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

+ **W.P.(C) 3282/2023 & CM APPL. 12769/2023**

BLESSING SOCIETY

.....Petitioner

Through: Mr. C. Mohan Rao, Senior Advocate
with Mr. K.B. Upadhyay, Mr. Lokesh
Sharma and Mr. C.P. Pandey,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ORSRespondents

Through: Mr. Sameer Vashisht, ASC (Civil),
GNCTD with Ms. Harshita Nathrani,
Advocate for GNCTD.

+ **W.P.(C) 3284/2023**

DAYAWATI EDUCATIONAL A CHARITABLE SOCIETY

.....Petitioner

Through: Mr. C. Mohan Rao, Senior Advocate
with Mr. K.B. Upadhyay, Mr. Lokesh
Sharma and Mr. C.P. Pandey,
Advocates.

versus

GOVT OF NCT OF DELHI AND OTHERSRespondents

Through: Mr. Sameer Vashisht, ASC (Civil),
GNCTD with Ms. Harshita Nathrani,
Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.09.2024

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1. The Petitioners are entities actively engaged in providing mid-day meals and working on Integrated Child Development Services (ICDS) projects. They responded to a tender inquiry issued by Respondent No. 1 in



respect of Tender ID No. 2022 DE 229377 1 under Request for Proposal (RFP) dated 16th September, 2022, which invited entities to bid for the contract to prepare and supply freshly cooked mid-day meals to children in primary and upper primary classes of government-aided schools, Alternative and Innovative Education (AIE) centers, and under the *Samagra Shiksha Abhiyan* of the Directorate of Education, Government of the National Capital Territory (GNCT) of Delhi. The contract was intended to be for an initial term of one year, with the possibility of an extension up to two additional years on an annual basis.

2. Upon the conclusion of the tender process, the Petitioner in W.P.(C) 3284/2023 was placed at Serial No. 1 of the Reserve List, while the Petitioner in W.P.(C) 3282/2023 was listed at Serial No. 4 on the Reserve List. Through the present petitions, the Petitioners impugn the selection process and seeking quashing of the letter dated 27th February, 2023, whereby Respondent No. 1 has accepted the bids of 31 NGOs.

PETITIONERS' CONTENTIONS:

3. Although several grounds have been urged in the present two petitions, Mr. C. Mohan Rao, Senior Counsel for the Petitioners, has limited his challenge to the awarding of contracts to Respondents No. 15, 16, and 32 on the ground of their ineligibility. To support this contention, he draws attention to Clauses 5 and 6 of the RFP that outline the eligibility conditions, which state as follows:

"5. Applicant Organization should either have all the requisite infrastructure ready as per Annexure-II in the kitchen/godown for service of meal (EXISTING KITCHEN) or it should be able to set up the kitchen infrastructure as per Annexure-II within 45 days from the date of work order (PROPOSED KITCHEN).



6. Accordingly, in case of PROPOSED KITCHEN, Applicant Organizations (having experience in the mass supply of hot cooked meal) should have other existing running kitchen in Delhi or outside Delhi for reference purposes and should submit details of (i) Proposed semi automated de-centralised kitchens to be established in Delhi within a period of 45 days from the date of work order and (ii) other existing running kitchen in Delhi or outside Delhi (reference Kitchen) for reference purposes.”

4. Mr. Rao argues that the three aforementioned entities fall under the ‘Proposed Kitchen’ category, however, they did not meet the requirements set out in Clauses 5 and 6. He asserts that these entities did not have an existing reference kitchen, either in Delhi or outside Delhi, which is a prerequisite for being classified as a ‘Proposed Kitchen’. To substantiate this, Mr. Rao refers to the additional documents filed by Respondent No. 1 under the Index No. 4118819 dated 25th September, 2024, containing copies of the consolidated marking reports in respect of Respondents No. 15, 16 and 32. He states that the inspection reports clearly indicate that none of these entities had an existing reference kitchen in place at the relevant time, and the inspection was only conducted of the proposed kitchen facility itself. Mr. Rao thus contends that awarding the contract to these entities is illegal due to their non-compliance with the eligibility criteria. Accordingly, he asserts that, given the Petitioners’ positions on the Reserve List and their compliance with the eligibility requirements, they should be awarded the contracts once the ineligible contracts are set aside.

RESPONDENT NO. 1’S CONTENTIONS:

5. Mr. Sameer Vashisht, ASC for Respondent No. 1, vehemently opposes the petitions, arguing that Respondents No. 15, 16, and 32 cannot



be classified as ‘Proposed Kitchens’. He asserts that these entities had all the requisite infrastructure in place at the time of inspection by the designated Inspection Committee. The consolidated report from the Expert Committee members, along with photographic evidence, clearly verifies that the kitchens met all necessary requirements for awarding the contract. Mr. Vashisht further states that the contracts for these three entities were initially awarded for a period of one year and have been extended due to their satisfactory performance. Regular inspections have been conducted and no complaints have been received regarding their operations. He thus emphasizes that all three kitchens have functioned effectively and without issue, and thus there is no occasion to revoke the contracts awarded in their favour. Additionally, Mr. Vashisht argues that the assessment and award of marks, as well as the interpretation of the contract terms within the tender document, fall squarely within the purview of Respondent No. 1’s discretion. Therefore, he contends, the Petitioners have no grounds to challenge these decisions through judicial review.

ANALYSIS AND FINDINGS:

6. The Court has considered the contentions raised by the parties. It is a well-settled principle that the decision-making process of the tendering authority, especially when it involves technical or commercial expertise, should not be interfered with by the courts. The Supreme Court has repeatedly held that the employer or project owner’s decision to accept or reject a bid should only be interfered with in cases of *mala fide* intentions or when the decisions are so arbitrary that no reasonable authority could have arrived at them. Mere errors, technicalities, or faults in decision-making are



insufficient grounds for judicial interference.

