



2024:DHC:9071-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 15009/2024 & CM APPLs.62913-14/2024

MESSRS. RASOI CANTEEN AND CATERER

...Petitioner

Through: Mr. Joydeep Sharma and Mr. Rajiv
Tiwari, Advocates.

versus

ATMA RAM SANATAN DHARMA COLLEGE & ANR

.....Respondents

Through: Mr. Mohinder J.S. Rupal, Mr.
Hardik Rupal and Ms. Aishwarya
Malhotra, Advocates for R-1.
Ms. Shweta Bharti, Mr. Rohit Jolly
and Ms. Bheeni Goyal, Advocates
for R-2.
Mr. Sushil Kumar Pandey, SPC and
Ms. Neha Yadav, Advocate for
Ministry of Commerce.

Date of Decision: 21st November, 2024

CORAM:

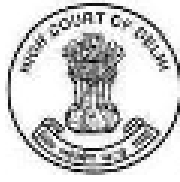
HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

MANMOHAN, CJ: (ORAL)

1. Present writ petition has been filed under Articles 226 & 227 of the Constitution of India, 1950 seeking a direction to respondent no.1/College to award the contract as well as handover possession of the canteen pertaining to Tender bearing Bid Number GEM/2024/B/395846 dated 13th September, 2024 and to set aside any attempt/decision/award of the respondent no.1 to award the contract to any other party illegally.



2024:DHC:9071-DB



2. Respondent no.1 floated a Tender bearing Bid Number GEM/2024/B/395846 dated 13th September, 2024 for canteen services through the web portal of respondent no.2/GeM. The petitioner participated in the said tender process by duly filing its bid on 22nd September, 2024. There were thirteen (13) participants in the said tender process. Respondent no.1 opened the Technical Bid of all the thirteen (13) bidders and two parties, i.e., respondent no.3 - M/s. Ronit Enterprise and the petitioner were declared to be technically qualified. The petitioner achieved 100% marks in technical qualification, whereas respondent no.3 was declared qualified with minimum qualifying marks of 50%.

3. Upon opening of Financial Bid of the petitioner and respondent no.3, the respondent no.2/GeM placed the respondent no.3 - M/s. Ronit Enterprise as H1 and the petitioner as H2. It is the case of the petitioner that Annexure III of the NIT clearly provided that "*Bidders with highest license fee will be awarded as H1 and will be given the contract*". It is stated that a bare perusal of the Financial Evaluation Sheet shows that the petitioner had quoted a sum of Rs.7,50,624/- for the contract period i.e. License Fee for twelve months i.e. Rs.62,552/- per month. Whereas, the said respondent no.3 - M/s. Ronit Enterprise quoted only Rs.61,100/-. Thus, it is stated that the respondent no.2/GeM made a mistake while classifying the petitioner as H2.

4. Aggrieved by such action, the petitioner had visited the office of the respondent no.1 and requested that necessary action may be taken to rectify the classification by the respondent no.2/GeM. However, the respondent no.1/College showed its inability to do so and stated that it is bound by the classification of the respondent no.2/GeM. It is stated that the petitioner



2024:DHC:9071-DB



immediately wrote to the respondent no.1/College by email dated 18th October, 2024. However, the respondent no.1/College failed to respond to the same and is taking steps to award the contract to respondent no.3 - M/s. Ronit Enterprise. Hence, the present petition.

5. The present matter was first listed on 24th October, 2024, when on the oral prayer of learned counsel for the petitioner, M/s. Ronit Enterprise was impleaded as respondent no.3 and a notice was issued. On the same day, this Court had directed that any decision taken by the respondent shall be subject to further orders to be passed in the present writ petition.

6. On the next date of hearing i.e., 4th November, 2024, the petitioner stated that respondent no.3 had been served. However, none appeared for respondent no.3 - M/s. Ronit Enterprise. The respondent no.1/College had also fairly stated that the Tender in question has not been awarded and shall not be awarded without seeking prior permission of this Court.

7. Thereafter, the matter came to be listed on 7th November, 2024, when the learned counsel for respondent no.2/GeM had stated that the buyer organisation/respondent no.1/College had directed GeM to process the Tender on Quality & Cost Based Selection ('QCBS') System. She stated that following the said mandate, the lowest bidder i.e. respondent no.3 - M/s. Ronit Enterprise was declared the successful bidder.

8. *Per contra*, learned counsel for the petitioner stated that the tender terms stipulate that the bid with the highest License Fee has to be awarded the contract. He relied upon the judgement of this Court in ***Sunil Yadav vs. Aruna Asaf Ali Government Hospital & Anr., W.P.(C) 11960/2022*** decided on 1st November, 2023, which was allowed on the identical set of facts. This Court had *prima facie* observed that there seems to be a



2024:DHC:9071-DB



contradiction between the tender terms and the mandate given by respondent no.1/College to the GeM portal, hence, learned counsel for respondent no.1/College was granted some time to seek instructions in this regard.

9. None enters appearance on behalf of respondent no.3 - M/s. Ronit Enterprise, despite service, even today.

10. Mr. Mohinder J.S. Rupal, learned counsel for respondent no.1/College has handed over to the bench an affidavit dated 19th November, 2024. The affidavit of respondent no.1/College is taken on record. The relevant paragraphs of the same are extracted hereunder:-

“4. The Respondent College opted for QCBS, after which Respondent No. 2 instructed the Respondent College to establish an evaluation criteria. The Respondent College set the criteria and assigned it a weightage of 10% as required by Respondent No. 2. This process was part of the technical evaluation of the tender floated.

