information and documents, the Note in the box permits the Respondent No. 2 to seek clarification from the bidders. He states that at Annexure-G, Integrity Pact, is provided at Serial No. 13 and the Respondent No. 3 was permitted to make good the deficiency of witnesses' signatures on the said Integrity Pact.

13. He states that the tender has been called for inviting bids for several Clusters; and e-mails were sent to forty-five (45) bidders permitting them to

¹ (1975) 1 SCC 70 paras 14 and 17

² (2007) 8 SCC 1 para 36



make good the deficiency in their respective Annexure-G. He relies upon a table handed over during the course of hearing. He states for Cluster A-2, the Cluster in question, e-mails were sent to three eligible bidders, including Respondent No. 3, permitting them to make good the deficiency in their respective Annexure-G. He states that therefore, equal treatment and level playing field was granted to all the bidders.

14. He states that the Petitioner has fairly conceded that the documents submitted by the Petitioner, which were found to be deficient fell under the category of Mandatory Criteria under Serial No. 6 and therefore, Respondent No. 2 did not afford any opportunity to the Petitioner to make good the deficiency. He states that Respondent No. 2, similarly, did not permit any other bidder to make good the deficiency in the information listed under Serial No. 6.

15. Mr. Jayant Mehta, learned Senior Counsel for Respondent No. 3 states that in addition to the submissions of the learned SG, he would like to add that in the Techno-Commercial Eligibility Criteria at Serial No. 13 which requires submission of Annexure-G, Integrity Pact, the instruction was that the Pact should be signed by the bidder. He states that there were no instructions with respect to the signatures of the witnesses. He states that accordingly, Respondent No. 3 had initially submitted Annexure-G duly signed by its authorised signatory and without the signatures of the witnesses. He states that the ambiguity in the instruction at Serial No. 13 cannot prejudice the bidder. He states that Respondent No. 3 has duly filed all the documents enlisted under the head Mandatory Criteria at Serial No. 6.

16. He states that Respondent No. 3 has been found to be the highest



bidder and thus, has been awarded the contract. He states that Petitioner herein is a disqualified bidder and having conceded to the disqualification, filing of the present writ petition for the sole intent of seeking cancellation of the award in favour of Respondent No. 3 on this specious plea of Annexure-G, exhibits ‘a dog in the manger’ attitude.

17. We have heard the learned counsel for the parties and perused the record.

18. The Petitioner herein does not challenge the validity of its disqualification from the tender process on account of non-fulfilment of the Mandatory Criteria enlisted at Serial No. 6 of the Techno Commercial Eligibility Criteria³ in the tender document. The Petitioner’s bid was rejected on account of non-fulfilment of the conditions set out at Serial No. 6 and communicated to him *vide* Annexure P-1. We are, therefore, not concerned with the rejection of the Petitioner’s bid and the declaration of its disqualification in the present petition.

19. The short issue arising for consideration before us is whether the direction issued by Respondent No. 2 to Respondent No. 3 *vide* e-mail dated 30th March, 2024 instructing the latter to (re) submit Annexure-G, Integrity Pact, duly signed by authorised signatory along with the signatures of the witnesses is in derogation of the Note⁴ or Clause 2.1 of Evaluation of Bids⁵ appearing in the box under the table Techno Commercial Eligibility Criteria.

20. We have perused the Techno Commercial Eligibility Criteria, which enlists fourteen (14) entries to be complied with by the bidders for satisfying

³ At internal page 45 of 167 of the tender documents

⁴ At internal page 49 of 167 of the tender documents

⁵ At internal page 41 of 167 of the tender documents



the eligibility criteria. The stipulation of Mandatory Criteria for Cluster A is enlisted at Serial No. 6 and for Cluster B at Serial No. 7 respectively. Entries at Serial Nos. 6 and 7 are alternate entries and the bidder is required to comply with either of the entries, as applicable to the Cluster bid. However, the information sought from the bidder in Serial Nos. 6 and 7 have been classified as mandatory by the tendering authority.

21. The instruction of 'Mandatory Criteria' in the table is labelled specifically against entries at Serial No. 6 and Serial No. 7 in the tender document. This instruction of Mandatory Criteria does not appear against entries in Serial Nos. 1 to 5 and Serial Nos. 8 to 14. The submission of the Petitioner that the instruction 'Mandatory Criteria' governs entries appearing from Serial Nos. 6 to 14 does not have any basis. If the instruction of 'Mandatory Criteria' was applicable to all entries from Serial Nos. 6 to 14, it would have appeared in the table between Serial No. 5 and Serial No. 6. However, since the tendering authority intended to limit the instruction of 'Mandatory Criteria' to Serial No. 6, therefore, it was mentioned against the said entry specifically. This also becomes evident as the instruction 'Mandatory Criteria' is repeated in the table against entry at Serial No. 7. If the Petitioner submission is correct, there was no occasion for tendering authority to repeat this instruction against entry at Serial No. 7.

22. Thus, on a bare reading of the table, it is evident that the instruction 'Mandatory Criteria' controlled the information sought from the bidder at Serial Nos. 6 and 7. The explanation offered by the learned SG with respect to the tendering authority's interpretation with respect to Entry No. 13 as non-mandatory appears to be reasonable and plausible. For the same reason,



the instruction appearing in the Note in the box under the table is inapplicable.

23. In the present petition, we are concerned with respect to the compliance sought from the bidder at Serial No. 13 i.e., the Integrity Pact, Annexure-G. The entry at Serial No. 13 cannot be governed by the instruction 'Mandatory Criteria' appearing at Serial No. 6. Further, the requirement of submitting of Integrity Pact in the format provided at Annexure-G of the tender is not information about the bidder and is, in fact, a compliance in anticipation of the award of the bid. In the facts of this case, Respondent No. 3 had admittedly, duly submitted an Integrity Pact, Annexure-G signed by the authorised signatory.

24. The Respondent No. 2 wrote the e-mail dated 30th March, 2024 recording that the signatures of the witnesses were missing on the said Annexure-G. In our considered opinion, the requirement of the signatures of the witnesses on 30th March, 2024 was pre-mature as the said Integrity Pact is to be signed by an officer of Respondent No. 2 as well after the award of the contract in favour of the successful bidder, and thus, the signatures of the witnesses could/should have been affixed at the time when the Integrity Pact was signed by the officer of Respondent No. 2. The witnesses to the agreement are also to witness the signature of the officer executing on behalf of Respondent No. 2. Thus, the Integrity Pact as submitted by Respondent No. 3 initially under the signatures of its authorised signatory, with its technical bid itself was duly compliant.

25. There is also merit in the submission of learned Senior Counsel for Respondent No. 3 that there was no instruction for signatures of witness in



the tender document against entry No. 13 and therefore, absence of signatures of the witnesses on the 'Integrity Pact', Annexure-G cannot be attributed as a non-compliance by Respondent No. 3.

26. There is no separate challenge to the eligibility of Respondent No. 3 in this writ petition and the sole contention raised for seeking quashing of the award of tender in favour of Respondent No. 3 being re-submission of Annexure-G is without any merit. There has been no violation of the principles of equality or level playing field against the Petitioner in the award of tender to Respondent No. 3 on the allegations raised in the present petition.

27. Accordingly, the present writ petition is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 26, 2024/rhc/MG

Click here to check corrigendum, if any