2021:JKLHC-JMU:238

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

WP (C) No. 1958/2020
CM Nos. 7397 & 7398/2020
CM No. 977/2021

Reserved on : 15.03.2021
Pronounced on : 29.03.2021

M/S Datar Security Pvt. Ltd ...Petitioner(s)

Through:- Mr. R. K. Gupta, Sr. Advocate with
Mr. Udhay Bhasker, Advocate.

V/s

Jammu & Kashmir Bank Ltd. and others ...Respondent(s)

Through:- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner-company is a security agency registered under the Jammu and Kashmir Private Security Agencies Regulation Act, 2005 (PSARA) and is engaged in the business of providing private security to various organizations throughout India, including the Union Territory of Jammu and Kashmir for the last several years. The petitioner claims to be a professional security agency providing security guards to as many as 46 organizations all over the country which include institutions like HPCL, HPGCL, IIM, SCERT, Ambedkar Nagar Hospital, Delhi University, National Law University, PUNSUP, PUNGRANE, Canara Bank, Punjab & Sind Bank, Allahabad Bank etc. etc.

2. It so happened that the Central Security Department of the Jammu and Kashmir Bank Limited, respondent No.1, invited bids from eligible parties for empanelment of reputed security agencies to provide security guards for J&K Bank Branches, ATMs, Offices, residential complexes and other Bank's property in the UT of J&K, UT of Ladakh and other places in the country for a period of three years vide Reference No. JKB/CHQ/CS/F-76/2020-034 dated 28.02.2020. Responding to the aforesaid notification, the petitioner-company submitted its online bid (both technical as well as financial) on 11.06.2020 within the extended period for three zones, i.e. Zone of UT of J&K, Zone of UT of Ladakh and Zone Mohali. The petitioner- company was declared qualified in the technical bid and, accordingly, the respondent No.2 called upon the petitioner- company to participate in the reverse auction to be held on 22.09.2020 along with the details/ number of unskilled, gunmen and skilled guards as was required to be provided by the participating agency. The petitioner-company submitted its bid for a sum of ₹ 5,29,49,166.00 for the total number of security staff. As per the requirement of tender notice, there was a base price providing for minimum wages for the State/UT, ESIC, EPF Contributions, EDLI, Administrative charges and related statutory obligations and mandatory deductions.

3. The petitioner- company along with other eligible bidders participated in the reverse auction on 22.09.2020 only for the Zones of UT of J&K and UT of Ladakh. However, it did not submit any bid for Mohali Zone in the reverse auction held on 22.09.2020. The petitioner- company quoted rate of ₹ 5,29,49,166.00 for the Zone of UT of J&K and ₹ 4,40,599.00 for the Zone of UT of Ladakh, which had been fixed as base/start price by the respondents. On the basis of the bid submitted, the petitioner- company was declared as L-4 for the Zone of UT of J&K and L-1 for the UT of Ladakh in the reverse auction.

4. Due to technical and some other reasons the respondents, however, did not finalize the reverse auction for the Zone of UT of J&K, Zone of UT of Ladakh and Mohali. It decided to conduct revised reverse auction for the Zone of UT of J&K on 27.10.2020. Similarly with regard to Zones of UT of Ladakh and Mohali, open reverse auction was decided to be held on 28.10.2020. In the revised open reverse auction to be conducted by the respondents, it was indicated that the participating bidders would only submit the bid by quoting agency commission/service charges. The petitioner-company participated in the revised reverse auction conducted for the Zone of UT of J&K on 27.10.2020 wherein it quoted the rate for agency commission of ₹ 0.01 per skilled/unskilled/gunman. The petitioner also participated in the revised reverse auction conducted for the Zones of Ladakh and Mohali on 28.10.2020 and quoted the same rate of agency commission i.e. ₹ 0.01 per person.

