

(2018) 01 DEL CK 0580

In the Delhi High Court

Case No : Civil Writ Petition No. 722 Of 2018, Civil Miscellaneous Application No. 3075, 3076 Of 2018

Kanwar Singh Yadav

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Citation : (2018) 01 DEL CK 0580

Hon'ble Judges : S. Ravindra Bhat, J;A. K. Chawla, J

Bench : Division Bench

Advocate : Raman Kapur, Joydeep Sarma, Bhagwan Swarup Shukla, Suraj Kumar, Kamaldeep, N.K. Agarwal

Final Decision : Partly Allowed

Judgement

1. Counter affidavit is taken on record.

2. The petitioner complains that the rejection of its bid (made in response to the Notice Inviting Tender - NIT - for catering and canteen services at the Siri Fort Cultural Complex) was arbitrary and unjustified. The short ground urged is that the rejection of its bid was on the ground that the experience certificate furnished by it in response to the NIT merely referred to its past experience in "running and managing the canteen/cafe" in Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi w.e.f. 14.07.2014 till date. The firm is capable of providing canteen services to more than 500-1000 persons at a time. The eligibility criteria spelt out by the public agency, Directorate of Film Festival reads as follows: -

"5. Certificate from the office where the canteen & catering facility is being provided satisfactorily by the tenderer, issued by an authorized person for the last two of Govt. Semi Govt. or PSU.

The contractor/Agencies should have at least minimum two years experience during preceding last four year for running catering & canteen services of Govt.,

Semi Government or PSU for providing services to 500-1000 persons at a time."

3. The petitioner's experience certificate which was part of its bid issued by the Trauma Centre (of the AIIMS) was dated 07.10.2017. The respondent/authority - in its counter affidavit - urges that the rejection was justified having regard to the express terms in the eligibility condition which required past experience of two years in catering services as well. It is submitted that the petitioner's effort to have the corrected certificate brought on record and considered would not be in order and the respondents cannot be faulted in rejecting the tender.

4. Counsel for the highest tenderer which has been impleaded as second respondent i.e. Eswara Kamdhenu Restaurant Pvt. Ltd. submitted that permitting consideration of the petitioner's bid would lead to prejudice. It was submitted that even the certificate provided and sought to be brought on record does not say that the petitioner had experience in catering services but rather that it merely states that it is "capable of providing canteen and catering services to more than 1000 persons at a time". It is submitted that if even today, assuming though not admitting, the revised certificate can be taken on record, the question of considering the petitioner eligible does not arise.

5. In this case, the petitioner had produced its original certificate on 07.10.2017. It indicated the petitioner's ability of providing canteen services to more than 500-1000 persons at a time. The object of the tender is for the running of the catering and running of canteen services at Siri Fort Cultural Complex, New Delhi for the audience at Siri Fort as well as for the office of Directorate of Film Festivals.

6. Broadly, therefore, the tender (dated 18.11.2017) held out the need for services at fixed places, i.e., Siri Fort Cultural Complex and the office of Directorate of Film Festival. Given this requirement, the catering is not the predominant or the primary activity which the bidders were expected to engage in. Undoubtedly, they are expected to have that capability. As far as the second respondent's objection that the certificate does not expressly say that the petitioner had provided catering facility, this Court is of the opinion that no conclusion on this ought to be given and the matter should be left to the first respondent to decide on this aspect. However, the Court is of the opinion that the omission of the expression "catering" by the Trauma Centre when it furnished the certificate originally on 07.10.2017 ought not to have been construed in a hyper technical manner so as to exclude the petitioner's bid. Public interest demands that the bids should be fairly interpreted and not rejected on narrow technical considerations - as long as the purpose for which the bid is issued is fulfilled. Undoubtedly, past experience is an essential condition. However, the omission of a previous contracting agency to certify one or other attribute cannot visit any one bidder with the adverse consequences of its bid's rejection at the threshold as technically non-complaint.

7. The Court is also of the opinion that though financial bids have been opened, it

would be appropriate that the respondents take suitable action towards ensuring that in the event the petitioner's certificate is found to be acceptable, its financial bid is also opened. A direction to that effect is furnished; the Directorate of Film Festival shall ensure that the necessary technical assistance is obtained and the financial bids are appropriately sourced from the server etc. The process shall be completed within two weeks.

8. The writ petition is partly allowed in the above terms. There shall be no order as to costs.