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

+ **W.P.(C) 666/2019**

AKSHAYA PATRA FOUNDATION

..... Petitioner

Through: Mr.Rajiv Nayyar, Sr. Advocate with
Ms.Yugandhaka Pawar Jha, Mr.Kunal Verma,
Mr.Sooraj Sharma, Mr.Gautam Mohanty,
Ms.Bhagya K. Yadav, Ms. Tia Majumbar &
Mr.Vipin Agrawal, Advocates.

versus

**GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ORS**

..... Respondents

Through: Mr. Sanjay Ghose, ASC, GNCTD
with Ms. Urvi Moha, Advocate.
Mr. Kirti Uppal, Sr. Advocate with Mr.K.B.
Upadhyaya, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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22.01.2019

CM Appl. 2982/2019 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 666/2019 & CM Appl. Nos. 2981/2019

1. Issue notice. Mr. Sanjay Ghose, learned Additional Standing Counsel accepts notice on behalf of the GNCTD.
2. The present writ petition concerns a Request for Proposal (hereinafter "RFP") issued by the Directorate of Education, Government of NCT Delhi

for supply of mid-day meals to the students of Government and Government aided schools. The petitioner's grievance is that its bid has been rejected on the ground that it had submitted the bid physically, and not online.

3. Mr. Rajiv Nayyar, learned Senior Counsel for the petitioner submits that the petitioner participated in the RFP by physical submission of the bid alongwith all requisite documentation on 22.10.2018. He drew our attention to minutes of the pre-bid meeting held on 22.11.2018 and the meeting of the "Bid/RFP Opening, Advisory-Cum-Assistance Committee" held on 27.11.2018 [stated in the writ petition to have been received by the petitioner on 18.01.2019] to demonstrate that the concerned committee has rejected the petitioner's bid on the ground that it was submitted offline and not online. Mr. Nayyar contended that neither the advertisement issued by the respondent nor the detailed RFP document required submission of bids in both forms and the committee's rejection of the petitioner's bid on this ground was therefore liable to be set aside.

4. The discussion by the committee in its meeting dated 27.11.2018, to the extent it is relevant, is as follows:-

“In the meeting held on 27.11.2018 all the Bids/Applications were re-scrutinized and after detailed discussions it was decided by the Committee that:-

1. Four applicants [1. Akshaya Patra Foundation (Badli), 2. Akshaya Patra Foundation (Mohan Co-operative), 3. Akshaya Patra Foundation (Jahangir Puri) & 4. Jay Gee Humanitarian Society)] have submitted bids offline but have not submitted the same online. It was also noted that 01 applicant [Sagar International] has submitted bid online but has not submitted EMD. However, it was clearly mentioned in the advertisement notice (RFP) under the heading Milestone dates of Electronic Selection process:-

<i>I</i>	<i>Downloading of Request for proposal document</i>	<i>Start dated 25.09.2018 at 10.00 a.m. last date 24.11.2018 at 4.00P.M.</i>
<i>iv</i>	<i>Date of submission of Request of Proposal online</i>	<i>Up to 24.10.2018 at 4.00P.M.</i>
<i>v</i>	<i>Physical submission of RFP</i>	<i>24.10.2018 at 4.00 P.M.</i>

The above was also a part of online uploaded RFP document. Further, it was also mentioned in the advertisement notice as “The Bid document can be downloaded from the website <https://govtprocuremnet.delhi.gov.in>. However for general information, guidance and reference, the Bid Document can also be viewed and downloaded from Directorate of Education website <http://edudel.nic.in>”. In response, department has received 58 online applications.

The committee decided that this being violation of GFR Rules/ IT Department GNCTD circular number No. F.10(9)/2007/IT/3725-45 dated 02/07/2009 (which mandates compulsory Implementation of e-Procurement system for all tenders over ₹ 2 Lakhs) and accordingly applications of these bidders/applicants. [1. Akshaya Patra Foundation (Badli), 2. Akshaya Patra Foundation (Mohan Co-operative), 3. Akshaya Patra Foundation (Jahangir Puri), 4. Jay Gee Humanitarian Society,)] need to be rejected summarily and accordingly Committee decided to recommend the same.”

5. The advertisement issued by the respondent and detailed RFP document have been annexed to the writ petition. Although, they referred to submission of the RFP online, as well as physical submission thereof, there is no indication that both modes of submission are required to be complied with. If that was the intention of the tendering authority, it was incumbent

upon it to so instruct bidders in clear and unambiguous terms. An interpretation of the tender documents which requires bidders to comprehend an unexpressed intention to this effect, failing which they would be disqualified, is entirely unreasonable and manifestly arbitrary. The petitioner is, therefore, entitled to consideration of its bid, if otherwise qualified.

6. Mr. Kirti Uppal, learned Senior Advocate sought to intervene in these proceedings on behalf of two other bidders who are not parties to the present petition namely, Ghanshyam Seva Samiti and Maitri Research and Development Foundation. He submitted that these two bidders have qualified in the RFP and that the intervention of the Court in favour of the petitioner would be to their detriment. However, we are of the view that no bidder can assert an interest or a right arising out of an illegal disqualification of a rival contender. The participation of the petitioner in the tender, if otherwise qualified, would enhance the competitiveness of the process and ultimately inure to the public interest.

7. For the above reasons, this Court hereby directs the Government of NCT of Delhi to take further steps to consider and process the petitioner's bid, if found otherwise qualified, and proceed with further steps in the tender evaluation process.

8. The writ petition succeeds in the above terms. No orders as to costs.

9. A copy of the order be given *dasti* under the signatures of the Court Master.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 22, 2019/ 'pv'

W.P.(C) 666/2019

Page 4 of 4