5. Since the petitioner- company was first to give its bid in the revised reverse auction held on 27.10.2020 for the Zone of UT of J&K and the open reverse auction held on 28.10.2020 for Zone of UT of Ladakh and Zone of Mohali, as such, the rates quoted by the petitioner-company became the base price for all the three Zones. Since there was no bid lower than the base price/bid quoted by the petitioner-company, therefore, the petitioner-company was declared L-1 for all the three Zones. Ordinarily, as was expected by the petitioner- company, the contract was to be awarded to the petitioner-company having been declared as L-1 for all the three Zones, however, vide communication sent by respondents through e-mail bearing No. JKB/CPC/F-76/2020-101 dated 13.11.2020 the petitioner- company was informed that the bid received from it was unrealistic and as such has been rejected. It is this communication of the respondents which is assailed by the petitioner in this petition filed under Article 226 of the Constitution of India.

6. The impugned communication has been challenged, inter alia, on the following grounds:-

(i) That the impugned communication, besides being illegal, unlawful and arbitrary, on the face of it, is also in violation of principles of natural justice, in that, neither any prior notice was issued to the petitioner-company nor was any explanation sought before issuing the impugned communication;

(ii) That the petitioner- company having been declared as L-1, was entitled in law to the award of the contract and, therefore, the decision of the respondents to deny contract to the petitioner, that too without any justifiable reasons, is bad in the eye of law and deserves to be quashed;

(iii) That once the bid submitted by the petitioner was in conformity with the terms and conditions of the tender notice/bid document, there was no reason or justification with the respondents to arbitrarily reject the bid, by terming it as ‘unrealistic’.

7. The writ petition is vehemently opposed by the respondents. In their objections, respondents have denied the charge of arbitrariness in the making of the impugned decision. It is submitted that the bid quote of the petitioner i.e. ₹ 0.01 as agency charges, is totally irrational, unreasonable, impracticable and unrealistic. The abnormally low bid has been quoted by the petitioner-company only to get the contract at any cost, otherwise, such low bid is not viable in the ordinary commercial sense. The petitioner is bound to pay the minimum wages of the Central Government/ State Government, as applicable, as also to make statutory payments on account of EPF, ESIC, and EDLI contributions etc. It is also pleaded by the respondents that the agency commission of ₹ 0.01 quoted by the petitioner- company was also found against the mandate of letter bearing No. 31/14/1000/2014-GA dated 17.09.2017 issued by the Ministry of Commerce and Industries, in which it has been mentioned that the quotations over and above the minimum wages insofar as these pertain to Service Charges/Administrative Charges, quoted by the bidder, has to be necessarily over and above zero percent and further that Zero percent includes all derivates of Zero up to 0.999. It is thus submitted that any service charge, not adhering to above guidelines, is not required to be considered and such bid rejected. Reliance has been placed by the respondents on the inter departmental communications between Joint CGDA (Finance) and IFA HQrs (WC), Chandimandir dated 27.09.2017. The respondents have also placed reliance upon the condition in the General terms and conditions of the NIT providing for right reserved in the respondents to reject any or all the RFPs applications without assigning any reason whatsoever.

8. Having heard the learned counsel for the parties and perused the record, it is necessary to first remind ourselves yet again of the contours of exercise of power of judicial review in the contractual matters. One judgment that quickly comes to mind is **<u>Tata Cellular v. Union of India</u>, (1994)6 SCC 651**. What is said by a Three Judge Bench of Hon'ble the Supreme Court in the aforesaid case and relevant for the disposal of controversy on hand, is contained in paragraph 70 of the judgment, which, for facility of reference, is reproduced as under:-

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

9. Equally illuminating are the observations of Hon'ble the Supreme Court in paragraph 81 of the judgment where in the Supreme Court deals with two important facets of irrationality. Paragraph 81 reads thus:-

"81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of State for Environment, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v. Bernet London Borough Council, ex p Johnson the

condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

10. The Supreme Court, after considering the whole gamut of judicial opinion on the point and referring to case law laid down in India and abroad, culled out six important principles in paragraph 94 of the judgment, which, in my opinion, also deserves to be reproduced as under:-

> "94. The principles deducible from the above are : (1) The modem trend points to judicial restraint in administrative action.
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> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
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> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
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> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
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> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

