

\$~15 & 16

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

%

Judgement delivered on :13.04.2017

+ **W.P.(C) 8008/2016 & CM No.33230/2016**

NAV PRAYAS

..... Petitioner
Through Mr.Kirti Uppal, Sr. Adv. with
Mr.C.P.Pandey, Mr.K.B.Upadhyay
and Ms.Sahiba Pantel, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent
Through Mr.Nikhil Goel and Mr.Ashutosh
Ghade, Advs. for SDMC

+ **W.P.(C) 8020/2016 & CM Nos.33290-33291/2016, 41793/2016**

DALIT PRAHARI

..... Petitioner
Through Mr.S.S.Ray, Mrs.Rakhi Ray and
Mr.Vaibhav Gulia, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent
Through Mr.Gaurang Kanth and Mr.Pushkar
Tainmi, Advs. with Mr.Kripal Singh
(Asstt. Director of Education Midday
Meal)

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S. RAVINDRA BHAT, J (Oral)

1. The petitioners challenge the award of contract for supply of mid-day meal to the children studying in schools of South Delhi Municipal Corporation (SDMC) and their aided schools. The advertisement inviting applications was published on 12th August, 2016 which set out the relevant qualifications enabling desirous parties to furnish bids/offers.

2. Both petitioners concededly lodged their bids claiming that they have the requisite manpower as well as the expertise in providing mid-day meals to students of MCD run schools. The petitioners complain that the procedure adopted for evaluation of tenders and award of contracts especially for inspection of kitchens by the SDMC officials is arbitrary and was tailor-made to reject their bids. To say so, they point out the initial tender evaluation of the tender documents that was done through a four member committee constituted on 8th April, 2016. It is stated that subsequently a seven member committee was constituted to inspect the kitchen and that their kitchen (in all eight rival bidders) were in fact inspected on 10th and 13th May, 2016. Subsequently the tender evaluation and scrutiny committee went ahead and queried the petitioners as to the documents furnished by them, including financial details, bank accounts and other relevant materials. The petitioners argued that in these circumstances the procedure adopted by the SDMC to constitute a fresh committee, again re-inspecting the premises and determining that the kitchen of the present petitioners i.e Nav Prayas and Dalit Prahari are not fit to be awarded contracts, is arbitrary.

3. To support their submissions learned counsel relies upon the grounds urged in the petition. Besides it was highlighted that the SDMC's decision to appoint the fresh inspection committee was necessitated on account of complaints/petitions was an entirely motivated exercise because so-called complaints were received, after inspection and petitioners were never put to notice. It is stated that the complaints – largely anonymous – were moved to ensure that the petitioner's bids were ultimately rejected. Questioning the legality of the SDMC's move to substitute the first inspection committee, the learned counsel submitted that there was nothing on record to show that it ever committed any irregularity. There was no reflection cast on the members and on the other hand the so-called complaints which led to the change in composition appear to be the sole purpose of ensuring that the petitioner's bids were eliminated and those who might not fit the contract were given accommodation.

4. It was argued that the SDMC also overlooked material circumstances with respect to the successful tenderer i.e. People's Welfare Society which had placed on record in two appeals of known instances wherein GNCTD was of the opinion that the nature of services of the society were poor especially the food provided to the children was unhygienic. They rely upon the order of this Court in Writ Petition No.147/2013 (People's Welfare Society v. Govt. of NCT of Delhi) which had questioned the cancelling of the contract/award, issued on 4th January, 2013 to the society, by the Government of NCT of Delhi on allegations of unhygienic supply of meals to the Government Sarvodaya Kanya Vidyalaya, Shadi

Khampur, Delhi. The subject matter i.e. the meals so found to be contaminated, was on 5th September, 2011. The Court had refused to grant any relief and dismissed the petition. It is also urged, that the People's Welfare Society was in fact blacklisted by the Ghaziabad District Basic Education Department, by an order dated 24th June, 2015, which is suppressed by it in the tender particulars and details furnished. This constituted sufficient ground for SDMC to reject the tender which it did not do arbitrarily. SDMC has contested these proceedings in both the petitions. It contends that whilst the averments with respect to the setting up of the tender evaluation committee its clearance with respect to the petitioner's bids etc. have been accurately urged in the writ petitions, the allegations with respect to motivated cancellation of the first inspection committee deliberations, setting up of the second inspection committee and its inspection report, are utterly unfounded. SDMC has during the course of proceedings and hearing produced the original record which bear out that the official tender evaluation committee of four members scrutinised the relevant bids – including of the petitioners. The complaints filed – which led to the Constitution of the second inspection committee, was also produced. On the basis of these materials it is urged that the complaints – uniformly mention that the hygiene levels of the various blacklisted participants was not up to the desired standard and therefore there was a likelihood of some mis-happening to occur. It is the realisation of the issue and decision of the SDMC that the deliberations of the inspection committee constituted on 9th May, 2016 should not be considered and that a fresh

