

(2017) 12 DEL CK 0237

In the Delhi High Court

Case No : Civil Writ Petition No. 10931 Of 2017

Sarvesh Security Service Pvt. Ltd

APPELLANT

Vs

University Of Delhi

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

Indian Penal Code, 1860 — Section 354

Citation : (2017) 12 DEL CK 0237

Hon'ble Judges : S. Ravindra Bhat, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Arjun Mitra, Aastha Jain, Sneha Singh, Rishi Ahuja, Amit Bansal, Seema Dolo

Final Decision : Allowed

Judgement

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S. Ravindra Bhat, J" ,,,

1. Issue notice. Mr. Amit Bansal, Advocate accepts notice on behalf of respondent. Both the parties submit that the writ petition may be heard and" ,,,

disposed of finally.,,,

2. The writ petitioner offers security services and approximately employs about over 1600 personnel as guards. It claims to be providing manpower,,,

services to various public sectors and non-Government organizations including the Supreme Court of India, Indian Law Institute, hospitals etc. It" ,,,

responded to an e-tender issued by the Delhi University inviting for providing round the clock security services in North Campus for its two zones i.e.,,,

Zone-1 and Zone-2.,,,

3. The Notice Inviting Tender (NIT) spelt out the following eligibility conditions in

the form of "Mandatory Requirements" in Clause 3 of the NIT.,,,

That stipulation reads as follows:-,,,

"3. Mandatory requirements:,,,

The security agency should submit the following mandatory requirements:-,,,

1. Certificates of statutory Registrations:-,,,

i) Registration under Employee Provident Fund and Miscellaneous Provisions Act. 1952.,,,

ii) Registration under Employees State Insurance Act, 1948",,,

iii) Registration under The Contract Labour (Regulation & Abolition) Act, 1970",,,

2. Registration under the Private Security Agencies Regulation Act, 2005",,,

3. Registration under GST, TIN/TAN/PAN.",,,

4. Registration with Labour Department of the State/Central Govt. or any other regulations time to time required as per guidelines of Govt.",,,

if any.,,,

5. The agency's should have annual turn-over of Rs.5.00.000,00 (Five Crore) per year in the last three years in the security business",,,

(substantiated by Audited statements of accounts details of security assignments be given with documentary evidence).,,,

6. Clientele list with the performance certificate from the agencies mentioned in Clause-6 should be furnished in the Annexure-D.,,,

7. The agency has to attach an undertaking (Annexure-F) stating that the agency has carefully read the complete tender document and has,,,

agreed to all the terms and conditions, scope of work, Agency's & University's obligation, Penalty clause and all other conditions as",,,

mentioned in the tender document.,,,

8. The agency should have at least 200 numbers of Security Guards on its roll and it should be substantiated by producing their Employee,,,

Provident Fund (EPF) numbers and other details of the Security Guards in the prescribed Annexure-E.,,,

9. A declaration has to be given that the agency/contractor has not been blacklisted by the Central/State Govt./Autonomous body/Company,,,

during the last three years.,,,

10. The tenderer must give the job profile of the security agency detailing,

among others, the following:",,,

(i) Infrastructure,,,

(ii) Technical expertise,,,

(iii) Trained Manpower,,,

(iv) Availability of all necessary security-related gadgets, equipments etc.â??",,,

4. The criterion for tender evaluation is contained in Clause 6 which reads pertinently as follows:-,,,

â??6. Criterion for Evaluation of Tenders,,,

6.01 The evaluation of the tenders will be made by a Tender Evaluation Committee first on the basis of technical information furnished in,,,

form given in Annexure-B, which is an eliminatory round, then only financial bid will be opened. The financial bids shall be evaluated on",,,

the basis of commercial information furnished in form given in Annexure-C, for each item.",,,

6.02 Technical evaluation will be conducted, keeping in view the requirements/ expectations in respect of security services in the University",,,

of Delhi. Further, prior to the opening of the Financial Bid, antecedents of the agencies/tenderer may be verified by a Technical Committee",,,

of the University of Delhi, which may also decide to visit/inspect the offices and as well as the sites of the eligible agencies.",,,

6.03 The financial bids shall be evaluated on the following criteria:,,,

6.03.1 A notional value of engaging Security personnel shall be calculated and taken into account as per the rates quoted in Annexure-C.,,,

6.03.2 Combined value of the grand totals shall be taken into account from the rates quoted in Annexure-C.,,,

6.04 The University of Delhi will award the contract to the tenderer whose tender has been determined to be substantially responsive and,,,

S.No.,Company Name,Allegations Made,Report of the University

01., "M/s Sarvesh Security

Services Ltd.", "F I R against

Director Col.

