

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No.1724 of 2020
IA NO: CAN 1 of 2020**

**Shiba Prosad Banerjee
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Saptangshu Basu, Mr. Swarup Pal, Mr. Surya Maity, Ms. Amrita Maji, Ms. Mrinalini Majumder, Mr. Anirban Chakraborty
For the respondent-authorities	:	Mr. Jishnu Chowdhury, Mr. Robiul Islam, Ms. Pramita Banerjee
For the respondent no.10	:	Mr. Aurobinda Chatterjee, Mr. A. Sengupta
Hearing concluded on	:	15.01.2021
Judgment on	:	22.01.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner challenges the rejection of his bid and the acceptance of respondent no.10 as the successful bidder in a tender floated by the respondent-authorities on May 27, 2019 for supply of cooked diet for indoor patients admitted to health facilities. The Revised Bid Summary Report (Annexure P-1 at page 81 of the writ petition) indicates that the petitioner's bid was rejected for non-submission of Performance Certificate in prescribed format as per Clause 3 of the

Notice Inviting Tender (NIT). Learned counsel for the petitioner submits that the petitioner duly submitted Performance Statement in terms of the proforma given in Clause 3 of the NIT. By placing such Performance Statement dated June 7, 2019 (annexed at page 86 of the writ petition), learned counsel contends that all particulars, as required by the NIT, were furnished by the petitioner. Despite having done so, the tendering authorities rejected the petitioner's bid for non-submission of Performance Statement in prescribed format.

2. Learned counsel for the petitioner further submits that the bid of the private respondent was accepted unlawfully, although the same was in contravention of the conditions stipulated in the NIT.
3. Clause 18.3 of the NIT provides that if any document required to be submitted for e-tender by the bidder in his technical proposal is not submitted or is found to be deficient in any manner at any stage after opening of bid, the bid may be summarily rejected.
4. Clause 13.1 of the NIT provides that the bidder shall provide an undertaking that the proprietor/promoter/director of the firm, its employee, partner or representative are not convicted by a court of law for offence involving moral turpitude in relation to business dealings such as bribery, corruption, fraud, etc. The undertaking should also contain the averment that the firm does not employ a government servant, who has been dismissed or removed on account of corruption and that the firm has not been debarred or blacklisted by any Government Ministry/Department/Local Government/PSU, etc., in the last 2 years from scheduled date of opening of the e-tender.

5. The undertaking submitted by the private respondent, annexed at page 93 of the writ petition (Annexure P-4), was undated and, as such, did not qualify for being considered within the contemplation of Clause 13.1, it is submitted.
6. That apart, learned counsel for the petitioner argues, the Performance Statement of the private respondent was not accompanied by a notarised certification authenticating the correctness of the information furnished. Such requirement appears at the end of Clause 3.1 of the NIT. Comparing the mere notarial stamp and seal appearing on the Performance Statement of the private respondent (at page 92 of the writ petition) with the full-fledged notarial certificate furnished by the petitioner (annexed at page 85 of the writ petition), learned counsel argues that the documents of the private respondent were deficient on such score as well, thus disqualifying the bid of the private respondent.
7. Learned counsel appearing for the respondent-authorities submits that the undertaking furnished by the private respondent sufficiently complied with the provisions of the NIT, since the last sentence of such undertaking (although undated) mentioned that the firm had not been debarred or blacklisted by any Government Ministry/Department/Local Government/PSU, etc., in the last two years from scheduled date of opening of the tender.
8. Learned counsel submits that the notarial stamp affixed to the Performance Statement of the private respondent, although not a

‘notarial certificate’ in the strictest sense, fulfilled the criterion stipulated in the NIT in that regard.

- 9.** Learned counsel for the tendering authorities further contends that the Performance Statement of the petitioner was insufficient. Pointing out in particular to the details furnished under the first and third columns thereof, learned counsel submits that the full address of the purchaser in respect of the previous work done by the petitioner was not furnished. Merely “C.M.O.H Burdwan” was mentioned under the said column. In comparison, the Performance Statement of the private respondent clearly mentioned the particular Hospital and the order number and date of the previous work in details. As far as the description and quantity of the past work was concerned, the petitioner merely mentioned various years and the number of beds, but did not mention any other detail thereof. In contrast, the private respondent, in its Performance Statement, had clearly indicated the number of beds and that the supply pertained to cooked diet in the relevant column.
- 10.** Referring to Item C under the document check list chart provided in Clause 12.3 of the NIT, learned counsel for the respondent-authorities submits that the same was a mandatory requirement. Since the credential documents required under the said check list were to be read into the eligibility criterion, as stipulated in Clause 3 of the NIT, non-furnishing of the same by the petitioner exposed the petitioner’s bid to rejection. As per the last paragraph of Clause 3.1, documentary evidence was to be furnished in support of the Performance

Statement. Clause 3.1, sub-clauses (a) and (b) specifically provide that the intending tenderer should produce credentials as stipulated therein to be eligible and to qualify for the bid. Such clause, implicitly, mandates the production of documents in support of the bidders' Performance Statement relating to past work done. However, the petitioner was deficient on such score and his bid was, thus, rightly rejected.

