

07 19.11.2020
AN Ct. No. 12
Supplementary
List

W.P.A. 7922 of 2020

Burnpur Labour Contract & Construction Cooperative
Society Limited

-vs.-

State of W.B. & Ors.

Mr. Satrajit Sinha Roy

... for the petitioner

Mr. Samrat Sen

... for the respondent

Ms. Smita Das De

... for the respondent

The present writ petition has been taken out challenging a communication to the petitioner (annexure P-3 at page 570 of the writ petition) which, according to the petitioner, has the effect of disqualifying the petitioner as a bidder from a tender pertaining to selection of private service providers for establishment, operation, maintenance and management of mechanized laboratory facilities located at nine different government hospitals in West Bengal P.P.P. Mode.

Learned counsel for the petitioner argues that the petitioner could not have been restricted by taking resort to Clause 2.6(1) of the notice inviting tender, since the said Clause is not exhaustive and entities/individuals have a different judicial character than those set out in the said sub-clause can also participate in the said bid.

Learned counsel for the petitioner also argues that the other ground, on which the petitioners' bid was apparently sought to be rejected, was also invalid since

the petitioner consortium, or at least one of its members, had an annual turnover of Rs. 1 crore or more in the preceding three financial years.

Learned counsel for the respondents authorities argues that the impugned communication dated September 22, 2020 itself makes it clear that it was not a final decision and reply was invited from the petitioner within 5 days of the receipt of the letter.

Since it is arguable as to whether the respondents-authorities could record the observations regarding the alleged ineligibility of the petitioner at a premature stage, while in the same breath seeking a reply from the petitioner on the self-same issue, it would only be proper for the petitioner to be given an opportunity to use a reply to the said communications.

Accordingly, W.P.A. 7922 of 2020 is disposed of by directing the petitioner to file a reply in terms of the impugned communication dated September 22, 2020 within a week from date before the respondents-authorities concerned. In the event such reply is filed by the petitioner within such stipulated time, the respondent No. 3 shall consider such reply in accordance with law and decide on the eligibility of the petitioner upon considering the same. If the petitioner does not file the objection within the period as stipulated above, the respondents authorities shall proceed by deeming that the petitioner is ineligible for the tender process-in-question.

It is made clear that the merits of the parties' contentions regarding the petitioners' eligibility to participate in the bid have not been gone into in the present writ petition.

There will be no order as to costs.

All parties shall act on the server copy of this order accordingly.

(Sabyasachi Bhattacharyya, J.)