

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.450/2023

M/S Satyanarayan Enterprise, Prop. Nirmal Roy at Mantribari Road, Opposite to PWD Office, P.O.: -Agartala, District:-West Tripura.

..... Petitioner(s).

V E R S U S

1. The Agartala Municipal Corporation, represented by the Municipal Commissioner, Agartala, West Tripura, P.O.: -Agartala, Pin:-799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura, P.O.: - Agartala, Pin:-799001.
3. The Executive Engineer, Electrical Division, Agartala Municipal Corporation, West Tripura, P.O.: - Agartala, Pin:-799001.
4. Sri Rajesh Deb, S/o. Sri Narayan Chandra Deb, resident of Ranjit Nagar, P.O.: - Ramnagar, Pin:-799002, Agartala, West Tripura.

.....Respondent(s).

Along with

WP(C) No.451/2023

Sri Swadesh Chandra Saha, S/o. Lt. Benode Behari Saha, resident of 13 Sakuntala Road, P.O.: -Agartala, District:-West Tripura.

..... Petitioner(s).

V E R S U S

1. The Agartala Municipal Corporation, represented by the Municipal Commissioner, Agartala, West Tripura, P.O.: -Agartala, Pin:-799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura, P.O.: - Agartala, Pin:-799001.
3. The Executive Engineer, Electrical Division, Agartala Municipal Corporation, West Tripura, P.O.: - Agartala, Pin:-799001.
4. Sri Rajesh Deb, S/o. Sri Narayan Chandra Deb, resident of Ranjit Nagar, P.O.: - Ramnagar, Pin:-799002, Agartala, West Tripura.

.....Respondent(s).

WP(C) No.347/2023

Sri Samir Chandra Deb, S/o. Lt. Sushil Chandra Deb, resident of A.D. Nagar, Road No.16, P.O.: -S.D. Mission, Agartala, West Tripura.

..... Petitioner(s).

V E R S U S

1. The Agartala Municipal Corporation, represented by the Municipal Commissioner, Agartala, West Tripura, P.O.: -Agartala, Pin:-799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura, P.O.: - Agartala, Pin:-799001.
3. The Executive Engineer, Electrical Division, Agartala Municipal Corporation, West Tripura, P.O.: - Agartala, Pin:-799001.

4. Sri Rajesh Deb, S/o. Sri Narayan Chandra Deb, resident of Ranjit Nagar,
P.O.:- Ramnagar, Pin:-799002, Agartala, West Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. C.S. Sinha, Advocate.

For Respondent(s) : Mr. Arijit Bhaumik, Advocate,
Mr. Saugat Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

Date of hearing and judgment: **22nd May, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioners, Mr. Arijit Bhaumik, learned counsel appearing for the respondents- Agartala Municipal Corporation and Mr. Saugat Datta, learned counsel appearing for the private respondent.

2. WP(C) No.347 of 2023, WP(C) No.450 of 2023 and WP(C) No.451 of 2023 have been filed on 31.05.2023, 24.07.2023 and 25.07.2023 by the unsuccessful bidders assailing the issuance of work order dated 20.05.2023 in favour of the private respondent in each of these writ petitions concerning the same work of "Providing supply, installation, testing and commissioning of 02(two) Nos. Lighting Mast at South Zone under Agartala Municipal Corporation for beautification of Agartala City (Phase-II)" as per NIT dated 24.03.2023 for an estimated cost of Rs.24,85,795.00/-. For convenience sake facts as pleaded in WP(C) No.347/2023 are referred to hereinafter. As per the NIT the time of completion was 30 days from the date of award of work. Private respondent in all these three writ petitions is one and the same who was declared L-1 as he had quoted a price of Rs.19,85,902/- which is 20.11% less

than the tender value of work. Writ petitioner Samir Chandra Deb had quoted a rate of Rs.24,75,852/-, writ petitioner M/S Satyanarayan Enterprise represented by its proprietor Nirmal Roy had quoted a rate of Rs.24,85,795/- and the third writ petitioner Swadesh Chandra Saha had quoted a rate of Rs.21,76,522/-. The main plank of challenge on behalf of all these writ petitioners is that the private respondent lacked the eligibility criteria of having executed similar nature of work. They further allege that since the documents related to the bidders were not uploaded before issuance of the work order on 20.05.2023, the other unsuccessful bidders were not able to file their objection as to the lack of technical eligibility of the private respondent. The documents were uploaded by the employer after 2(two) days on 22.05.2023 which is not disputed. As such, it amounts to violation of fair play and principles of natural justice in conduct of tender process by a State instrumentality. Therefore, the award of work is vitiated on grounds of arbitrariness and violation of the terms and conditions of the NIT.

