

Ct. 05
Item No.02
19.10.2020
(suvendu)

WPA 8203 of 2020

(Via Video Conference)

**SHIBA PROSAD BANERJEE
Vs.
THE STATE OF WEST BENGAL & ORS.**

Mr. Saptansu Basu
Mr. Swarup Paul
Mr. Surya Maity
Ms. Amrita Maji
Ms. Mrinalini Majumdar

.....for the Petitioner

The petitioner supplies vehicles including ambulance and staff car on monthly hired basis for a rural hospital in the District of Purba Bardhaman. The petitioner is aggrieved by a notice inviting e-tender for hiring of staff car for Katwa Sub-divisional Hospital, Purba Bardhaman, dated 3rd October, 2020. The closing date for submission of e-tender is today, i.e. on 19th October, 2020 and 21st October, 2020 has been fixed for opening to the bids pursuant to the notice inviting e-tender.

Learned counsel appearing for the petitioner assails the impugned notice primarily on two grounds. First, according to the counsel, the impugned notice of 3rd October, 2020 is contrary to the criteria of an existing notification dated 24th

November, 2008. Counsel submits that contrary to the Mass Emission Standard of vehicles purchased on or after 01.05.2005 with Diesel/LPG/CNG Engine (Bharat Stage-II) and vehicles purchased on or after 01.05.2008 with similar Engine (Bharat Stage -III), the impugned notice dated 3rd October, 2020 has included in the category of vehicles “ age of car i.e. date of registration not more than three months, from the date of publication of this NIT”, thereby only making vehicles of registration on or from 3rd July, 2020 eligible for participating in the tender. The second point taken is that the Superintendent of Katwa Sub-divisional Hospital who is the issuing authority of the impugned notice is not empowered to do so. Counsel submits that an earlier circular of the Deputy Secretary to the Government of West Bengal dated 20th November, 2015 states that the power to extend the period of the existing service providers for the specified hospitals are delegated to the concerned Chief Medical Officer of Health (CMOH) of the District provided such extension order shall not increase the number of existing agencies already approved by the Department. Counsel submits that the facts warrant cancellation of the impugned notice.

The respondents are not represented.

Affidavit of service filed in Court today is kept on record. Learned counsel for the petitioner submits that the respondents were informed even yesterday i.e. on 18th October, 2020 that the matter would be taken up today.

On hearing learned counsel appearing for the petitioner, this Court is of the view that the criteria mentioned in the notice inviting e-tender of 3rd October, 2020 for evaluating the eligibility of the participating bidders are arbitrary and unconscionable in the backdrop of the economic situation brought about by the pandemic. The category of vehicle which is mentioned in Clause (c) for the commercial bids to be evaluated involves a cut of date from 3rd July, 2020 that is the registration number of the vehicle must be on a date on or from 3rd July, 2020. The Clause mentioned that the age of car i.e. the date of registration should not be more than three months from the date of publication of the NIT (which is 3rd October, 2020). This means that the intending bidders would have to secure registration numbers for cars beginning July, 2020 meaning thereby that cars would have to be brought in or before July, 2020.

It is common knowledge that the lockdown and the pandemic which started from the last week of

March, 2020 has adversely affected the economy. The economic fall out has impacted the purchasing power of the people in the country. Hence, including such a clause in the present times is totally unreasonable.

Second, the impugned notice is contrary to the earlier G.O. dated 24th November, 2008 which allowed vehicles purchased on or after 1st May, 2005 and 1st May, 2008. There is absolutely no justification for the concerned authority to change the criteria for evaluation of commercial bids particularly when the earlier notification is still in place particularly when the work remains the same, namely supplying vehicles to Government hospitals in Purba Bardhaman District.

This court does not wish to comment on the submission that the particular clause has been inserted to favour a group of persons to the exclusion of the petitioner since the said allegation has not been substantiated from documents. However, for the transparency of the process as has been reiterated in Meerut Development Authority Vs. Association of Management Studies & Anr. reported in (2009) 6 SCC 171 the petitioner should be given some relief.

WPA 8203 of 2020 is disposed of with an order restraining the respondent no.6, being the Superintendent of Katwa Sub-divisional Hospital, Purba Bardhaman from proceeding any further with the notice of e-tender dated 3rd October, 2020.

The Court is of the view that since the bids are yet to be opened and the concerned authorities have not selected the successful bidder nobody will be irrevocably prejudiced.

(Moushumi Bhattacharya, J.)