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

+ **W.P.(C) 434/2019 & CM APPL. 1979/2019**

THE PEOPLES WELFARE SOCIETY Petitioner
Through: **Mr.K.B.Upadhyay & Mr.Pallavi**
Rawat, Advocates

versus

GOVT. OF NCT OF DELHI Respondent
Through: **Mr.Satyakam, ASC with Mr.Rajesh**
Sharma, Mid-day Meal, DoE,
GNCTD

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
18.01.2019

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1. Issue notice. Mr.Satyakam, Additional Standing Counsel accepts notice.
2. Learned counsel for the respondent states that he has instructions in the matter; the concerned officers are present in Court.
3. The petitioner's grievance is that its bid for the supply of cooked mid-day meal, pursuant to the tender floated by the Government of NCT of Delhi [hereafter referred to as GNCTD], has been negated on the ground that it is in effect disqualified, in view of the tender condition. The concerned

tender condition relating to disqualification reads as follows:

<i>Sl. No.</i>	<i>Condition</i>	<i>Requirement</i>	<i>Documents required</i>
	xxxx	xxxx	xxxx
3.	<i>Applicant Organization, whose work order has been terminated/suspended by Directorate of Education for supply of contaminated meal or who has been blacklisted by Directorate of Education, GNCT of Delhi or any Department of GNCT of Delhi or who has been blacklisted by any Department of Govt. of India due to any mishap/illness of consumers/untoward incident/any other reason, cannot apply, if their Blacklisting/termination/ Suspension is valid on the date of submission of application.</i>	<i>Applicant Organization, whose work order has been terminated/ suspended by Directorate of Education for supply of contaminated meal or who has been blacklisted by Directorate of Education, GNCT of Delhi or any Department of GNCT of Delhi or who has been blacklisted by any Department of Govt. of India due to any mishap/ illness of consumers/ untoward incident/ any other reason, cannot apply, if their Blacklisting/ termination/ suspension is valid on the date of submission of application.</i>	<i>An affidavit that the applicant Organization has never been blacklisted by Directorate of Education, GNCT of Delhi or any Department of GNCT of Delhi or has never been blacklisted by any Department of Govt. of India OR an affidavit that the applicant's Blacklisting is not valid on the date of submission of application.</i> <i>An affidavit that the work order for supply of Mid Day Meal of applicant Organization has never been suspended/ terminated by Directorate of Education, GNCT of Delhi.</i>
	xxxx	xxxx	xxxx

4. The relevant facts in this case are that the petitioner claims to be a ISO 9001:2008 certificate holder [valid for the period from 01.06.2013 to 31.05.2016] and also ISO 22000-2005 certificate holder for three years for providing hot cooked mid-day meal to school students in India. In the pleadings the petitioner has outlined the award of tenders for providing cooked food to children by various corporations including South Delhi Municipal Corporation in its schools on 26.10.2016 and that contract continues to be in force. In the meanwhile, on the basis of some allegations with respect to supply of unhygienic food the petitioner's contract, awarded by the South Zone of SDMC was cancelled by the GNCTD, sometime in 2012. The question of cancellation of contract was challenged before this Court. Ultimately the writ petition [W.P.(C) 147/2013] was disposed of on 21.05.2014.

5. The petitioner argued that in fact the GNCTD had not passed any black listing order. No opportunity of hearing preceded the decision, if any taken, and consequently the GNCTD cannot effectively "blackout the petitioner" perpetually, as it is seeking to do now.

6. Learned counsel for the GNCTD does not urge that the previous conduct, which lead to the cancellation of the contract weighed with the tender evaluating authorities in this case. At the same time, he did not dispute that the cancellation of the contract in 2012 was not followed by any procedure much less an order blacklisting the petitioner for any length of time.

7. It is evident that the fact that the petitioner had in the past supplied allegedly contaminated or unhygienic food is borne out by the record.

However if, it is further inferred that the petitioner cannot be considered for award of tender at all by GNCTD, in the opinion of the court, that is arbitrary and cannot be countenanced. Concededly, no blacklisting order was made against the petitioner; in any event, it was not made known to the petitioner.

8. In these circumstances, the past transgression by the petitioner in the execution or performance of the contract cannot be a bar for considering its bids on the merits and proceeding to decide, which would be the most appropriate agency that can be awarded the contract.

9. For the above reasons, it is held that the petitioner's bid needs to be evaluated on its merits and dealt with in accordance with law. Directions to the effect are issued, and the writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 18, 2019

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