3. Learned counsel for the Corporation and the private respondent both have filed separate counter affidavits in WP(C) No.347 of 2023. The respondent-Corporation has, *inter alia*, answered the grounds of challenge in the following manner:

As per learned counsel for the Corporation, pursuant to the NIT dated 24.03.2023, 8(eight) bidders submitted their bids by the last date, i.e. 06.04.2023. The time of opening of the bid was 06.04.2023 at 16:00 hours. As per the NIT, intending bidders were required to submit experience of appropriate class for internal electrification works registered with the PWD/TTAADC/MES/CPWD/ Railways/Govt. Organization of the State and

Central having experience in similar nature of works since the tender was for providing supply, installation, testing and commissioning of two numbers Lighting Mast at North Zone under Agartala Municipal Corporation for beautification of the City. The relative rates quoted by the private respondent and these three unsuccessful writ petitioners have been indicated in the earlier paragraph of this order. Respondents-Corporation state that as per the documents submitted by the private respondent, he had worked with Military Engineering Service (MES, for short) and was also licensed by the Government of Tripura to carry out electrical installation work in the State. The private respondent had uploaded various work orders of similar nature issued in his favour by the MES. The Executive Engineer, Electrical Division, Agartala Municipal Corporation vide letter dated 10.04.2023 sought clarification from the private respondent that as per the documents uploaded by the private respondent, he was eligible for low tension electric works up to 1100 volts and the present work to be executed was within 430 volts and as such, a low tension electric work. The private respondent by letter dated 12.04.2023 clarified his eligibility with the MES and along with the said letter he submitted a certificate of the same date where it was certified that he was an enlisted contractor of MES and was eligible for low tension electric works up to 1100 volts which included: (i) Internal electrification, (ii) High Mast lighting, (iii) Street light, (iv) LT/UG Cable/ACSR, and (v) DG Set. Apart from that, he had uploaded various documents regarding the previous work done by him to demonstrate his experience. Therefore, he was found eligible and accordingly, work order was issued on 20.05.2023 in his favour. These documents are enclosed as Annexure-R/4 to R/7 to the counter affidavit. It is further stated that e-Tender was issued for 2(two) nos. of Lighting Mast, one was for 20 metres high and the

other for 30 metres high. Petitioner Samir Chandra Deb had uploaded his experience certificate for 16 metres High Mast and 20 metres High Mast and could not submit experience for 30 metres High Mast. Apart from that, he could not upload any document regarding experience for installation of 30 metres High Mast. According to the respondents, therefore, the allegation that the private respondent was not eligible to participate in the e-Tender is not correct. The respondents do not dispute that the related documents of the bidders were uploaded on 22.05.2023.

4. Learned counsel for the respondents-Corporation submits that after preparation of the comparative statement of all bidders and after clarification about the eligibility of the private respondent as well, the matter was placed before the appropriate authority for taking a decision. In the present case, the same process as has been followed by the Corporation in other such NITs was followed and on account of huge difference in the estimated cost of work and rate quoted by the private respondent which is substantially lower than the unsuccessful bidders i.e. writ petitioners, work order was allotted in his favour on 20.05.2023. It is submitted that the work was stipulated to be completed within 30 days. The work has been duly completed and after submission of his bills, the payments have also been released. It is submitted that, therefore, there is no lack of eligibility on the part of the private respondent to question the award of work. It is further submitted that the respondents have not violated the terms and conditions of the NIT and neither is there any absence of fair play. As such, the challenge to the issuance of the work order in favour of respondent No.4 is without merit and the writ petitions deserve to be dismissed.

5. Learned counsel for the private respondent has also adopted the submissions. He submits that the work has been executed long back and payments of bills have also been made. As such, the issue has become academic.

6. We have considered the submissions of learned counsel for the parties at length and taken note of the relevant materials placed on record.