11. In the later decision of Hon'ble the Supreme Court in **Michigan Rubber (I) Ltd. V. State of Karnataka and others**, **(2012)8 SCC 216**, a two Judge Bench of Hon'ble the Supreme Court was yet again confronted with the same issue. Placing reliance on the judgment in **Tata Cellular** (supra), **Raunaq International Ltd. vs. I.V.R. Construction Ltd. & Ors**. **(1999) 1 SCC 492** and **Tejas Constructions & Infrastructure Pvt. Ltd. vs. Municipal Council, Sendhwa & Anr**, **(2012) 6 SCC 464,** and few others, the Apex Court made its conclusions in paragraph nos. 23 and 24, which, for facility of reference, are also reproduced as under:-

> "23) From the above decisions, the following principles emerge:
>
> (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
>
> (b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
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> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
>
> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
>
> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.
>
> 24) Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

> (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached?; and
>
> (ii) Whether the public interest is affected?
>
> If the answers to the above questions are in negative, then there should be no interference under Article 226."

12. After the judgment in **Tata Cellular**, which is virtually *locus classicus* on the point, and elaboration of principles laid down therein in the later judgment of Hon'ble the Supreme Court in **Michigan Rubber** (supra), the contours of power of judicial review vested in this Court by Article 226 of the Constitution, are now well defined. The scope of interference in contractual matters, when State is one of the contracting party, is very limited and, as rightly said, this Court, while exercising its writ jurisdiction, does not sit in appeal over the decision of the authority and its job is limited to the extent of finding that the exercise of discretion or decision making is not vitiated being affront to and in derogation of soul and spirit of Article 14 of the Constitution of India. A fair amount of latitude or free play in joints is required to be conceded in favour of the State.

13. It is in the light of these principles laid down by Hon'ble the Supreme Court in the aforesaid twin judgments and reiterated in several recent decisions of the Supreme Court, the case of the petitioner and the rival arguments of the parties are required to be appreciated.

14. It is not in dispute that the bid quote of ₹ 0.01 offered by the petitioner-company towards the agency commission is not in violation of any terms and conditions of the revised reverse auctions conducted by the respondents for three Zones in question. As is argued by Mr. R. K. Gupta, learned senior counsel, one amongst the eligibility criteria prescribed in the RFP for participation in the revised reverse auction was that any bid quotes/zero charges under Agency Commission would be treated as null and void and the same shall not be considered for further evaluation. It is thus contended by the learned senior counsel that any quote above 'Zero' was in consonance with the terms and conditions of the reverse auction and, therefore, same could not have been termed by the respondents as 'unrealistic'. What is exactly provided in this regard deserves to be noticed herein below:-

> "Any bid in the reverse auction that quotes nil/zero charges under agency commission shall be treated as null and void and will not be considered for further evaluation.

Further it was also provided that:

> " Reverse auction to the conducted as open reverse auction i.e. without setting of the base price. The first bid received in Reverse Auction will be considered as the Base/Starting price of the auction."

15. Placing strong reliance on the aforesaid stipulation, learned senior counsel submits that any rate of commission above Zero must necessarily be treated as in conformity with the terms and conditions of the revised reverse auction and, therefore, terming such quote of bid as 'unrealistic' is arbitrary, irrational and falls foul of Article 14 of the Constitution of India.

16. Per contra, Mr. Abhinav Sharma, learned senior counsel representing the respondents argues that as per the admitted position as also as per the terms and conditions of the auction, the respondents had reserved themselves a right to reject even the lowest bid without assigning any reasons. Once that power is conceded to the respondents, it is totally irrational to say that respondents having provided that quote of nil/zero charges on account of Agency Commission was null and void, could not have rejected the quote above 'Zero' by terming it as impracticable and unrealistic. He, therefore, submits that base quote of the petitioner-company has been rejected by the respondents after taking a conscious decision that the same was totally irrational, impracticable and unrealistic. He, therefore, argues that, once the decision is backed by reasons, this Court may not look into the sufficiency of such reasons, for this Court, while exercising the powers of judicial review in contractual matters, will not partake the role of appellate authority.