inspection committee ought to be constituted – which was done on 22nd June, 2016. SDMC points out that the composition of the second committee was predominantly of senior officials who had relevant and material expertise and were concerned with the issue at hand. It was pointed out for instance that the Additional Commissioner (Education), Chief Law Officer, apart from Health Officer (Medical), were being part of the inspection committee. The second committee in fact inspected the premises of all the applicants, on 30th June, 2016 on the basis of a modified checklist and furnished its report. On an objective evaluation of these reports the contracts were awarded to Stree Shakti, Iskon Food Relief Foundation, People's Welfare Society, Jay Gee Humanitarian Society and Ekta Shakti Foundation. It was submitted that so far as the People's Welfare Society is concerned, the SDMC did receive reports with respect to it being blacklisted, consequential queries were made with the Ghaziabad District Basic Education Department by letter dated 12th September, 2016 who clarified that initially the blacklisting order was made on 24th June, 2015 but it was revoked on 19th December, 2016. Copies of those letters, issuing and revoking the blacklisting of the People's Welfare Society, were enclosed. The same are part of the record.

5. The analysis discussed above would show that essentially the challenge to the award of contract to five successful bidders and the denial of contract is premised on grounds of arbitrariness, highlighting (a) the irregularities involved with respect to the change in methodology i.e. inspection (b) overlooking the allegations against the People's Welfare Society. The submissions of the petitioners

with respect to the irregularities in the change of methodology hinge upon the initial inspection committee – seven member committee had concluded its deliberations i.e. by inspecting premises of all the eight bidders on 10th and 13th May, 2016. It is submitted that when the inspection committee was about to prepare its report that was to be the basis for consideration and award of contracts, mysteriously complaints started pouring in and conveniently, which were taken as a pretext to undo the deliberations of the erstwhile committee and this committee made some minor changes to the checklist which had been formulated earlier and predictably to the petitioner's detriment proceeded to inspect and upheld that they are not worth of grant of contract. The argument is that such arbitrariness involved in the process, the petitioner's bids were compliant in all other respects made by the tender evaluation committee during May-June, 2016 with respect to the financial details, particulars etc.

6. Clause 25 of the tender conditions categorically states as follows :

“Clause 25: Selection of the voluntary organizations shall be finalized after inspection of the kitchens by members of the committee constituted for this purpose.”

7. In this case the record indicates that the seven member inspection committee was constituted on 9th May, 2016. This consisted of the Additional Commissioner (Education) as Chairperson, Superintendent Engineer (Quality Control), HQ, Additional Director (Education), Additional MHQ (Public Health), Nutritionist from FICCI, Legal Officer by CLO and ADE (MDM) as

Member Secretary.

8. Undoubtedly this inspection committee visited all the bidders including the petitioner. However, they did not furnish the checklist. It do not appear on record. Nor did they finalise any record. In the meanwhile SDM started receiving complaints. The Court has considered these complaints. These seems to be typical complaints, suggestions with respect to the lack of standards etc. and appear to have emanated largely from three different sources. SDMC considered these complaints to be of some significance enough to warrant the process of re-inspection – now through a new committee comprised of more senior officials i.e. Additional Commissioner (Education), Deputy Commissioner (Central Zone), Medical Health Officer and Chief Medical Officer. It is apparent that as compared to the previous committee the second one comprised of more senior officials. The petitioner argued that this procedure is arbitrary as it prejudiced them. The Court is unable to agree with the submissions. Clause 25 of the tender conditions clarifies that inspection reports qua the kitchens would be the most important consideration before the bid were to be finalised and contracts awarded, having regard to the sensitive nature of the service i.e. cooking, transportation and food to children. The procedure adopted might seem strange, yet the SDMC chose to record complaints seriously cannot be characterised as arbitrary since the analysing of the inspection report, the deliberations or the procedure adopted was only inchoate. Therefore the decision of SDMC to constitute a fresh inspection committee in the absence of any guidelines or indication in the tender conditions to the contrary

cannot be held arbitrary.

9. Now coming to the second issue with respect to allegations of blacklisting and favouritism of one party i.e. People's Welfare Society. We have considered an instance detected in September, 2011 and contract to that period being cancelled by the GNCTD, yet the GNCTD does not appear to have issued any blacklisting order. With respect to allegations that they were subjected to blacklisting by some other body, SDMC appears to have conducted some form of inquiry to determine whether in fact the blacklisting was a matter of record when the tender/bids were received.

10. The response of the concerned agency which is alleged to have blacklisted People's Welfare Society i.e. Ghaziabad District Basic Education Department is itself clear. SDMC appears to have sought the response from the Ghaziabad Authority on 1st September, 2016. The response by way of a letter dated 12th September, 2016, enclosing the two orders dated 24th June, 2015 and 9th December, 2015 are on record. They clearly show that although a blacklisting order was made on the earlier date i.e. 24th June, 2015, it was later withdrawn on 24th June, 2015. Therefore the submissions of the petitioners have no merit. For these reasons this Court is of the opinion that both petitions are unmerited. They are consequentially dismissed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 13, 2017/VLD