7. In *Dwarkadas Marfatia and Sons v. Port of Bombay*¹, it was emphasized that constitutional courts are primarily concerned with the decision-making process. Similarly, in *Tata Cellular v. Union of India*², it was held that the courts should not substitute their views for that of the administrative authority, except in cases where the decision is perverse. This principle was reaffirmed in *Jagdish Mandal v. State of Orissa*³ and *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*⁴. Additionally, in *Municipal Corporation, Ujjain & Anr. v. BVG India Limited*⁵, the Supreme Court underscored that judicial review of administrative action aims to prevent arbitrariness, not to second-guess the soundness of decisions made by experts in the field. If the decision-making process is not tainted by *mala fide* intentions or arbitrariness, and if public interest is not adversely affected, judicial intervention is unwarranted. The Supreme Court further noted that commercial transactions, especially in tender processes, are governed by commercial considerations, which include the ability of the bidder to deliver the requisite services.

8. The essence of these decisions is that the courts must exercise restraint in contractual matters involving State instrumentalities, and refrain from exercising their jurisdiction under Article 226 of the Constitution of India to intervene when the same is not warranted. In light of these precedents, it becomes clear that this Court's interference should be minimal and only in circumstances of clear arbitrariness, bias, or perversity. The

¹ (1989) 3 SCC 293

² (1994) 6 SCC 651

³ (2007) 14 SCC 517

⁴ (2016) 8 SCC 622

⁵ (2018) 5 SCC 462



authority that drafts the tender documents is best placed to interpret its terms and conditions. Where multiple interpretations are possible, the view of the tendering authority should prevail, and courts should not assume the role of an appellate body in re-evaluating the technical aspects of the bid evaluation.

9. Having noted the foregoing, the Court must apply these principles to the instant case. The Petitioners have contended that Respondents No. 15, 16, and 32 are ineligible as they fall under the category of “Proposed Kitchens” and failed to have an existing “reference kitchen”, as required by Clauses 5 and 6 of the Request for Proposal. However, Mr. Vashisht, has argued that these entities had the necessary infrastructure in place and were duly inspected by the designated Inspection Committee. The Committee’s consolidated report, corroborated by photographic evidence, verified that these kitchens met all requisite conditions. The contracts were awarded following this evaluation, and subsequent periodic inspections confirmed that these kitchens were functioning satisfactorily. No complaints were reported against their operation, which further supports their compliance with the tender requirements.

10. A critical analysis of Clauses 5 and 6 reveals that the tender process contemplated two categories: “Existing Kitchens” with infrastructure already in place, and “Proposed Kitchens”, which had to establish the necessary infrastructure within 45 days of the work order. Clause 6 specifies that Proposed Kitchens must provide details of an existing reference kitchen, and accordingly, as argued by the Petitioners, in absence of such a reference kitchen, mere inspection of the proposed kitchen facility would fall short of the requirements delineated in the RFP. However, in the opinion of the



Court, the interpretation of these clauses lies primarily with the tendering authority. According to the submissions advanced by Mr. Vashisht, the category of “Proposed Kitchen” would apply only to such entities which have no existing infrastructure that is capable of being inspected, and therefore is required to provide a reference kitchen for the purposes of inspection. However, given that Respondents No. 15, 16, and 32 were inspected and found to have the requisite infrastructure in place, the tendering authority determined that these entities did not fall under the category of “Proposed Kitchens”. This interpretation, in the opinion of the Court, does not indicate any arbitrariness or *mala fide* intent on the part of the tendering authority. Further, the competence of the said Respondents is supported by the inspection reports, which found the facilities to be adequate for the purposes of awarding contracts, as well as the ongoing satisfactory performance of these kitchens, which has resulted in extensions being granted in favour of all three entities.

11. In view of the above, the term “Proposed Kitchen”, in the context of Clauses 5 and 6 of the RFP, must be construed based on the tendering authority’s understanding of the same. The inspection reports unequivocally indicate that these kitchens were not in the process of setting up but had the necessary infrastructure from the outset. Thus, Respondents No. 15, 16 and 32 would fall under the category of “Existing Kitchens”. Consequently, Respondent No. 1’s decision to award the contracts to these entities was based on their compliance with the eligibility requirements as interpreted by the tendering authority.

12. As held in *N.G. Projects Limited v. Vinod Kumar Jain & Ors.*⁶, as

⁶ (2022) 6 SCC 127



well as the other aforementioned precedents, the writ court should not impose its decision over that of the tendering authority. Courts are not equipped to delve into the technicalities of economic activities undertaken by the State and should exercise caution in interfering with decisions involving technical considerations of such a nature. The Court's role is to ensure that the decision-making process is lawful, not to replace the tendering authority's judgment with its own. The award of contracts, in this case, does not exhibit any arbitrariness, mala fide intent, or perversity that would warrant this Court's intervention. The Petitioner's arguments rest on an interpretation of the tender conditions that the Respondent No. 1, in its capacity as the tendering authority, does not endorse. As per the legal principles outlined, the tendering authority's interpretation should be respected, especially when it aligns with the evidence and expert assessments, as it does here.

13. In light of the foregoing, the Court finds no infirmity in the tendering authority's decision to award the contracts to Respondents No. 15, 16 and 32. The Petitioners' arguments do not reveal any compelling grounds for interference. The tendering authority has acted within the scope of its discretion and authority, and its decision does not suffer from any arbitrariness, mala fide intent, or irrationality.

14. Accordingly, the present petitions are dismissed. Pending application(s), if any, are also disposed of accordingly.

SANJEEV NARULA, J

SEPTEMBER 27, 2024

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