5. After conducting the technical evaluation, the Respondent college uploaded the technical marks of the qualified vendors on the portal of Respondent No. 2. Subsequently, Respondent No. 2 took three days to use the remaining 90% weightage for financial evaluation, after which Respondent No. 2 allotted the tender. The tender evaluation sheet, which the Respondent College obtained directly from the portal of Respondent No. 2 is annexed hereto and marked as ANNEXURE R-1.

6. Upon review, the Respondent college observed that Respondent No. 2 has awarded the tender to a vendor (Respondent No. 3) who not only had lower technical marks but also quoted a lower license fee. This was in direct contrast to the tender document, which clearly stated that the vendor offering the highest license fee would be awarded the tender. The Respondent college after noting this discrepancy duly informed the Respondent No. 2 about this error in evaluation. However, there was no corrective measures taken by the Respondent No. 2.

7. It is respectfully submitted that responded that the petitioner has quoted Rs. 7,50,624 p.a. as the licence fee and not canteen service – best price on fixed menu rate. While the Licence fee quoted by Respondent No.3- Ronit Enterprises comes to Rs. 7,33,200 (61100 x 12 + 7,33200 p.a.) which is lesser than the licence fee quoted by the Petitioner. Hence it is the Petitioner which shall fall under H1 Rank (since the bidder who has quoted the higher licence fee to the



2024:DHC:9071-DB



Respondent College shall have H1 Rank out of 90% of the total financial evaluation.) by quoting the Higher Annual Licence fee and not the Respondent No.3 herein..."

(Emphasis Supplied)

11. It is clear from the above that the intention of the tender issuing authority was to award the canteen services contract to the highest bidder. This is also clear from the Annexure-II to the bid document, which is the Technical Data Sheet wherein it is mentioned that, "*Bidders are required to bid ONLY on Licence fee to be paid for the college canteen*". Besides, Annexure-III to the bid document respecting "Schedule of Price Bid in the form of BOQ_XXXX.xls" also states that "*Bidders are required to bid ONLY on Licence fee to be paid for the college canteen*". It is significant to note that the instructions issued by respondent no.1/College in Annexure III also specifies, "***Bidders with highest licence fee will be awarded as H1 and will be given the contract***". It is clear as crystal that the instructions specify that a bidder with highest bid value would be qualified as successful H1 bidder and would be also awarded the contract.

12. Mr. Rupal, learned counsel for respondent no.1/College invited attention to Page 6 of the affidavit dated 19th November, 2024 to submit that it is not the items which are to be served in the canteen or the prices indicated therein which would be a relevant parameter for qualifying as H1 bidder. He states that the only determinative factor is the Licence Fee. The higher the bid, the more the chances of being declared as H1 bidder and to whom the contract would be awarded ultimately.

13. This Court has also considered the aforesaid submissions of Mr. Rupal, learned counsel, which are in consonance with the tender terms and agreed with the same. It is also relevant to note that as per the bid



2024:DHC:9071-DB



document, the weightage, so far as Technical Score is concerned is only 10% of the total evaluation, whereas the weightage given to Financial Score is 90%. This too propels this Court to be of the firm opinion that it is the Licence Fee which would be the determinative factor so far as declaration of H1 bidder is concerned. It is also given to understand that so far as the rates of items to be served in the canteen are concerned, the same are pre-approved and fixed. Thus, it is only the Licence Fee which would determine as to who would be qualified a successful H1 bidder.

14. Ms. Shweta Bharti, learned counsel for respondent no.2/GeM claimed that it proceeded to process the tenders in accordance with the instructions given by respondent no.1/College in QCBS mode. She states that there is no mistake committed by the GeM portal which only followed instructions. According to her, the instructions given by respondent no.1/College were strictly followed resulting in declaration of respondent no.3 as H1 and the petitioner as H2.

15. Without traversing into the controversy between respondent no.1/College and respondent no.2/GeM, this Court notes that respondent no.1/College admits in its affidavit that it is the highest bidder who was to be declared as H1, to whom ultimately the contract is to be awarded. It is also apparent that respondent no.2/GeM has incorrectly selected the lower bidder as H1 instead of selecting the higher bidder as H1, as required by the subject Tender. It is beyond cavil that respondent no.1/College intends to award the contract to the petitioner being H1 bidder.

16. We do not see any reason or any impediment as to why the petitioner, even at this stage, cannot be awarded this contract since respondent no.3 - M/s. Ronit Enterprise has only been declared as H1



2024:DHC:9071-DB



bidder, without any further award of contract. Accordingly, the respondents are directed to award the contract to the petitioner in terms of the tender documents. This Court is fortified in its view by the observations in *Sunil Yadav (supra)* which was passed in similar set of facts.

17. The respondent no.2/GeM is directed to make necessary corrections on the GeM portal clarifying that the petitioner is an H1 bidder in accordance with the terms and conditions of the NIT issued by respondent no.1/College.

18. In case respondent no.2/GeM is unable to do so for any reason, it would be open to respondent no.1/college to award physical contract to petitioner, in the peculiar facts of this case.

19. With the aforesaid directions, the present writ petition stands allowed. Pending applications stand disposed of.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 21, 2024/rl