17. Mr. R. K. Gupta, learned senior counsel, in support of his argument, that the Court must strike on the arbitrariness even in the realm of contract where State or public body is one of the party, has relied the judgments in **Harminder Singh Arora v. Union of India**, **AIR 1986 SC 1527**, **Union of India v. Dinesh Engineering Corporation and anr**, **AIR 2001 SC 3887**, and **M/S K. C. Food Pvt. Ltd v. State of J&K and others (OWP No. 2576/2018 decided on 31.12.2018)**. All the three decisions aforesaid relied upon by the petitioner do not lay down any proposition of law different from the one laid down in the twin cases which I have elaborately referred to hereinbefore.

18. Learned senior counsel appearing for the petitioner has also placed reliance on a Division Bench judgment of Delhi High Court in the case of **Orion Security Solutions Pvt. Ltd. v. Govt. Of NCT of Delhi and ors** decided on 22.08.2016 and another judgment rendered on 04.01.2017 by a Division Bench of High Court of Delhi in W.P. (C) 10884/2016 titled **Orion Security Solutions Pvt. Ltd v. Govt. Of NCT of Delhi and ors**. In the aforesaid judgment, the Division Bench of Delhi High Court was confronted with a similar situation where the bid of the petitioner was compliant and responsive in all respects as per the terms and conditions of the NIT/bid document, but had been rejected by the Government of NCT of Delhi on the ground that the same was abnormally low and unrealistic. The Division Bench, after finding that quoting of ₹ 1 as Agency charges by Orion Security Solutions Pvt. Ltd was not in violation of any terms and conditions of the NIT and that there was no prohibition in the tender document for making such quotation, declared the decision of the tender committee, that the quotation was abnormally low and unrealistic, as arbitrary. In the aforesaid judgment, the Division Bench also took note of the fact that, after the quotation of the Orion Security Solutions Pvt. Ltd. was rejected by the Tender Committee, the Agency had represented before the Additional Director of Education and explained its business model to justify its viability despite having quoted a very low rate. The Division Bench considered the issue in the context of the explanation tendered and concluded that, since the quotation, though on lower side, was not in violation of any terms and conditions of the contract and, therefore, its rejection by the Tender Committee was arbitrary and violative of Article 14 of the Constitution of India. This judgment of the Division Bench, however, was not later followed by another Division Bench of Delhi High Court when it considered the issue yet again in the case **Sarvesh Security Services Pvt. Ltd vs. Ihbas and anr, decided on 27.09.2017**. The Division Bench of Delhi High Court comprising Justice S. Ravindra Bhat and Justice Sunil Gaur considered the issue at great length and the similar reliance placed by the learned counsel appearing for *Sarvesh Security Services* on the judgment of *Orion Security Solutions Pvt. Ltd*. was not accepted. The facts in the aforesaid case, decided by Delhi High Court, are not materially different from the facts of the case under examination. What was said by the later

Division bench of Delhi High Court in Sarvesh Security Services (supra) is aptly summed up in paragraph 23 and 24 of the judgment, which reads thus:-

> "23. The above reasoning, in the opinion of this Court, cannot have universal application. The decision about whether award of contract to one party or another is not dependent entirely on the price or cost quoted for the goods or services; it is also dependent upon the ability of the bidder, which is to be seen from a consideration of several other factors. One factor certainly would be viability of the bid. In the present case, the petitioner has offered to provide services at an overall consideration of `0.01; others have quoted more. A disembodied look at the rates conveys the impression that all those rates too are depressed; however, the Court should not, here, substitute its view. The successful bidder, JMD Consultants, quoted `20,000/- towards administrative costs, i.e. more than the petitioner. Again, the successful bidder's quotation for other charges was more. The respondents took into consideration all these aspects. As is evident from the deliberations and IHBAS' files in the present case, it undertook to discuss the viability of the bid of the Petitioner; the rejection of the bid was not taken on an arbitrary whim and the freak low administrative charge quoted by the Petitioner was found to be unsustainable from a business perspective. The element of public interest casts a serious responsibility on the IHBAS in the particular instance, as IHBAS is a tertiary level institute and deals with hospital functioning under the aegis of the GNCTD; the same cannot be compromised on any accord, let alone on non-performance of manpower contract by the contracting agency. Furthermore, the committee took note of and was guided by the Supreme Court decision in Jagdish Mandal (supra); it was also aware of the two judgments of this court on the issue of nominal or minimum administrative charges and the approach to be adopted.
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> 24. It is, therefore, clear from the above analysis that the State exercises a considerable latitude of administrative discretion in the awarding of government contracts by the process of inviting tender. This discretion of the State, though, is subject to judicial review, albeit, one that is limited to analysing if such exercise of discretion is illegal or arbitrary. If the State decides on the award of the contract by veering from the conditions of the NIT, and such decision is bonafide and in due consideration of the sustainability of the corresponding project/work to be conducted and maximising the expenditure of public money, then the Court deems right to not interfere in such decision of the State. In the present case, likewise, the low quote for the administrative cost, cited in the petitioners' bid was found to be unsustainable as evident from the deliberations made by the Respondents (as mentioned above). The bid rejection by IHBAS was not arbitrary, but based on a carefully contemplated decision that champions the functional viability of the purpose of the invitation of the tender and the efficient utilisation of public money, and is thus, not arbitrary or malafide. The Petition is, therefore, dismissed as without merit; but without any order as to costs."

