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

% Judgment delivered on: 08.12.2017
+ W.P.(C) 10931/2017

SARVESH SECURITY SERVICE PVT. LTD. Petitioner

versus

UNIVERSITY OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Arjun Mitra, Ms. Aastha Jain, Ms.
Sneha Singh and Mr. Rishi Ahuja, Advs.

For the Respondent : Mr. Amit Bansal, Ms. Seema Dolo, Advs.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

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.”*

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

“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 has been determined as the lowest evaluated bid, computed on the overall value of all men and material, provided further that the tenderer is determined to be competent to perform the contract satisfactorily. The University of Delhi shall however not bind itself to accept the lowest or any tender bid, wholly or in part.”

5. The instructions/guidelines for tenderer also state that the organization i.e. Delhi University “in public interest reserves its right to accept or reject all tenders without assigning any reasons and also

to impose/relax of the terms of the tender”.

6. The petitioner’s bid was furnished. After the technical evaluation stage, on 01.12.2017, meeting was held, the result of which was notified to the petitioner by e-mail. This e-mail intimated the rejection of the petitioner’s bid. The relevant part of the minutes of the meeting on 01.12.2017 to the extent it pertains to the petitioner and the relative reference to the norms applied are as follow:

“MINUTES OF THE MEETING

MINUTES OF THE MEETING HELD ON 1ST DECEMBER, 2017 at 3:00PM IN THE PROCTOR'S OFFICE FOR HIRING OF SECURITY SERVICES IN THE NORTH CAMPUS OF THE UNIVERSITY OF DELHI.

Members present:

The Chairperson welcomed all the members of the Committee and apprised them about the discussion and recommendations held in the last meeting dated 21.11.2017 wherein the Committee had recommended for an inquiry in respect of the following security agencies whose complaint was received from M/s Pankaj Security Services vide letter No. 14.11.2017 having certain allegations.

Accordingly, letter dated 22.11.2017 were issued by the Assistant Registrar (Estate) to the concerned Department's with the request to provide the current status of the allegations as made by the complainant. The

Officials from the Estate Section and the Security Officer visited the concerned Departments to deliver the above mentioned letters and to obtain the reports on the allegations made upon the aforementioned security agencies.

On the basis of the feedback by the University Officials with the staff of P.S. GTB Enclave, North District, Delhi; Delhi Tourism & Transport Development Corporation and Pandit Bhagwat Dayal Sharma PGIMS, Rohtak, Haryana and documents received by the officials, the following report has been submitted as under:

<i>S.No.</i>	<i>Company Name</i>	<i>Allegations Made</i>	<i>Report of the University</i>
<i>01.</i>	<i>M/s Sarvesh Security Services Ltd.</i>	<i>FIR against Director Col. Sachida Nand, Sinha u/s 354 IPC Show Cause Notice dated 07.01.13 issued by Education Dept. GNCTD</i>	<i>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 have 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.</i>
<i>02</i>	<i>****</i>	<i>****</i>	<i>****</i>
<i>****</i>	<i>****</i>	<i>****</i>	<i>****</i>

As per the GFR 2017 Rule 151 Debarment from Bidding sub rule (i) (a) & (b) clearly state that:

- (i) A bidder shall be debarred if he has been convicted of an offence:-*

- (a) *Under the Prevention of Corruption Act, 1988 or*
- (b) *The Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*

In view of the above rule position, the reports and feedback received from the different offices/Departments as mentioned in the complaint, the Committee has recommended to technically disqualify aforementioned security agencies i.e. M/s Sarvesh Security Services Pvt. Ltd., M/s Orion Security Solutions and M/s Kore Security Services.

After a detailed discussion on the technical bids, antecedent verification report of sub-committee and the enquiry reports submitted by the University Officials in the complaint received from M/s Pankaj Security Services vide letter No. 14.11.2017.”

7. It is contended by learned counsel that the reference to GFR 2017, to reject the petitioner's bid is arbitrary. It was contended that the eligibility conditions nowhere barred the bidder facing criminal prosecution from entering into the contract. Besides it was contended that GFR 2017 which is relied upon by Delhi University has nowhere been incorporated in the tender conditions or even referred to. Even, in the circumstances of an assumption that the petitioner was convicted, its bid could not have been rejected.

8. Learned counsel submits alternatively that even before concluding that the petitioner was ineligible, the minimum requirement dictated that some hearing was given, this was not done.

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 – 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 petitioner's financial bid. At that stage, it is open to the University to take all circumstances into consideration and accept or reject the petitioner'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 – give the University sufficient elbow to decide whether the interest of the institution, even if the petitioner'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 University'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 petitioner'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.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

**DECEMBER 08, 2017
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