

AD. 24.
January 29, 2021.
MNS.

W. P. A. 2206 of 2021
(Via video conference)

M/s Bhranti Bhusan Singha and another
Vs.
State of West Bengal and others

Mr. Swarup Paul,
Mr. Gurusaday Dutta

... for the petitioners.

Mr. Samrat Sen,
Mr. Amitava Mitra,
Ms. Debangana Dey

...for the respondent-authorities.

Mr. Arup Munshi

...for the private respondents.

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

The petitioner no. 2 sought to participate in
a tender process as proprietor of the petitioner
no.1-firm but was declared ineligible during
scrutiny on the ground that the petitioner did not
have a security licence, which was necessary in
view of the nature of the work to be done.

Learned counsel appearing for the
petitioners submits that although the petitioners
are in possession of certificates issued by several
authorities, including a certificate of enlistment by

the relevant Municipality, certificate of enrolment and professional taxes payment certificates, the petitioners' bid was rejected.

Learned counsel further submits that the father of the petitioner no. 2 was the sole proprietor of M/s Bhranti Bhusan Singha, a sole proprietorship firm, which, upon the death of the original proprietor, devolved upon the petitioner no. 2. As such, the delay in issuing the security certificate by the appropriate authority despite the pendency of the petitioners' application in that regard could not have prompted the respondent-authorities to hold that the petitioners' bid is ineligible.

Learned counsel relied in this context on Order XXX Rule 10 of the Code of Civil Procedure, which provides for legal heirs of a deceased sole proprietor of a firm to be necessarily impleaded for continuance of a suit.

Learned counsel also relies on a judgment reported at **(2002) 3 Supreme Court Cases 626 (Harshavardhan Chokkani Vs. Bhupendra N. Patel and others)**, wherein it was observed by the Supreme Court that, by the conduct of the parties therein, being the firm and the vendor of the respondents therein, the firm had already

become the tenant of the premises before purchase of the said building.

Learned counsel argues that, if the heir of the deceased original proprietor of a sole proprietorship firm can be construed as tenant under the relevant Rent Control Act and also be impleaded to espouse the case of the deceased sole proprietor in a firm in a civil suit, the same principle ought to be borrowed in the present context, conferring sufficient right on the petitioner no. 2 to participate in the bid as an eligible bidder.

Learned counsel further submits that the private respondents, who were chosen as eligible bidders, were also deficient in submission of similar documents as the petitioners. As such, violation of the petitioners' fundamental rights to equality is also urged.

Learned counsel appearing for the private respondents disputes such contentions and argues that the private respondents were otherwise eligible for participation in the bid.

Learned counsel appearing for the tendering authority places reliance on Clause 3(i), sub-clause 'm' of the Notice Inviting Tender to indicate that a private security license obtained

from the Home Department, Government of West Bengal was necessarily required to be uploaded along with the bid.

Learned counsel for the respondent-authorities further relies on Clause -15 of the NIT, which provides that during scrutiny, if it appears to the quotation inviting authority that the credential or any other papers are found incorrect, manufactured and fabricated, the “quotationer” will not be allowed to participate in the quotation and that application will be rejected outright without any prejudice with forfeiture of earnest money. As such, the petitioners having failed in such regard, the rejection of the petitioners’ bid is argued to have been a valid exercise of discretion by the authority.

Learned counsel further submits that the private respondents had submitted their tender documents while their previous licence was continuing. Subsequently, the licence expired but was renewed prior to conclusion of the bidding process. As such, the illegality and inequality, agitated by the petitioners, do not hold good.

The concept of a tenant continuing in place of a deceased tenant upon payment of rent cannot be equated with the legality of a person

offering security services without a security licence as required by law. The Supreme Court in ***Harshavardhan Chokkani*** (supra) was considering a case under the relevant rent control law. In such context, it was held that, in the event the heir of a deceased proprietor continues to pay the rent, even in the name of the firm, the same clothes the heir with tenancy rights. The said ratio has no nexus with the present case.

Order XXX Rule 10 of the Code of Civil Procedure is also on a different footing, inasmuch as the same provides for an acceptance of the heirs, in consonance with the provisions of Order XXII of the Code, for the limited purpose of continuance of the suit on behalf of the deceased. However, such principle cannot clothe a person, having no security licence as required by law, with the right to perform such services.

What is to be considered in the present case is whether the discretion available to the tender issuing authority was validly exercised.

In view of the submissions made by the tendering authority as regards the validity of the documents of the private respondents and keeping in mind the relevant clauses of the NIT, as discussed above, no *mala fides* or

arbitrariness could be attributed to the impugned action of the tendering authority to vitiate the tender process. The authority adopted one of the plausible views available.

Moreover, in view of the petitioner no. 2 not being eligible himself, in the eye of the tendering authority and as per the NIT clauses, the petitioners do not have *locus standi* to point out deficiencies in the documents of other bidders.

In the event the petitioner no. 2 was selected as an eligible bidder, it might have been open to the petitioners to point out the deficiencies in the documents of other bidders chosen to be eligible, since there would be a scope of competition, hence equality, between the petitioner and such other eligible bidders.

In the present case, however, the petitioners could not cross the milestone of eligibility itself, thereby denuding the petitioners of any such right to claim equality on similar footing with other eligible bidders.

In such view of the matter, the violation of Article 14 of the Constitution of India cannot be a relevant factor in the present consideration.

Accordingly, the writ petition fails.

W. P. A. 2206 of 2021 is dismissed on contest without, however, any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)