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2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No. 1274 of 2021

**Rahul Saha
Versus
The State of West Bengal and others**

Mr. Amit Sharma.
...for the petitioner.

Mr. Uttam Kr. Bhattacharya.
...for the respondent no.7.

The petitioner participated in the tender process floated by the respondent-authorities.

Learned counsel for the petitioner submits that the petitioner's technical bid was wrongly turned down on the ground that performance certificate was not uploaded duly by the petitioner. Such rejection order dated December 1, 2020 is annexed at page 139 (Annexure P/3) of the writ petition.

Learned counsel places reliance of Clause 6 of the NIT, appearing at page 31 of the writ petition, to indicate that respective payment certificates related to past experience were to be submitted by the bidders. It appears from the annexure to the writ petition that annual tax statement in Form 26 AS was filed by the petitioner by way of performance

certificate, annexed at page 98 onwards of the writ petition.

It is further submitted that, in a different tender, the respondent-authorities had permitted the uploading of similar certificates to hold the bidders therein eligible. It is further submitted that other bidders in the present tender, despite having failed to submit invoices and other relevant documents, were chosen as eligible bidders.

Such contentions are controverted on behalf of the respondent-authorities.

However, it appears from the documents annexed by the petitioner by way of payment certificates that those merely pertain to payments simpliciter, without disclosing details as regards the exact nature of work performed, as required on a complete reading of Clause 6 of the present NIT. In such view of the matter, it was well within the discretion of the respondent-authorities, who issued the tender, to reject such payment certificate as insufficient compliance of Clause 6 of the NIT. Such valid exercise of discretion ought not to be interfered at the drop of a hat by the writ court.

Acceptance of similar certificates in a different tender is of no relevance in the present context.

Regarding the argument regarding other bidders having been held eligible despite having filed insufficient documents, the petitioner does not have locus standi to point out such alleged discrepancies in view of the petitioner himself having failed to comply with the requirements of the NIT. Moreover, such question of fact, regarding deficiency of documents of the other bidders, cannot be gone into in details without adduction of evidence, which is beyond the charter of the writ court. Moreover, the petitioner does not have any right to claim any 'negative equality' in the eye of law.

In view of the aforesaid discussions, the writ petition fails.

Accordingly, WPA 1274 of 2021 is dismissed without any order as to costs.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)