Sachida Nand,

Sinha u/s 354 IPC

Show Cause

Notice dated

07.01.13 issued

by Education

Dept. GNCTD", "Shri Gaje Singh, Security Officer had visited P.S

G.T.B. Enclave to deliver the letter issued by the

Asstt. Registrar (Estate) and discussed the matter of

FIR No.0685 dated 31.08.2015 lodged against Col

Sachida Nand, Director of M/s Sarvesh Security

Services Private Ltd by Ms Geeta Kishra, they hav

apprised him that in reference to aforesaid FIR, the

case has been challaned on 24.07.2016 and

forward to Hon'ble Court on 29.03.2017 and

presently the case is under process in Court.

02,****,****,****

****,****,****,****

9. Mr. Bansal appearing on behalf of the respondent- Delhi University on advance notice contended that charges levelled against the bidder were,,,

serious; its director is now facing trial for allegedly molesting a female security guard for the offences under section 354 of IPC. Given that the Delhi,,,

University is a public institution, involving movement of substantial number of students, teachers and other staff population, it was not unreasonable on",,,,

its part to reject the petitioner's bid at the technical evaluation stage.,,,

10. The stipulation with respect to consideration of tenders nowhere spell out qualifying conditions, except stating that an entity having blacklisted",,,,

would be debarred. Although the Delhi University points out to the general conditions which entitle it to in public interest - reject any bid regardless of,,,

financial viability, what occurred in this case is that the rejection at the technical evaluation stage was with reference to something alien to and not a",,,,

matter of eligibility stipulation. Concededly the petitioner's director or other employees have not been convicted of the offence that he/they are,,,

charged with, nor has the petitioner been blacklisted. In the circumstances

before rejecting the bid, fair hearing was necessary.",,,

11. During the course of the hearing, the Court was informed that the financial bids too were opened, but however, that award of contract has not yet",,,,

been finalized. In these circumstances, the Court is of the opinion that the tender rejection at the threshold of the technical evaluation stage was",,,,

unwarranted. Given the information that the University came across and the minutes of the meeting of 01.12.2017, the petitioner should â?" in the",,,,

opinion of court, represent to the University as to its version with respect to the charges and allegations. The University would after duly considering it,",,,

make a reasoned order and also evaluate the petitionerâ??s financial bid. At that stage, it is open to the University to take all circumstances into",,,,

consideration and accept or reject the petitionerâ??s bid, as the case may be. In this regard, this Court is not in agreement with the petitioner with",,,,

respect to disqualifying criteria (blacklisting) being the sole guiding principle to reject the tender. As far as the public agencies are concerned, in this",,,,

case the University - while evaluating the overall bid of the tenderer or bidder, the disqualifying conditions spelt out are undoubtedly binding. However,",,,

Clause 7 of the Instructions to Bidders and Clause 6.2 of the Tender Conditions â?" give the University sufficient elbow to decide whether the interest",,,,

of the institution, even if the petitionerâ??s bid is found technically and financially feasible, the facts on record would have /it would not have the",,,,

overall effect (on the organization having regard to the nature of the public interest involved) on the decision to enter into the contract. In other words",,,,

while technically the bid may be sound and also financially viable, the Universityâ??s larger public interest obligations may have to be factored in",,,,

while deciding to award the contract. This decision has to be taken by the University keeping the above principle in mind.,,,,

12. Accordingly, directions are issued to the University to consider the petitionerâ??s representation within two weeks. The petitioner shall furnish its",,,,

representation in regard to the contents of the minutes of the meeting of 01.12.2017 within three working days from today to the Registrar of the",,,,

University. The University shall not finalize the bid till the representation is decided. The writ petition is allowed to the above extent.,,,,

13. Order Dasti under signatures of the Court Master.,,,,