19. When the case in hand is examined, it is seen that what is said by the Division Bench of Delhi High Court in Sarvesh Security Services (supra) applies on all fours to this case as well.

20. It is true that in the revised reverse auction, the respondents had sounded a note of caution that anybody quoting rate as nil/zero charges for Agency Commission, would not be considered for evaluation and such bid would be null and void. This stipulation, however, does not mean that any rate quoted by the bidder above 'zero', howsoever impracticable and unrealistic it may be, must be accepted by the employer. As is elaborately discussed and unambiguously held that State or its instrumentality inviting bids for award of contract is well within its right to reject even a lowest bid provided the decision to reject such bid is not irrational, arbitrary and in violation of Article 14 of the Constitution of India.

21. As is noted in the judgment of Sarvesh Security Solutions (supra), the purpose of constituting a Tender Committee for evaluation of tenders, is to find out whether any abominably low bid offered by the lowest tenderer will affect the work if the contract is awarded to such tenderer. If the Committee, after taking into consideration all the relevant factors, comes to the conclusion that the lowest bid offered by the tenderer is abnormally low and unrealistic and would come in the way of smooth execution of the contract, said decision cannot be termed as unreasonable or arbitrary.

22. I have gone through the record produced by the respondent-Bank, a perusal whereof indicates that the matter has been considered from all angles and the Committee, after obtaining the opinion from the Law Department of the Bank, has taken a decision to reject the unrealistic bid offered by the petitioner. The relevant deliberations of the Committee are contained in Note 244 to 249, which I think, also deserves to be reproduced herein below:-

> " 244. In response to the RFP floated by the Department, Bids were received and opened on. As per process Reserve Auction was conducted on 22/09/2020 however final L1 bids received after the said Reverse Auction where below minimum wages. The said bids could not be accepted as at a later stage the Bank would be liable to pay the difference between the L1 bids and the Minimum Wages and this would also be against the mandate of law.
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> 245. Matter was referred to Law Department, CHQ who opined that Bank may hold the Reverse Auction afresh, seeking bids only for Agency Commission while keeping the Minimum Wages component fixed as per regulations.
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> 246. Reverse Auction was conducted again on 27/10/2020 for one Zone of UT of J&K and on 28/10/2020 for rest of the Zones with revised Terms and Conditions as per the opinion of the Law Department, however in the said Reverse Auction one of the Bidders namely, M/s Datar Security Services Pvt. Ltd quoted Rs. 0.01 as Agency Commission/guard/month which restricted other bidders to participate. Similarly in the Reverse Auction of other zones two more bidders namely M/s A P Securitas Private Limited and M/s Central Investigation & Security Services Limited submitted Abnormally low rates of Agency Commission per guard per month.
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> 247. The Committee deliberated on the issue and referred the same to Law Department, CHQ who opined that Bank may debar the bidders who have unrealistic bids and hold fresh Reverse Auction. Also as per the opinion Bank while conducting fresh Reverse Auction, may fix minimum percentage as 0.9999% of the agency commission below which no bid would be accepted and the bidders debarred from the reverse auction are to be informed of their disqualification from the bidding process. The said opinion is based on the Ministry of Finance, letter no. 29(1)/2014-PDD dated 28-01-2014 and Clarification to the said letter dated 14-09-2014 (copy placed along side).
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> 248. Accordingly the Committee communicated the disqualification to the said bidders. However, before finalization of conducting the fresh reverse auction, Committee received representation from below listed two of the three bidders disqualified.
>
> I. M/s Datar Security Services Pvt Ltd.
> II. M/s A P Securitas Private Limited.
>
> *M/s Datar Security Services Pvt Ltd in their representation (letter placed alongside) have raised the following points, as in their opinion their bid is compliant to the RFP;*
>
> *That they should be given an opportunity to provide clarifications with regard to their bid which in their opinion are reasonable.*
>
> *In the RFP no rules or regulations were provided for minimum service charges (Agency Commission).*
>
> M/s A P Securitas Private Limited in their representation (mail placed alongside) have raised the following points:

