SCC Online Web Edition, © 2024 EBC Publishing Pvt. Ltd.
Page 1 Monday, July 01, 2024
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2024 SCC OnLine Del 4281

In the High Court of Delhi at New Delhi

(BEFORE MANMOHAN, A.C.J. AND MANMEET PRITAM SINGH ARORA, J.)

Jbmd Enterprises ... Petitioner;

Versus

Sr. Dy. CGDA AN and Others ... Respondents.

W.P.(C) 8410/2024 and CM APPL. 34686/2024

Decided on June 1, 2024

Advocates who appeared in this case :

Mr. A.K. Mishra with Mr. Sudhanshu Dwivedi, Ms. Reeta Vashist, Mr. Aman Kumar Thakur and Mr. Sumbul Advocates.

Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-1 to 4 and 6 and Mr. Akash (GP)

The Judgment of the Court was delivered by

MANMOHAN, A.C.J. (Oral):— Present writ petition has been filed under Article 226 of the Constitution seeking quashing of the entire bidding process of Bid No. GEM/2024/B/4891416 dated 07th May, 2024 ('impugned tender'). In addition, the Petitioner seeks a direction to the Respondents to provide reasons for rejecting its bid and to pass speaking order on the grounds for the disqualification.

2. Learned counsel for the Petitioner states that the Petitioner is a partnership firm, mainly working in providing manpower to various industries on contract basis. He states that the Petitioner has registered itself on the Government e-Marketplace ('GeM Portal') for participating in tenders advertised by Government Agencies.

3. He states that Respondents published a tender on the GeM Portal inviting bids for availing security manpower services. He states that on 16th May, 2024, the Petitioner participated in the impugned tender by duly registering itself and filing all the relevant documents. He states that the said tender was closed on 17th May, 2024 at 11:00 A.M. and the bids were opened on the same day at 11:30 A.M.

4. He states on 21st May, 2024, the result of the technical evaluation of the bids was published on the GeM Portal. He states that upon verification, the Petitioner learnt that as against the status of the Petitioner's bid, the remark was 'Not Evaluated'. He states that upon scrolling it was noted that whereas 237 companies had submitted bids for the impugned tender, 227 bids were disqualified with the identical remark 'Not Evaluated'. He states that due to lack of information, as

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regards, the reason for rejection of its bid, the Petitioner reached out to the customer care of GeM Portal. He states, however, no information was forthcoming and the Petitioner was informed that GeM Portal has no role in this matter and enquiries must be addressed to the tendering authority i.e., Respondents herein. In this regard, he also relies upon the e-mail dated 21st May, 2024 received from the GeM Portal.

5. He states that in these circumstances, the Petitioner herein had addressed a detailed representation on 22nd May, 2024 to Respondent Nos. 1 to 4 to seek reasons for its disqualification from the impugned tender. He states, however, no reply has been received till date and therefore, the Petitioner has been constrained to file the present petition.

6. In reply, learned counsel for Respondent Nos. 1 to 4 and 6 states that they are in receipt of the representation dated 22nd May, 2024. He states however, he is not aware, as regards, the reason for the Petitioner's bid being declared as 'Not Evaluated'. He states that probably the remark of 'Not Evaluated' has been allotted by the operators of the GeM Portal and Respondent Nos. 1 to 4 do not have any role in Petitioner's disqualification. He states that the contract has already been awarded to the successful bidder on 22nd May, 2024.

7. We have heard the learned counsel for the parties and perused the record. In view of the e-mail dated 21st May, 2024 issued by GeM Portal directing the Petitioner to address his enquiries for reasons of rejection to the Respondent Nos. 1 to 4 and the contra stand of learned counsel for the Respondent Nos. 1 to 4 that in the facts of this case it is the GeM Portal which can explain the remarks 'Not Evaluated', we are of the opinion that the tendering authority and the GeM Portal are passing the buck and not addressing the queries raised by the Petitioner herein. The Petitioner having participated in the impugned tender process is entitled to know the reasons for the disqualification of its bid and not providing these answers is contrary to the requirement of transparency. This is also essential, so as to enable the Petitioner, to resolve the deficiencies in its documents to participate in the future tenders.

8. We, accordingly, direct both Respondent No. 5 i.e., GeM Portal and Respondent Nos. 1 to 4 to communicate to the Petitioner the reasons for posting the remark 'Not Evaluated' against its bid. The Respondents are directed to pass a speaking order and communicate the same to the Petitioner within two weeks.

9. Learned counsel for the Petitioner states that he is satisfied with the aforesaid directions and accordingly, the present petition is disposed of in the aforesaid terms along with pending application.

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