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

+ **W.P.(C) 943/2019**

JAY GEE HUMANITARIAN SOCIETY Petitioner
Through: Mr. Arvind Kumar, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR Respondents
Through: Mr. Satyakam, Add. Std. Counsel for
GNCTD with Mr. R. Tyagi, MDM,
DOE, GNCTD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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05.02.2019

CM Appl. 4258/2019(*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 943/2019

1. Issue notice. Mr. Satyakam, Additional Standing Counsel accepts notice.
2. The petitioner is aggrieved by the non-acceptance of its request for proposals on the ground that it was submitted physically and not online.
3. At the outset, it is pointed that in an identical circumstances, concerning the same RFP for supply of mid day meals to the students of schools of GNCTD, this Court had directed the agencies concerned i.e. Government of NCT of Delhi, Education Department to accept the offline

bids of another party *Akshaya Patra Foundation vs. Government of National Capital Territory of Delhi & Ors* in W.P.(C) 6666/2019 decided on 22.01.2019.

4. In *Akshaya Patra* (supra), this Court had noticed the discussion of the concerned Tender Evaluation Committee and extracted it. The relevant discussion, in the judgment is extracted below:- para 4 & 5

“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. For 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."

5. The Court had after considering the submission allowed the respondent/Government of NCT to allow participation of the writ petitioner in that case in the following terms:-

"6.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 process with further steps in the tender evaluation process.
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7. Since the facts are not in dispute and the same minutes of meeting of the tender Evaluation Committee reflects the name of the petitioner as well, this Court is of the opinion that the same relief ought to be given.

8. Accordingly, the respondents are directed to process the petitioner's bid and take further steps to consider it in accordance with law and in accordance with other tender conditions.

9. The writ petition is allowed in the above terms.

10. *Dasti.*

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 05, 2019

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