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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3828/2020 and CM APPL. 13709-11/2020**

M/S SYBEX SUPPORT SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Saurabh Sharma, Advocate

versus

UNION OF INDIA, MINISTRY OF STATISTICS AND

PROGRAMME IMPLEMENTATION & ANR. Respondents

Through: Mr. Vinod Diwakar, CGSC

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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30.06.2020

HEARD THROUGH VIDEO CONFERENCING

1. The instant writ petition challenges the eligibility conditions in the Request for Proposal bearing No. A-12026/01/2020-E.II dated 11.05.2020 issued by the respondent No.2/National Statistical Office (in short, 'NSO') for providing manpower for survey of its office on the ground that it is unreasonable, arbitrary, minimises competition and is in violation of the CVC guidelines issued vide O.M No. 12-02-1-CTE-6 dated 17.12.2002.
2. The petitioner is a private limited company involved in the supply of manpower, security services and housekeeping to various government, State, PSU organisations on Pan India basis.

3. It is stated in the writ petition that the respondent No.2/NSO issued a RFP bearing no. A-12026/01/2020-E.II dated 11.05.2020 for procurement of manpower for its headquarters and for zonal, regional and sub-offices.
4. It is the contention of the petitioner that under the RPF, a bidder should have a minimum turnover of Rs. 100 crore during each of the last 3 years (2016-17, 2017-18 and 2018-19). Apart from that, the earnest money deposit sought for the Central Zone in the impugned RPF is Rs. 52 lakhs which is 2 per cent of the total value of work that would work out to Rs. 26 crores which according to the petitioner, is contrary to the CVC guidelines dated 17.12.2002 wherein CVC has prescribed that the annual turnover should be 30 per cent of the estimated cost of the project. It is, therefore, the contention of learned counsel for the petitioner that the RFP which contains an eligibility clause of turnover of Rs. 100 crores for a tender, is violative of the guidelines of CVC apart from restricting competition.
5. Mr. Saurabh Sharma, learned counsel for the petitioner reiterates the submissions made in the writ petition and argues that the clauses in the subject RFP are arbitrary in nature and an attempt by the respondent No.2/NSO to eliminate competition.
6. On the other hand, Mr. Diwakar, learned CGSC contends that the tender was issued way back on 11.05.2020 and the present petition challenging the tender conditions has been filed after more than one and half months after publication of the RFP. He further states that these conditions are uniformly applicable to all the bidders and are not arbitrary in nature.
7. We have heard Mr. Saurabh Sharma, learned counsel for the petitioner and Mr. Vinod Diwakar, learned CGSC.

8. Admittedly, the petitioner has not participated in the tender process. He had however participated in a pre-bid meeting held through video conferencing on 15.06.2020, wherein the participants had raised certain queries that have been answered by the respondent No.2/NSO which is reflected in the minutes of the meeting dated 15.06.2020, enclosed with the petition.

9. Admittedly, the petitioner had received a copy of the minutes of the meeting on 17th June 2020. The writ petition was filed only on 25th June 2020 and after removal of the objections raised by the Registry, has been listed today i.e., 30th June 2020. It is also pertinent to mention that a Corrigendum was issued on 10th June, 2020 itself by which the date of opening of technical bid was extended to 1st July, 2020. It is well settled that in matters relating to tenders, time is of extreme importance and bidders cannot be permitted to thwart the bidding process by approaching courts belatedly. Therefore, the petitioner ought to have approached the court well within time. Courts have frowned on persons who approach the court at the last minute in tender matters which results in unnecessary delay of projects.

10. It is well settled that conditions and qualifications of the tender are laid down to ensure that the contractor has the capacity and resources to successfully execute the work. Nothing has been shown by the petitioner which would persuade us to arrive at a conclusion that the decision taken by the respondent No.2/NSO is intended to favour someone or is arbitrary or irrational warranting interference under Article 226 of the Constitution of India.

11. In view of the fact that the petitioner has approached the court belatedly and has not even applied in response to the REP because of the

fact that it does not have a minimum annual turnover of 100 crore for each year during the years 2016-17, 2017-18, 2018-19, it is not even entitled to file this petition. The petitioner has not made out a case that the conditions are so arbitrary and is oriented to favour a chosen few that would warrant interference by the court. Resultantly, the petition is dismissed in *limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JUNE 30, 2020

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