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

+ **W.P.(C) 4244/2017, C.M. APPL.18522-18523/2017**
SKYBER CAFE Petitioner

versus

AIRPORTS AUTHORITY OF INDIA AND ANR Respondents

+ **W.P.(C) 3099/2017, C.M. APPL.13490-13491/2017**
GOLDEN CHARRIOT HOSPITALITY SERVICES PVT LTD
..... Petitioner

versus

AIRPORT AUTHORITY OF INDIA Respondent

Through: Sh. Basant, Sh. Rajender Beniwal, Ms. Arushi Singh, Sh. Bineesh. K and Sh. P.V. Dinesh, Advocates, for petitioner, in Item No.24.
Ms. Poonam Kumari, Adocate, for UOI, in Item No.24.
Sh. Balbir Singh, Sr. Advocate with Sh. Sandeep Bajaj, Sh. Bhagat Singh, Ms. Aakanksha Nehra and Sh. Mark Wright, Advocates, for petitioner, in Item No.25.
Sh. Abhinav Vasisht, Sr. Advocate with Sh. Digvijay Rai and Ms. Priya Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

% **18.05.2017**

1. The petitioners' complain of arbitrariness by the respondents, especially the Airports Authority of India [hereafter referred to as "the Authority"].
2. The brief facts are that the Authority had issued a tender in February 2017 inviting bids for "concession to develop, market,

set-up, operate, maintain and manage food and beverage outlets at 6 Category A and 6 Category B airports”.

3. The petitioner in W.P.(C) 3099/2017 - Golden Charriot Hospitality Services Pvt. Ltd. [hereafter referred to as “the Golden Charriot”] - submitted that the requisite fee of ₹1 lakh was paid by it on 04.04.2017 and thereafter it submitted its application for qualification and the relevant documents on the next day. It complains that when it checked the Authority’s portal after the closing time, it discovered that its application and connected documents were not reflected. It immediately addressed an e-mail to the Authority on this issue, complaining that its bids ought to be considered since it had submitted the documents on time.

4. The petitioner in W.P.(C) 4244/2017 – Skyber Cafe also alleges to have submitted a bid. It alleges that the bid was saved in the Authority’s portal on 02.04.2017 and relies upon an e-mail communication addressed to the Authority to the effect that it had saved the documents on the portal. It also relies upon a letter dated 10.04.2017 addressed to the Chairman of the Authority, complaining of the arbitrary exclusion of its application which, according to M/s. Skyber Cafe was submitted and sent on time.

5. The Authority had appeared on advance notice. Initially, the Court had required digital examination of the computer systems of the Authority and also of the petitioner, especially Golden Chariot, on two dates of hearing. The Court was informed that the agencies nominated by the orders were not in a position to do so. The

Authority has produced the relevant files during the proceedings. It also relies upon copies of screenshots to explain the process. According to the Authority, after successfully bidding for the tender, the potential bidder was allowed access to its website and enabled, in a manner of speaking, to upload the tender documents on its portal. The process involves the uploading of all the relevant tender specification documents and the supporting certificates, saving them and consequently their submission (or transmission) which is the third and final stage. Once uploaded and submitted, the portal – both at the end of the Authority as well as the bidder's user page - which it is enabled to access through unique PIN, would reflect the documents sent and submitted and would disclose that the bids have been submitted. In support of the argument, the Authority relies upon the screenshots of its portal reflecting the final list of all the bidders who had successfully saved the tender documents. The same list reflected how many potential tenderers had purchased the tender, saved and uploaded the documents, but had not submitted it. The Authority's list reflects that no less than 15 bidders who had purchased the tender had saved and submitted the documents. At the same time, it also shows that some had purchased the documents but not proceeded further. The list finally discloses the particulars of the petitioners, i.e. Golden Chariot and Skyber Cafe who had proceeded to the stage of purchasing the tender documents and even saving it, but had not submitted it. This clearly shows that the petitioners' assertions to the contrary are unfounded.

6. Learned counsel for the respondents submitted that there were certain inefficiencies in the portal of the Authority which resulted in the tender documents not being reflected finally even though they were saved. Learned senior counsel appearing for Golden Chariot argued in order to support this argument, that at the stage of purchasing tender documents, no less than 5 attempts had to be made before the amount could be successfully transferred. It was stated that the same account of inefficiency appears to have occurred leading to an error in the respondents' website and that since this possibility cannot be ruled out, the bidders left out, i.e. Golden Chariot and Skyber Cafe should be given the chance of a consideration in the tender process.

7. This Court notices that the documents produced and relied upon by the Authority show no apparent bias in the process. It also reveals that 15 bidders had successfully submitted the tenders before the given time and three of them have even sent and transmitted bids successfully on 05.04.2017 itself. The screen shots provided by the petitioner – at least in the petition filed by Golden Chariot appears to be incomplete as they are copies of part (not whole) of the documents. This appears from portion of averments and documents in the writ petitions. The documents filed along with Skyber Cafe are closer to the screen shots that were produced by the Authority. At the same time, Skyber Cafe significantly omits to mention that the documents were sent and the bid was submitted or transmitted. This omission is glaring because it appears both in the document, i.e. in the email

dated 06.04.2017 as well as in para 5.6 of the writ petition. Apart from this, the Court is mindful of the fact that neither of the petitioners has relied on independent material duly certified in accordance with law, i.e. Section 65 of the Evidence Act, 1872 testifying that the documents saved on their systems were transmitted, as is being asserted.

8. It is well-settled that judicial review is concerned with the process of decision making rather than the merits of it. *Sans* illegality, material irregularity in consideration of bidders' offer or absence of *bona fides*, all of which are indeed absent, the Court in a writ proceeding would rarely, if ever, interfere with the decision of the public agency. For these reasons, in the present case, the Court is satisfied that there is no illegality, procedural irregularity or lack of *bona fides*. The writ petition has to accordingly fail. It is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT, J

PRATHIBA M. SINGH, J

MAY 18, 2017/ajk