

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 831 of 2021

**Sub Enterprise & Anr.
Vs.
Union of India & Ors.**

Ms. Rimpay Mukherjee
... for the petitioners

Despite service, none appears on behalf of the respondents.

Affidavit of service filed in Court today be kept on record.

The grievance of the petitioners is that the petitioners came out as successful bidders in a Tender floated by the South Eastern Railway Authorities, annexed at page 17 of the instant writ petition. However, the petitioners found several discrepancies in the NIT conditions. The petitioners pointed out such discrepancies to the Tendering Authorities. However, no response has been given by the respondents to such complaints, neither has any corrigendum been issued in respect of the NIT, till date. Learned counsel for the petitioners submits that tomorrow is the last date for closure of the tender offer and, as such, non-consideration of the petitioners' contentions regarding discrepancies might disentitle the petitioners from subsequently raising any such claim.

In this context, learned counsel places reliance on Clause 20 of the NIT (at page 23 of the writ petition), which indicates that, should a tenderer find discrepancies in, or omissions from, the drawings of any of the tender forms or should be in doubt as to their meaning, he should at once notify the authority inviting tenders, who may issue a corrigendum. The said clause further provides that, it shall be understood that every endeavour has been made to avoid any error which can materially affect the basis of the tender and the successful tenderers shall take upon himself and provide for the risk of any error, which may subsequently be discovered and shall make no subsequent claim on account thereof.

The apprehension of the petitioners is reasonable. However, since the tender process has gone too far, tomorrow being the last date of expiry of the tender offer, the rules of the game cannot be changed at this eleventh hour after the game has started, not only keeping in mind the petitioners' interests but also factoring in the interests of the other affected parties.

However, the restrictions stipulated in Clause 20 of the NIT, as referred to above, cannot affect the petitioners' claims in the event of gross discrepancy in the issuance of contract to the petitioners, pursuant to allegedly discrepant tender conditions, since the petitioners' objections were taken prior to closure of the

tender process. As such, the objections as to discrepancy raised by the petitioners, cannot be labelled as “subsequent claim” or “error which may subsequently be discovered”, which have been excluded in Clause 20 of the NIT. Since the petitioners’ objection was raised much prior to the closure of the tender process, it will be open to the petitioners to object to the irrelevant or discrepant clauses of the contract, which might be granted to the petitioners upon acceptance of the petitioners’ bid even at subsequent stages.

However, the present cause of action does not come within the elevated category of violation of fundamental rights, which call for interference by the writ court under Article 226 of the Constitution of India.

In the circumstances, it will be open to the petitioners, as indicated above, to raise claims of discrepancy pertaining to the grievances forwarded to the respondents by the petitioners in the petitioners’ representation, as annexed to the writ petition, even at later stages.

W.P.A. No. 831 of 2021 is disposed of in the light of the aforesaid observations.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)