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

Date of Decision: 17.10.2019

+ **W.P.(C) 11028/2019 & CM APPL. 45521/2019**

**BHARAT RATTAN DR. BHIM RAO AMBEDKAR
DALIT UTTHAN EVOM SHIKSHA SAMITI
(REGD.)**

..... Petitioner

Through : Mr. Puneet Mittal, Senior
Advocate with Mr. Sumit
Choudhary, Ms. Vasudha Bajaj,
Advocates.

versus

**EAST DELHI MUNICIPAL
CORPORATION**

..... Respondent

Through : Mr. Mukesh Gupta, Standing
Counsel for EDMC with
Mr. Sanjeev Garg, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL. 45521/2019 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 11028/2019

1. Learned counsel for the respondent has entered appearance.

2. With the consent of the parties, the petition is set-down for final hearing and disposal today. The brief facts necessary for the disposal of the petition are that the Education Department of East Delhi Municipal Corporation ('EDMC') sought proposals from the interested NGOs/Voluntary Organizations working in Delhi for supply of freshly cooked Mid-Day-Meal to the children of primary schools of EDMC and its aided schools on 08.07.2019. After completion of the E-tendering process, the petitioner society also submitted a hard copy of its proposal along with the documents to the Deputy Director of Education (MDM), EDMC, Education Department, Udyog Sadan, 419, Patparganj Industrial Area, Delhi on 31.07.2019 vide Diary No. 2795. The petitioner society also uploaded the demand draft for a sum of Rs.6,69,013/- towards EMD on 02.08.2019. On 08.08.2019, the representative of the petitioner society was called by the officials of the Education Department, EDMC and was informed that the documents uploaded were not found during the E-tendering process and thus the proposal of the petitioner could not be processed further.

3. The petitioner society made representations on 09.08.2019 and 13.08.2019 to the Education Department, EDMC, Deputy Director of Education (Mid-day-meal) EDMC, Commissioner, Mayor and the Chairman of EDMC.

4. The representations were replied to by the Deputy Director, MDM vide letter dated 11.09.2019 informing the petitioner that upon opening the online tender, the documents supposedly uploaded by the petitioner society were not found available for downloading.

5. The non-acceptance of the tender has led to the filing of the present writ petition.

6. Mr. Puneet Mittal, learned Senior Counsel for the petitioner submits that as per the tender document, the following screenshot was provided which we reproduce below :

“East Delhi Municipal Corporation

Education Department

Udyog Sada, 419, Patparganj Industrial Area

Delhi-110092

REQUEST FOR PROPOSAL

Request for proposal are invited from interested NGOs/Voluntary organizations working in Delhi or willing to work in Delhi forward of work of supply of (fresh cooked) Mid Day Meal from the centralized semi automated kitchen to the children of Primary of EDM and its aided school :-

<i>S. No.</i>	<i>Name of work/Contract</i>	<i>Earnest Money Rupees (in lac)</i>
	<i>Preparation and supply of (freshly cooked Mid Day Meal from their centralized semi automated kitchens to the children of Primary of EDMC and its aided schools as per the following norms fixed by the Government of India under Mid Day Meal Scheme.</i>	<i>As per clause no. 17 of General Terms & condition. To be paid through a Demand Draft for a period of minimum 200 days drawn in favour of Commissioner EDMC.</i>

	<i>Category of beneficiaries</i>	<i>Specifications calories (KCL)</i>	<i>Protein (Gms)</i>	
	<i>Class I to V</i>	<i>450</i>	<i>12</i>	
	<i>Milestone dates of Electronic Selection Process</i>			
<i>1</i>	<i>Release Tender</i>			<i>08.072019</i>
<i>2</i>	<i>Pre Bid Meeting</i>			<i>15.07.2019</i>
<i>3</i>	<i>Closing of submission of RFP</i>			<i>31.07.2019</i>
<i>4</i>	<i>Physical submission of RFP</i>			<i>31.07.2019</i>
<i>5</i>	<i>Opening of Technical Bid</i>			<i>02.08.2019</i>

7. Relying on this Request For Proposal, Mr. Mittal has highlighted that not only were documents to be uploaded but physical submission of the RFP was also to be made on 31.07.2019. Without admitting that the tender documents were not uploaded, Mr.Mittal submits that since an alternate mode of application was provided, the petitioner also handed-over physical copies of the documents alongwith the demand draft vide Diary No. 2795 on 31.07.2019 as per the prescribed schedule.

