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

% Judgement delivered on: 24th April, 2017

+ W.P.(C) 3492/2017, CM No.15288/2017
SUNIL YADAV

..... Petitioner

Through : Mr.Sudhir Makkar, Sr. Adv. with
Mr.Harish Shukla, Adv.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE

..... Respondent

Through : Mr.Brajesh Kumar, Adv. for R-1

+ W.P.(C) 11952/2016 & CM Nos.47093/2016, 4980/2017
DIN BANDHU DASS

..... Petitioner

Through : Mr.A.K.Mata, Sr. Adv. with
Mr.J.Sarma, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr.Waize Ali Noor, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S. RAVINDRA BHAT, J.(Oral)

Both petitioners are aggrieved by the action of the respondent – All India Institute of Medical Sciences (AIIMS) in processing their bids for tea/coffee vending kiosks at two centres – trauma centre and emergency ward.

Both petitioners contend that their bids were compliant and they had even been intimated about the opening of the financial bids but on 17th December, 2016, AIIMS purportedly postponed it to 19th December, 2016. The petitioners through their learned counsel urged that the inaction is not only arbitrary but is motivated by a desire to somehow cancel the tender process and enable their parties to compete to bid afresh. AIIMS has resisted these petitions and contended that the tender evaluation yielded three compliant bids. It is also submitted that one of the ineligible bids had a complaint contending that the petitioners are in effect one party and were inter related. This led to the setting up of the supervisory committee. The supervisory committee apparently by its decision dated 13th January, 2017 recommended that there were inaccuracies in the published tender which required correction and short duration to cure minor irregularities in documents also ought to be provided. The minutes of meeting are extracted below

MINUTES OF MEETING

Subject : Minutes of meeting of the Committee constituted as per decision taken Dy Director (Admn.) regarding Tender No. i) ES/40-1/2016- Estate & ii) ES/40-2/2016/Estate.

A Meeting of the Committee was held on 13.01.2017 (Friday) at 3.00 p.m. to review the process of tender no. i) ES/40-1/2016- Estate & ii) ES/40-2/2016/Estate.

The following members attended the meeting:

1. Sh. Anil Bhatia, Chief Procurement Officer Member

2. Sh. Jairam Bhojwani. Financial Advisor Member
3. Sh. Pradeep Gupta, Sr. Stores Officer Member

After deliberations detailed and examination of records, the committee made the following observations/ recommendation:

The committee found that as per the bid document clause no.33 page no.7 and below the clause No.6.3 page No.9 is contradictory with each other. At one place firm has been told to furnish self attested document (as per revised Govt. Policy) and other places the notarise document has been asked. The benefit of doubt is to be given to bidders.

(Further it is a practice in procurement to call deficient historic documents information, clarifications etc. which does not have price implication. The same has not been done in this case.) The committee recommended that tender may be re evaluated considering the observation of the Committee.

The Committee also recommends that since there are numerous documentation/information required from tenderer, any minor shorting/ deficit documentation may be called giving limited time of the of one week if it is considered feasible for increasing the competition in the interest of Institute by the tender evaluation Committee.”

This Court has considered the submissions. AIIMS has produced the records. The petitioner’s contentions broadly are that in the absence of any complaint, with reference to the so-called confusion in the nature of documentation and attestation the supervisory committee could not have contrived such a confusion and in the circumstances the bid ought to be completed forthwith. AIIMS contends to the contrary.

Having considered the documents this Court is of the opinion that committee recommendations cannot be terms as per se arbitrary or without foundation. No doubt the complaints which led to the setting up of the supervisory committee had referred to confusion, however the committee's deliberations did not notice that on the question of attestation of documentation there was some lack of clarity. Apart from 7 documents they needed third party attestation (through notary, gazetted officer etc.) other documents too had to be furnished by bidders. During the course of hearing it transpired that one such bidder who had submitted non-compliant documentation faced rejection. In these circumstances, the supervisory committee's recommendations which led to the delay cannot be termed as arbitrary. Having considered the submissions this Court is of the opinion that since the committee's recommendations are with respect to confusion and contradictory clauses qua attestations, appropriate clarification in a clear and categorical manner should be issued in the form of corrigendum. The corrigendum should give all details including the petitioners and other unsuccessful/ineligible bidders to furnish their bids. Corrigendum to clarify qua the attestation of documents should be given a week's time (as is recommended) for curing minor defects or shortcomings in documentation after the date of final submission of the bid.

AIIMS shall issue a corrigendum at the earliest in line with the above order within a week from today and give a due publicity in the same manner as was done in the original tender. The time for

furnishing bids should be at least two weeks. Technically evaluation of such freshly received bids should be completed within 6 weeks from the date of publication of the corrigendum and the processing of tenders of the bid processing should be completed not later than 8 weeks from today.

The writ petitions and pending applications are disposed of in above terms.

Dasti under signature of the Court Master.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 24, 2017
VLD