That they quoted the least possible bid and their bids are compliant for Delhi and Bangalore zones as they are providing service at similar rates elsewhere.

For Mohali Zone they have raised objection that another bidder blocked participation by submitted very low rates. (However the said bidder was not disqualified in the said zone).

That they should get an opportunity to explain their bids.

249. Central Purchase Committee is of the opinion that given the representations of the bidders, besides minimizing competition, that may lead to litigations against the current process which would unnecessarily delay the Empanelment of Security Agency/s for providing security guards and as such it is recommended that the current RFP may be dispensed with and the use Department may float fresh RFP in consultation with Law Department with revised and detailed Terms and Conditions mitigating the gaps in the current RFP document, so that the process of Empanelment of Security Agency/s for providing security guards can be concluded smoothly without any potential disputes within minimum period of 30 days."

23. A bare reading of the above reproduced notes from the record makes it clear that the decision taken by the respondents after due deliberations is neither arbitrary or *mala fide* nor can be said to have been taken for any collateral purposes.

24. Following the dicta of law laid down in the case of **Tata Cellular**, **Michigan Rubber** and **Sarvesh Security Solutions** (supra), I find no merit in the plea of the learned senior counsel for the petitioner that the decision impugned taken by the respondents, rejecting the lowest bid of the petitioner on the ground of being unrealistic, falls foul of Article 14 of the Constitution of India. The decision is supported by reasons, which, by no stretch of reasoning, can be termed as irrational or perverse and it is not the case of the petitioner that the decision is *mala fide* or taken for any collateral purposes. Needless to say, this Court in the exercise of its judicial power of review may not go into the sufficiency of the reasons.

25. I am, however, of the considered view that the impugned decision, insofar as it debars the petitioner- company from further bidding under the RFP/ Reverse Auction for the Zone of UT of J&K, Zone of UT of Ladakh and Mohali Zone, cannot sustain in law for two reasons; one that no notice of hearing has been provided to the petitioner before taking such decision; and; two, the bid offered by the petitioner, though has been rejected as being unrealistic, was yet in conformity with the terms and conditions of the NIT. No wilful default or mischief can be attributed to the petitioner who was only asked, like other tenderers, not to quote his rates as Nil/Zero, as Agency Charges. He, therefore, quoted a rate which was above 'Zero' but was found by the respondents unworkable and unrealistic. In that view of the matter, I am of the considered view that petitioner has not committed any act or omission for which it needs to be penalized by debarring it from participation in the further bid process.

26. For the forgoing reasons the writ petition, insofar as it challenges the rejection of petitioner-company's bid in the Reverse Auction as being 'unrealistic', is found to be without merit and dismissed. However, the condition laid down in the impugned order, which debars the petitioner-company from the further bidding process for three zones i.e. zone of UT of J&K, zone of UT for Ladakh and Mohali Zone, is found to be illegal and bad in the eye of law and, therefore, the impugned order to that extent is quashed.

27. The writ petition is, accordingly, disposed of.

28. The record submitted by the respondent-Bank is returned.

(Sanjeev Kumar)
Judge

JAMMU:
March 29, 2021.
Anil Raina, Addl. Reg/Secy

Whether the order is speaking: Yes
Whether the order is reportable: Yes