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

% Judgment delivered on: 29.11.2016

+ **W.P.(C) 8736/2016 & CM No.35837/2016**

**S A INFRASTRUCTURE CONSULTANTS PVT TLD** ... Petitioner

versus

**NATIONAL HIGHWAY AUTHORITY OF INDIA** ... Respondent

**Advocates who appeared in this case:-**

For the Petitioner : Mr Joy Basu, Sr Advocate with Mr Alok Agarwal,  
Mr Sudhir Mishra, Ms Ritwika Nanda and Mr Abhinav

For the Respondent : Mr S. Nanda Kumar, Mr Parivesh Singh, Mr M.S. Saran  
Kumar and Mr Prateek Gupta

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE JAYANT NATH**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This writ petition has been filed in respect of the Request for Proposal (RFP) dated 22.02.2016 as also the RFP dated 09.09.2016 pertaining to the project – Independent Engineer Services for Six-Laning of Vijaywada-Gundugolanu Section of NH-5 from km 1076.48 to km 1022.48 including 6-lane Hanuman Junction bypass (length 6.72 km) and 4-lane Vijaywada bypass (length-47.88 km) [Total Length: 103.59 km] in the State of Andhra Pradesh under NHDP Phase V to be executed in BOT (Toll) mode on DBFOT basis.

2. Initially, the RFP dated 22.02.2016 had been issued. Several parties had participated, including the present petitioner. The petitioner was found to be H-1 on 14.02.2016. Thereafter, as per the terms of the RFP document, the petitioner was liable to be called for further negotiations. The negotiation process started on 20.06.2016 and concluded on 08.07.2016. The validity period of the proposal was to be 120 days from the last date of submission of the bids. In the present case, this translated to the validity being upto and including 24.07.2016.

3. The petitioner is aggrieved by the fact that despite the petitioner being H-1 and the negotiations having concluded on 08.07.2016, no letter of award was issued to it and the respondents even allowed the date of 24.07.2016 to pass by. Instead, the respondents took the step of issuing a fresh Request for Proposal on 09.09.2016 and that is why the petitioner has sought the quashing of the Request for Proposal dated 09.09.2016 as also for issuance of the letter of award in respect of the Request for Proposal dated 22.02.2016.

4. The respondents have taken a stand on two points. The first point being that there is an opinion of the Chief General Manager through letter

dated 11.07.2016 which would disqualify the petitioner. However, we may note that this ground is no longer available to the respondent in view of our judgment in **S. A. Infrastructure Consultants Pvt. Ltd v. National Highway Authority of India**: [WP(C) 7214/2016, decided on 30.08.2016]. Paragraph 17 of the said decision is relevant and the same reads under:-

“17. After hearing counsel for the parties, we are of the view that the course of action taken by the respondents insofar as the petitioner is concerned cannot be accepted. There are several reasons for this. First of all, there has been no determination on the show cause notices which were issued to *inter alia* the petitioner. Thus, there is no conclusive finding with regard to the four certificates of work experience submitted by Nicholas O’ Dwyer Limited were alleged to be false or fabricated. Apart from this, there is no finding that there was any complicity on the part of the petitioner. The respondent should have taken a final decision in the matter and if and only if there was a finding against the petitioner could the respondent have taken the decision to exclude the petitioner from the stage of opening of financial bids. The second reason is that we get the impression that the respondent was bent upon excluding the petitioner from the stage of opening of financial bids and that is why it went on seeking opinions after the first two opinions were against the course of action which they have taken. We are of the view that the first two opinions given by the Vigilance Department of NHAI in the first instance and by the legal consulting firm of NHAI were correct and sufficient to enable the respondent to open the financial bid of the petitioner. The respondent ought to have followed that course of action and permitted the petitioner to participate in the second stage i.e., opening of the financial bids yet, it persisted and sought further opinion from a Senior Government Standing Counsel and furthermore from

the CGM (Legal), NHAI. We do not understand as to how the CGM (Legal) could have given an opinion that the petitioner had used fraudulent means / misrepresented in the NHAI projects and that therefore the petitioner should not be entertained and be debarred from future projects also till he conclusively proves his *bona fides* with documents. This understanding of the law is completely contrary to what it actually is. Once show cause notices had been issued to the petitioner, unless they were taken to their logical end, there could not be any finding against the petitioner. Furthermore, we do not know how the CGM (Legal), NHAI could have given an opinion that the petitioner be debarred from future projects without even considering petitioner's replies to the show cause notices. This would clearly militate against the principles of natural justice. Even the opinion given by the Senior Central Government Standing Counsel to the effect that it is always advisable that during the pendency of enquiry the financial bids of the company should not be opened is erroneous and contrary to law. Thirdly, we do not see as to why the respondents did not take heed of the earlier two opinions and sought to rely on the latter two opinions which we have already indicated are contrary to settled legal principles."

5. The Second point that has been taken by the learned counsel for the respondent (NHAI) is that the letter of award could not be issued because the validity period of the proposal submitted by the petitioner had expired on 24.07.2016. We do not see as to how this stand can be taken by the respondent, particularly because the negotiations ended on 08.07.2016 and there was enough time for issuing the letter of award by 24.07.2016. In any event, to obviate any controversy, the learned counsel for the petitioner, on instructions, states that there is no difficulty in extending the

validity period of the proposal. We are also of the view that the validity period of the proposal is for the benefit of the bidder / proposer in order to prevent the respondent from endlessly delaying the conclusion of the bid process. In these circumstances, we feel that the respondent was wrong in not issuing the letter of award to the petitioner despite the petitioner having been found to be H-1 and the negotiations also having concluded on 08.07.2016.

6. Consequently, as a first step, the Request for Proposal dated 09.09.2016 is quashed. Secondly, the respondent is directed to issue the letter of award to the petitioner within a period of 60 days. The petitioner shall, within a week, send a communication to the respondent extending the validity period of the proposal for 60 days from today with effect from 24.07.2016.

7. The writ petition is allowed as above. There shall be no order as to costs.

**BADAR DURREZ AHMED, J**

**JAYANT NATH, J**

**NOVEMBER 29, 2016**

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