

06/10/2020
Item No.3
AB/S DE

Through Video Conference

F. M. A. 910 of 2020
With
I.A. No.CAN/1/2020
I.A. No.CAN/2/2020
I.A. No.CAN/3/2020
I.A. No.CAN/4/2020

Subir Ghosh
-Vs-
The State of West Bengal & Others

Mr. Satrajit Sinha Roy ...for the Appellant.

Mr. Samrat Sen, Asst. to A.A.G....for the State.

Mr. Swarup Pal,
Mr. Surya Maiti,
Ms. Amrita Maji,
Ms. Mrinalili Majumdar ...for the Respdt. 14.

Mr. Amitava Mitra ...for the Respondents.

The challenge here is to an interim order of January 15, 2020, passed on a writ petition challenging a tender process pertaining to delivery of cooked diet at government hospitals in the district of Nadia.

The order impugned is unreasoned, in that it indicates that a prima facie case has been made out, but does not spell out how such prima facie case was made out. It is elementary that the expression “a prima facie case having been made out” is a conclusion and not the reason to indicate that a prima facie case has, indeed, been made out. Further, the order refers to a previous judgment, without indicating the particulars of the relevant judgment. The parties

agree that the judgment referred to in the relevant order was one of November 25, 2019 passed in another writ petition filed by the same writ petitioner. However, it is apparent from the penultimate page of the order dated November 25, 2019, that the State had submitted before the Court that, “there were irregularities in the tender impugned in the present writ petition and, as such, they want to reissue the said tender”. It was in the light of such concession, as appropriately recorded in the final page of the relevant order of November 25, 2019, that the order came to be made.

It does not appear that any similar submission as to the perceived irregularity of the tender process was made on behalf of the State in the present case. None is recorded in the order impugned.

The more important factor is that the tender process in this case opened sometime in March, 2019 and the closing date for submitting online bids was April 1, 2019. The writ petition was filed in January, 2020. Though it is submitted on behalf of the writ petitioner that the time to submit the bids was extended, no specific date in such regard is indicated. What is apparent is that the writ petitioner did not participate in the bidding process and yet chose to challenge the same.

It is possible that a prospective bidder finds the terms of the tender documents to be unfair or illegal

and challenges the same ; but such challenge has to be before the time to put in the bids is closed. At any rate, if a bid is made and the bid is thrown out on an illegal or unfair ground contained in the tender documents, even then, a challenge can be fashioned. But a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever. This admitted aspect of the matter escaped the attention of the Single Bench while passing the impugned order of January 15, 2020.

For the reasons aforesaid, the order dated January 15, 2020 cannot be sustained and the same is set aside. Since the best arguable case of the writ petitioner will not result in any of the tender terms being altered as the writ petitioner did not participate in the process at all, the writ petition itself is dismissed. Nothing in this order will be construed to be an approval of the terms and conditions of the tender document and in an appropriate challenge, the same may be considered in accordance with law.

F.M.A. 910 of 2020 together with the interim applications therein are disposed of on the above basis. W. P. 296 (W) of 2020 is dismissed.

There will be no order as to costs.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)