8. Mr. Mittal has also drawn the attention of this court to print-out of the screenshot, which has been placed on record and which we have

scanned below, to submit that the petitioner has in fact uploaded the tender documents on the respondent's portal, as is evident from the Screen-shot:

The screenshot shows a web application interface for tender management. At the top, there are tabs for 'Main Portal', 'Main View', 'Contract Info', and 'Tender & Documents'. The 'Main View' tab is active, displaying the 'Action Page'.

Tender Info:

- Tender No: 10059
- Tender Ref No: MITNo.01(Pdu.032)/DMC/19-200/L08.07.19 (No. 1)
- Current Sequence No: 6
- Current Sequence Start Date: 2019-08-02 11:15:00
- Current Sequence Expiry Date: 2019-08-02 17:00:00
- Company Id: IN00011564

SuperHash Keys:

- Financial Envelope: xBem9VD2IGYS4mS1UJ0d6x4Dw=
- Technical Envelope: zjxsb-HRChpJCa0D19.7VWCo=

Actions Table:

Sl.	M.C.D. Actions	Schedule Info	Status
1.	Release Tender		Completed
2.		Purchase and Download Tender Document	Completed
3.		Online Bid Preparation and Hash Submission	Completed
4.	Technical and Financial Lock		Completed
5.		Re-encryption of online bids	Completed
6.	Technical Bid Opening		Pending
7.	Evaluation of Technical Bid		Pending
8.	Financial Bid Opening		Pending
9.	Evaluation of Financial Bid		Pending

9. Mr. Gupta, learned counsel for the respondent however submits that this being an E-tender, when the site was opened, it was found that the tender documents of the petitioner could not be downloaded; and hence, the bid of the petitioner was rejected. He further submits that the work of opening of tender was assigned to M/s Tech Mahindra and a certificate from them with regard to non-uploading of tender documents by the petitioner has also been obtained.

10. We have heard learned counsel for the parties.

11. While there is no dispute that a hard copy of the documents was filed on 31.07.2019, the question which arises for our consideration is whether the petitioner had in fact uploaded the tender documents on the portal of the respondent; and subsequently what is the relevance of physical submission of the RFP.

12. While Mr. Gupta has highlighted that being an E-tender, only those bids were considered which were duly uploaded, it is the case of Mr. Mittal that both the documents and RFP were available as per the Request For Proposal. Mr. Gupta also submits that tender of another identically placed person, by the name of Mr. Daljit Pahri, has also been rejected on the same ground and there is no mala fides in the action of the respondent.

13. While we find that the Request For Proposal also requires the physical submission of RFP by 31.07.2019; and in case the tender was restricted only to e- tendering, in which bid documents were only to be uploaded, in our view the condition of physical submission of documents would not have formed part of the Request for Proposal. We have extracted the screenshot above which gives a reasonable prima facie assurance that the petitioner did upload the E-tender.

14. We are also informed that originally the tender is awarded to a panel of successful bidders for providing the Mid-Day-Meal. Accordingly, we find that out of 7 bidders, one stands dis-qualified; the petitioner and one Mr. Daljit Prahari (identically placed bidder, as

the petitioner) have been rejected for non-uploading of the tender documents; and in respect of four other bidders, their kitchens have been inspected.

15. Having regard to the facts and circumstances of the case, we are of the considered view that the tender of the petitioner should be considered by the respondent since a physical copy of the tender documents was supplied to the respondent as per the schedule/date fixed; and there is no uncertainty with regard to the uploading of the tender documents as per the screenshot filed along with the petition.

16. Resultantly, the petition is allowed. The respondent is directed to consider the bid documents of the petitioner and the same would not be rejected only on the ground of non-uploading of the tender documents by the petitioner, subject to other terms of the RFP.

17. The writ petition stands disposed of in the above terms.

18. Order be given *dasti* under signatures of the Court Master.

न्यायमेव जयते

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 17, 2019

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