



2024:DHC:7781-DB



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

+ W.P.(C) 13000/2024, CM APPL. 54136/2024, CM APPL. 54137/2024 & CM APPL. 54138/2024

JAI MAA TRADERS

.....Petitioner

Through: Ms. Rashi Suri, Advocate

versus

HSCC (INDIA) LTD

.....Respondent

Through: Mr. Rajeev Bhalla, Sr. Advocate with
Ms. Tanvi Dubey, Mr. Mekala
Ganesh K Reddy and Mr. Aditya
Nema, Advocates

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Date of Decision: 04th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed seeking quashing of Tender No. GEM/2024/B/5099525 dated 28th June 2024 issued by respondent/HSCC India Ltd. for supplying medical and healthcare equipment to government medical colleges in Koriyawas and Bhiwani, Haryana ("subject tender").
2. Yesterday, learned counsel for the petitioner had stated that the terms and conditions of the subject tender are biased and unfair to participating bidders. He had further stated that the payment terms stipulated in the subject tender are ambiguous and designed to benefit only one potential bidder. He had stated that the brands specified under the tender, indicates

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collusion between the officers of the respondent and proposed bidder. He had also stated that the petitioner as well as other bidders had made representations dated 5th August 2024 and 9th August 2024, but no response had been received by them so far.

3. At that stage, learned senior counsel for the respondent had stated that neither the representations nor the RTI annexed with the writ petition were made by the petitioner. He had further stated that the documents placed on record at Annexure-D as representation/Request for Amendment had been filed by Maan Pharmaceuticals Ltd. and the letter head of Maan Pharmaceuticals Ltd. had been removed while annexing the document at Annexure-D.

4. Today, learned counsel for the petitioner admits that the representations had been filed by Maan Pharmaceuticals Ltd. and not by the petitioner. She, however, states that the said fact would make no difference to the present writ petition.

5. Having heard learned counsel for the parties, this Court is of the view that the present writ petition is misconceived. The petitioner has been unable to highlight any specific instance of irregularity or illegality that may warrant interference by this Court. The unsubstantiated allegations made by the petitioner are as vague as possible and bereft of any material particular.

6. Though the petitioner has alleged that the bid conditions are tailor made for a particular bidder, yet the petitioner has failed to name the bidder alleged to have been favoured by the respondent and that bidder has not been arrayed as a party in the present writ petition.

7. A perusal of the representations relied upon by the petitioner reveals that some of the tenderers want the respondent to reframe the tender terms



with respect to eligibility criteria, past performance criteria, minimum average turnover, payment schedule, modality of issuing inspection certificate, etc. In fact that alleged representation goes as far as dictating specific equipments that should be made part of the tender document. Such requests are against the settled position of law that the tender terms and conditions are purely within the domain of the tendering authority, which is best equipped to understand their own requirements. The terms and conditions of the tender are equally applicable to all the bidders and not just to the petitioner or similarly aggrieved bidders. A bidder cannot be allowed to challenge terms and conditions merely because the bid condition/clause which might not suit him and/or convenient to him, has been incorporated. In *Balaji Ventures Pvt. Ltd. vs. Maharashtra State Power Generation Company Ltd.*, SLP(C) 1616/2022, the Supreme Court has held that the tender issuing authority should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless and until it is found to be arbitrary, *malafide* and/or tailor made. In *Montecarlo Limited vs. National Thermal Power Corporation Limited*, (2016) 15 SCC 272, it was observed and held that the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no *malafides*/arbitrariness and that the government should have freedom of contract.

8. Ironically, in the present case, the petitioner wants the respondent to change tender terms so that the same are most convenient to the petitioner, ergo, the petitioner wishes the tender terms to be tailor made for the petitioner.



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9. Moreover, as edited documents have been filed without specifically stating that the representations and the RTI queries have been filed by the Maan Pharmaceuticals Ltd., this Court is of the view that the present petition is vitiated by *malafides* and suppression of facts.

10. Accordingly, the present writ petition is dismissed with cost of Rs.25,000/- to be paid to Delhi High Court Bar Association.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

OCTOBER 4, 2024

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