7. At the outset, it needs to be recorded that though all the writ petitioners have assailed issuance of the work order in favour of the private respondent on 20.05.2023 before uploading of the documents relating to the bidders, i.e. on 22.05.2023 but surprisingly none of the writ petitioners have enclosed the detailed terms and conditions of the NIT which are part of the tender notice dated 24.03.2023, a single page of which has been annexed by each of the writ petitioners. Whether there was a specific term to that effect for uploading of the documents before issuance of work order is an issue which cannot be examined in the absence of the detailed terms and conditions annexed to the writ petitions. However, since the question of fair play in action and violation of principles of natural justice have been raised, we have examined the averments of rival parties to test whether in effect the decision to allot work in favour of the private respondent was proper or not. An allegation has also been made that the private respondent lacked technical eligibility. From the averments made in the counter affidavit as also referred to in the foregoing part of the order, it does not appear that for the similar nature of work, the private respondent lacked experience. The documents enclosed in the counter affidavit suggest that he had the experience of executing work of similar nature with the Military Engineering Service and was also under license with the Government

of Tripura for executing electrical works in the State of Tripura. On the other hand, it appears that the writ petitioner Samir Chandra Deb had submitted documents, such as a certificate at Page-10 of WP(C) No.347 of 2023 issued by the Executive Engineer, West Division, TTAADC, Khumulwng that he had provided fixing of 20 metres High Mast Yard lighting at the VIP Quarter Complex, Khumulwng Park, TTAADC, Khumulwng in the year 2015. The eligibility conditions apparently required experience of installation of High Mast light up to the height of 30 metres which the writ petitioner Samir Chandra Deb did not possess. All three unsuccessful bidders were below the petitioner who was L-1 bidder.

8. We may now advert to the principles laid down as regards interference by this Court under Article 226 of the Constitution of India in Government contracts and tenders. Reliance is placed upon the decision of the Apex Court in the case of *National High Speed Rail Corporation Limited vrs. Montecarlo Limited & another* reported in (2022) 6 SCC 401. The Apex Court has reiterated the scope of interference under judicial review in contractual matters and held that a Writ Court should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the Court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) Whether the public interest is affected?

When the challenge in the present batch of writ petitions is examined in the light of these legal propositions, it is apparent that in the

absence of specific mala fide alleged against any person in the Corporation in either of the writ petitions, it cannot be said that the decision to award work in favour of the private respondent was actuated by mala fide to favour him. While seeking an answer to the second proposition as referred to above in the context of the facts and circumstances of the present case, it cannot be either said that the decision was arbitrary and irrational to the extent that no responsible authority acting reasonably could have reached it in accordance with the relevant law. The technical bid of individual bidders including the petitioners and private respondent were duly evaluated and if there was any doubt as regards the eligibility of the private respondent, on clarification the private respondent had duly satisfied that he had the experience of executing similar nature of work with the Military Engineering Service, one of the agencies which was indicated in the NIT. He also had the experience of installation of 30 metres High Mast light. The decision of the tender authority in such circumstances cannot be said to be arbitrary or irrational. While answering the third issue, we are also inclined to observe that since the private respondent fulfilled the technical eligibility criteria and he was the lowest successful bidder having quoted a rate which is Rs.4,89,950/- less compared to the writ petitioner Samir Chandra Deb, one of the bidders, the award of work in his favour could not be said to have affected the public interest. The Apex Court in the same decision while examining the terms and conditions of the said tender notice also observed that a clause in the invitation to bid prohibiting disclosure of information relating to evaluation of the bids etc. until information on contract award is communicated to all the bidders, cannot be said by any stretch of imagination that it takes away the right of the unsuccessful bidder to seek the judicial scrutiny of the tender process after the final decision is taken

to award the contract and the contract is awarded. Thereafter it is always be open for the unsuccessful bidders to ask for the reasons to which the employer is required to furnish promptly and thereafter the unsuccessful bidder may avail the legal remedy which may be available to it. The writ petitioners' plea on that count therefore is untenable though the documents were uploaded after two days of the award of work to the private respondent.

Reference is also made to a decision of the Apex Court in the case of *Uflex Limited vrs. Government of Tamil Nadu & others* reported in **(2022) 1 SCC 165** on the scope of interference in contractual matters by a Writ Court.

9. In the facts of the present case also, the relevant documents of the bidders including the successful bidder were uploaded two days after the award of the work. Petitioners being aggrieved have laid a challenge to the issuance of work order in favour of the private respondent on grounds of violation of principles of natural justice and doctrine of fair play. We may at this stage also observe that such NIT's in a commercial matter comprise of essential terms and non-essential terms and conditions. Unfortunately, in the present case, the writ petitioners have not even cared to bring on record the detailed terms and conditions of the tender notice for detailed scrutiny. Therefore, for the reasons recorded hereinabove, we are of the considered view that the award of work in favour of the private respondent did not suffer from any mala fide, arbitrariness or irrationality or that it affected the public interest.

10. As an upshot of the aforesaid discussion and for the reasons recorded hereinabove, we do not find any merit in the writ petitions which are accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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