

AD. 64.
December 22, 2020.
MNS.

W. P. A. 9221 of 2020
(**Via video conference**)

Ashok Kumar Ghosh
Vs.
The State of West Bengal and others

Mr. Ziaul Haque

... for the petitioner.

Ms. Sutapa Sanyal,
Ms. Rajlakshmi Ghatak

...for the State-respondent.

Mr. Chayan Gupta,
Mr. Rittick Chowdhury

...for the respondent nos. 2 to 5.

Affidavit-of-service filed in Court today be
taken on record.

The grievance of the petitioner is that the
respondent no. 6 was declared to be a successful
bidder in a tender for fire-fighting purposes, in
which the petitioner participated as well and was
designated as the L-3 bidder.

Learned counsel for the petitioner argues
that Clause- 2(a) of the Notice Inviting Tender
was not satisfied by respondent no. 6 and as
such, the declaration of respondent no. 6 as a
successful bidder was unlawful.

Learned counsel appearing for the respondent nos. 2 to 5 points out that Clause-2(a) stipulates that the bidder “should” have credential of executing “similar type of service work in power plants”, which does not necessitate the successful bidder to have completed an exactly identical work that envisaged in the present tender.

Learned counsel for the respondent nos. 2 to 5 relies on a judgment reported at **(1988) 1 Supreme Court Cases 605 (Nat Steel Equipment Pvt. Ltd. Vs. Collector of Central Excise)** for the proposition that the expression “similar” is a significant expression and that it does not mean identical but it means corresponding to or resembling in any respect; somewhat like; or having a general likeness.

In the present case, learned counsel submits that the respondent no. 6 had furnished documents indicating experience regarding mechanical erection and service work in respect of electrical thermal plants, which sufficiently qualified the respondent no. 6 for being declared as a successful bidder.

That apart, it is argued that the petitioner has no *locus standi* to prefer the instant writ

petition, since the petitioner was merely the L-3 bidder.

Placing reliance on the cited judgement as well as taking into consideration the general connotation of the term “similar”, the respondents’ argument is more acceptable than that of the petitioner.

It is for the tenderer to assess the eligibility and credentials of the participating bidders for award of contract and the court does not ordinarily interfere with such exercise of discretion.

In the present case, as rightly argued by the respondent nos. 2 to 5, no allegations of *mala fide* and/or arbitrariness have been espoused by the petitioner. Rather, the petitioner could not have benefited even if respondent no. 6 was not chosen as a successful bidder, since, in that event, the bid would have gone to L-2 bidder. As such, the petitioner does not have direct interest in the matter of selection of respondent no. 6 as the successful bidder.

That apart, the respondent nos. 2 to 5 have advanced a plausible ground for selection of the respondent no. 6, which takes away the justification behind the petitioner’s arguments.

As such, the petitioner merely acted as a fence-sitter, having participated in the bid and lost out to two other bidders. The grounds sought to be made out in the writ petition are not established and, if established, would not be sufficient to interdict the selection of bidders regarding the tender-in-question, which falls within the prerogative of the prospective tenderer, that is, the respondent nos. 2 to 5.

In such circumstances, W. P. A. 9221 of 2020 has no merits and is accordingly dismissed without any order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be uploaded and the respondents are directed to act on the same.

(Sabyasachi Bhattacharyya, J.)