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(2019) 03 DEL CK 0320

In the Delhi High Court

Case No : Civil Writ Petition No. 2654 Of 2019, Civli Miscellaneous Application No. 12291 Of 2019

Din Bandhu Dass — APPELLANT

Vs

Delhi Tourism & Transportation Development Corporation Limited (DTTDC) — RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 DEL CK 0320

Hon'ble Judges : G.S. Sistani,K J;Jyoti Singh, J

Bench : Division Bench

Advocate : Raman Kapur, M.M.Singh, S.K.Pal, Anisha Upadhyaya

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM APPL. 12292/2019 (exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 2654/2019 & CM APPL. 12291/2019

3. This is a petition filed under Article 226 of the Constitution of India filed by the petitioner seeking issuance of writ of certiorari or any other appropriate writ or direction, directing the respondent to produce the records relating to NIT No.GFS/365/2008-09/DTTDC/PF-II and also issuance of writ of mandamus or any other appropriate writ or direction, directing the respondent to finalize the tender being NIT No.GFS/365/2008-09/DTTDC/PF-II.

4. The petitioner claims to be operating in the business of canteen/food outlets in public Institutions and claims to have an expertise and experience in running

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outlets. Pursuant to a tender being floated on 18.12.2018, with respect to running two kiosks, area measuring 10'x10' feet each, for beverages, snacks/ food items for the visitors of Garden of Five Senses, Sid-ul-Ajaib, M.B.road, near Saket, New Delhi, petitioner made online submission of bid on 03.01.2019 in accordance with Notice Inviting Tender. As per prescribed procedure, requisite documents were submitted along with the bid. It is claimed that as per NIT, date fixed for opening of Technical Bid was 03.01.2019. However, post 03.01.2019 although the petitioner has made repeated visits to the Office of the respondent, no information has been received by him regarding the fate of his bid. Mr. Kapur, learned Senior Counsel submits that respondent had floated the tender even earlier, in the month of October, 2018, when the said tender was cancelled. The petitioner apprehends that the present bid would also be cancelled, with a view to favour the existing contractor so as to allow him to carry on his activities, despite the period of his contract having come to an end. In this background, the prayers so made in the writ petition are pressed by the learned senior counsel.

5. Ms. Upadhyay, learned counsel enters appearance on an advance copy and submits that the apprehensions of the petitioner are baseless and unfounded. She submits that in fact, the tender in question already stands cancelled on 14.03.2019, for cogent reasons. She submits that the allegations of favouritism against the existing contractor are without any basis and in fact the existing contractor had addressed a communication dated 19.06.2018 to the General Manager of the respondent informing that he is incurring heavy losses and he is not in a position to operate the kiosk any further. She submits that the first tender was cancelled as the bidders did not meet the technical qualifications for the tender. She submits that the petitioner did not participate in the tender floated in the month of October 2018. Thus, the petitioner cannot make a grievance with respect to the same. As far as the present tender is concerned, Ms. Upadhyay submits that the present petitioner did not qualify the technical bid as condition of clause 9 (III) was not fulfilled by the petitioner. She submits that since the tenderors did not meet the technical qualifications, the respondent was forced to cancel the tender and she has instructions that some of the tender conditions have already been relaxed by an internal communication of 05.03.2019.

6. We have heard the learned counsel for the parties. The basic facts which we have noticed hereinabove with respect to the floating of the tender, are not in dispute. It is also not in dispute that an earlier tender dated 15.10.2018 stands cancelled and the present tender was floated. The question which arises for our consideration is as to whether the present tender has been cancelled with a view to accommodate the existing contractor or favour him and by cancelling the tender allowing him to continue for an indefinite period as has been alleged by Mr. Kapur, learned senior counsel for the petitioner.

7. A communication dated 19.06.2018 from the said contractor has been handed over in Court to us and we reproduce the same below:

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" Date 19.06.2018

To

The General Manager

DTTDC

18-A, DDA SCO, Complex,

Defence Colony,

New Delhi-110024

Sir,

I have been operating food stall at the Garden of Five Senses for the last 15 years. I quoted highest rate for operating two food kiosks i.e. Rs.3,81,000/- + service tax with the condition of 7% increase in the kiosks rental after one year w.e.f. 1st September, 2016.

While submitting my tender rates, which were much on higher sides, we expected large football which did not turn up as our expectations. We are incurring heavy losses and not in a position to further operate the kiosks. As per one of the terms/conditions of the contract, we are giving three months notice to wind up. The advance license fee for four months deposited may please be adjusted for the forthcoming three months license fee.

Thanking you,

-sd-

(Babulal Raika)

C/o Babula Caterers

VPO Raikon Kabass Jayal,

Distt. Nagpur

Rajasthan-341023."

The above communication would show that the existing contractor is not interested in continuing in running the kiosk as he is suffering losses. The communication was issued as far back as on 19.06.2018, which was received by the respondent on 20.06.2018. Reading of the above communication would show that the existing contractor is in fact suffering losses and was not interested in carrying on with the operation of the kiosk. We cannot thus accept the plea of the petitioner that there is any element of bias or favouritism with regard to the existing contractor or that any one in the office of the respondent wants to favour him.

8. Additionally, learned counsel for the respondent contends that the allegation of

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favoritism is baseless for another reason that the earlier contract was for a period of three years, which is yet to come to an end and the tender was floated only in view of the communication addressed by the existing contractor. We find force in this submission of the respondent as well. If the respondent wanted to favour the existing contractor, there would not have been any necessity of floating a tender even when the present contract period has not come to an end.

9. Learned counsel for the respondent contends that the petitioner has not been awarded the tender because he did not qualify the condition No.

9 (III) which we reproduce below:

"9. List of Documents to be scanned and uploaded within the period of tender submission:

I. Bid Security in favour of Delhi Tourism and Transportation Development Corporation Ltd. in form of DD issued by nationalized/scheduled bank payable at New Delhi (these instruments issued by a cooperative bank will NOT BE ACCEPTED under any circumstances;

II. PAN card/VAT No.

III. Income Tax Returns for last 3 (three) years and Audited Balance Sheet for the period of last 3 years.

IV. Letter Comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting Documents;

V. GST Registration Certificate;

VI. Documentary evidence of 3 years experience of running eligible projects. (copy of license of Fssai)"

Relying on tender condition No. 9 III, learned counsel for the respondent submits that under this clause the petitioner was required to furnish his income tax return for the last three years and audited balance sheet for the same period, but the same has not been furnished. In response, Mr.Kapur submits that in all probability the petitioner had relied on an old form in which column no.5 required the petitioner to furnish his average turnover during the last three financial years i.e. 2012-13, 2013-14, 2014-15. We reproduce the said condition in the column as under:

"5. Average Turnover during the last three financial years i.e. 2012-13, 2013-14, 2014-15 (please enclose copy of ITR/Balance Sheet in support)"

Confronted with this, learned counsel for the respondent submits that this argument of the petitioner is of no avail to him as even assuming that the old form was to apply, the petitioner has not complied even with this requirement.

10. The terms and conditions of the tender are sacrosanct and have to be complied with. Petitioner having seen the tender condition was well aware that

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he had to upload all the documents as per the tender conditions within the time stipulated therein. The petitioner has however failed to comply with the condition of the tender and has not submitted the requisite document indicating his income tax returns/turnover and the respondents have thus rightly rejected his tender bid.

11. Accordingly, we find no fault in the action of the respondent. There is no merit in the writ petition and the same is accordingly dismissed.

12. All pending applications are also dismissed accordingly.

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