(2015) 10 DEL CK 0044

In the Delhi High Court

Case No : W.P. (C) No. 3806/2015 and CM No. 6808/2015

Virtuous Security and Facility Management Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Citation : (2015) 10 DEL CK 0044

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Syed Hasan Isthani, Vikas Yadav and Rohit Grewal, Advocates, for the Appellant; Ashish Dholakia and Shradha Bhargava, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J.—The petitioner has filed the present petition impugning the decision of respondent No. 2 (National Institute of TB and Respiratory Diseases "NITRD" for short) to scrap the tender dated 25.11.2014 and for directing the respondent No. 2 to issue the Letter of Intent (LOI) to the petitioner and to quash the process of fresh tender.

2. The respondent No. 2 had issued Notice for Inviting Tender (NIT) dated 25.11.2014. The said tender has been scrapped by respondent No. 2 and a fresh NIT dated 30.03.2015 has been issued.

3. It is the contention of the petitioner that the petitioner was L-1 in the tender process initiated through the NIT dated 25.11.2014 and without any rhyme or reason the said tender process has been cancelled by respondent No. 2 and fresh NIT dated 30.03.2015 has been initiated.

4. On the contrary, the stand of respondent No. 2 is that the respondent No. 2 had the right to reject all or any of the bids and to scrap the tender without assigning any reason. It is contended that the respondents had not yet finalized the tender process consequent to the NIT dated 25.11.2014 and had neither

found the petitioner to be L-1 nor was he declared as L-1 but in fact the bid of the petitioner had been found to be non compliant. It is contended that at the time of consideration of the bids in respect of the first NIT, the respondent No. 2 had come across an Office Memorandum (OM) dated 28th January, 2014 issued by the Ministry of Finance, Department of Expenditure directing the Ministry/ Departments to consider inclusion of a clause in the bid documents that "if a firm quotes ''NIL'' charges/consideration, the bid shall be treated as unresponsive and will not be considered" and for giving effect to the said Office Memorandum, the first NIT dated 25.11.2014 has been cancelled as it did not contain the said clause and fresh NIT dated 30.03.2015 has been issued incorporating the said clause.

5. To resolve the controversy, it would be appropriate to look at some of ten tender conditions.

6. The instruction No. 2 to "Instructions to Bidders", part of NIT dated 25.11.2014 stipulates as under:-

"2. NITRD reserves the right to accept or reject any bid"

7. Instruction No. 10 reads as under:-

"10. The NITRD Delhi does not bind itself to accept the lowest tender and reserves the right to:

(I) Reject any or all Tenders without assigning any reason

(II) Accept any tender or part thereof.

8. In the counter affidavit the respondent No. 2 has contended that the bid of the petitioner consequent to NIT dated 25.11.2014 had been rejected by the respondent No. 2. The Petitioner contends that the rejection was not legal and has not yet been communicated,

9. Since the entire tender process has been scrapped, we are neither called upon nor are we examining the validity of the rejection of the bid of the petitioner by respondent No. 2. Suffice it to note that the respondent No. 2 had not completed the process of scrutiny of the bids and declaration of the L-1 at the time the decision was taken to scrap the tender.

10. In the counter affidavit, the respondent No. 2 has taken a stand that the entire tender process has been quashed in view of the notification of the Ministry of Finance dated 28.01.2014 to the effect that all the tenders issued have to include the clause in the bid document to the effect that if a firm quotes ''NIL'' charges/service charge consideration, the said bid shall be treated as non-responsive and will not be considered.

11. The fresh NIT dated 30.03.2015 issued after the cancellation of the first tender process contains the following note:-

NOTE: (i) As per Office Memorandum No. 29(1)/2014-PPD dated 28.01.2014

Issued by Ministry of Finance (Department of Expenditure) "If a firm quotes ''Nil'' charges/ consideration, the bid shall be treated as unresponsive and will not be considered."

12. Learned counsel for the respondent No. 2 has produced before us the Minutes of the Standing Purchase Committee of the respondent dated 05.03.2015 and 25.03.2015. Perusal of the Minutes dated 05.03.2015 show that the Standing Purchase Committee had not found the petitioner as qualified. It was proposed to award the contract to some other bidder. However, in the subsequent meeting held on 25.03.2015, the Standing Purchase Committee, in view of the Office Memorandum dated 28.01.2014, proposed withdrawal of the proposal to award the tender to the bidder found qualified on 05.03.2015 and re-processing of the tender after insertion of the clause as per the Office Memorandum.

13. As per the NIT dated 25.11.2014, it is clear that the respondent No. 2 had reserved the right to reject any or all bids and was not obliged to accept or award the contract to even the L-1. The tender inviting authority has the right to reject any bid and even scrap the tender process for valid reasons and provided the right is exercised in a reasonable manner and without ulterior motives. In the present case, the respondent No. 2 decided to cancel the NIT dated 25.11.2014 in view of the Office Memorandum dated 28th January, 2014 of the Department of Expenditure/Ministry of Finance. It cannot be said that there was no reasonable cause for the respondent No. 2 to scrap the tender process and to invite a fresh tender after incorporating the clause in terms of the Office Memorandum of the Department of Expenditure, Ministry of Finance. In these circumstances, the action taken by respondent No. 2 cannot be faulted. Even otherwise, perusal of the Minutes of the Standing Purchase Committee dated 05.03.2015 and 25.03.2015 show that the petitioner was not declared as L-1 and the respondent No. 2 had not decided to award the contract to the petitioner. The petitioner, thus, cannot have a grouse with regard to the cancellation of the tender process consequent to the NIT dated 25.11.2014 and the issuance of a fresh NIT dated 30.03.2015.

14. In view of the above, we find no merit in the petition. The same is dismissed leaving the parties to bear their own costs. Interim order dated 20.04.2015 is vacated.

15. We may record that we have not considered on merits and expressed any opinion on the validity of the rejection of the bid of the petitioner consequent to the NIT dated 25.11.2014.