- 11.** Learned counsel for the private respondent, apart from adopting the arguments of the respondent-authorities, argues that the writ petition was filed about six months after issuance of the work order in favour of the private respondent. In the absence of appropriate explanation for such inordinate delay, the writ petition ought to be dismissed on such score alone.
- 12.** It is further submitted by the private respondent that Clause 3.1, sub-clauses (a) and (b) of the NIT contemplate 'completed work' during three years prior to the date of issuance of the e-tender notice. However, as borne out by the Performance Statement of the petitioner, no completed work of such description was cited by the petitioner. Thus, being in contravention of Clause 3.1 of the NIT, the petitioner's bid was rightly rejected.
- 13.** In reply to the arguments of the respondent-authorities, learned counsel for the petitioner submits that sufficient details were furnished in the Performance Statement of the petitioner. Counsel submits that the term "C.M.O.H. Burdwan" sufficiently covered the requirement of the proforma for Performance Statement provided in

Clause 3.1 of the NIT. C.M.O.H., Burdwan was the authority placing the order and, as such, the individual Hospitals to which food was supplied by the petitioner were immaterial. The mention of the concerned C.M.O.H.s was sufficient to satisfy the NIT conditions. Since the number of beds for which food was supplied in the corresponding financial years was mentioned in the relevant column of the petitioner's Performance Statement, there was no deficiency on that score either.

- 14.** In reply to the contentions of the private respondent, learned counsel for the petitioner argues that there was delay in online uploading of the necessary details pertaining to the tender. This, coupled with the intervening pandemic situation, caused the delay in filing the writ petition.
- 15.** It is further argued that the requirement stipulated in Clause 3.1, sub-clauses (a) and (b), of the NIT was not a part of the Performance Statement mentioned in the NIT. Thus, the work experience indicated in the Performance Statement of the petitioner, which covered several periods and pertained to several C.M.O.Hs, was sufficient compliance of the NIT.
- 16.** Considering the submissions of both sides, a conjoint reading of the clauses of the NIT does not rule out the view that the "documentary evidence", as sought in the last paragraph of Clause 3.1, also encompassed the eligibility criteria stipulated in the sub-clauses (a) and (b) of Clause 3.1 of the NIT. In the absence of such specific documents being produced by the petitioner, it was plausible for the

tendering authorities to reject the petitioner's bid. The credentials stipulated in the said sub-clauses, being mandatory eligibility criteria, can very well be read into the credentials to be disclosed in the Performance Statement.

17. It is arguable whether the details furnished by the petitioner, particularly under the first and third columns of his Performance Statement, were sufficient. In contrast to the detailed Performance Statement of the private respondent, the petitioner merely mentioned the names of the respective authorities. Even if it is assumed for the sake of argument that detailed address need not have been furnished, the particulars of the hospitals in which the petitioner actually provided food might have been a valid consideration for deciding the petitioner's eligibility vis-à-vis the other bidders. That apart, the petitioner did not mention whether the diet provided by the petitioner in the past occasions was cooked or not.
18. In contrast, the Performance Statement of the private respondent was much more specific, although it was comprised of lesser number of works done. What is to be seen is whether the eligibility criteria stipulated in the NIT were fulfilled and not the volume of past experience of the bidder.
19. As regards the undertaking filed by the private respondent, the same clearly stipulated that the firm had not been debarred or blacklisted by any Government Ministry/Department/Local Government/PSU, etc., in the last two years from the scheduled date of opening of the tender. Such undertaking was precisely in consonance with the

requirement of the NIT (last paragraph of Clause 3.1 thereof) to the letter. Thus, the bid of the private respondent could not be rejected on the score of deficiency in that regard.

- 20.** The last paragraph of Clause 3.1 required “notarised certification authenticating the correctness of the information furnished”. It did not stipulate that a formal ‘notarial certificate’ had to be furnished in the form maintained by the Notaries functioning under the Government of West Bengal. Even assuming that the private respondent deviated from the usual form used by Notaries in West Bengal, the stamp and seal of the concerned Notary was imprinted on the Performance Statement of the private respondent. There was no bar in the tendering authorities considering such notarial certification to be due compliance with the authentication of correctness of information required under the NIT.
- 21.** The writ court has to examine whether the tendering authority had the discretion which was exercised by it in choosing a successful bidder over others. It is well-settled that the court cannot impose its own view on the tendering authority. The choice made by the respondent-authorities in the present case was plausible and valid and, as such, ought not to be interfered with.
- 22.** That apart, the long delay of six months in preferring the writ petition even after the issuance of work order, pursuant to which the successful bidder has already commenced work, is itself an indicator of the petitioner having approached court with unclean hands. There is not a single sentence in the writ petition which pleads any

appropriate, let alone sufficient, cause for the delay. Hence, whatever submission is made from the Bar in that regard cannot be accepted as justification for the delay, in the absence of any specific pleading in that regard. Thus, in any event, the writ petitioner ought not to be granted the reliefs claimed in the writ petition at this belated juncture.

- 23.** Accordingly, WPA No. 1724 of 2020 is dismissed on contest without any order as to costs.
- 24.** IA No: CAN 1 of 2020 is also disposed of accordingly.
- 25.** Urgent certified website copies of the order shall be provided to the parties upon due compliance of all the requisite formalities.

(Sabyasachi Bhattacharyya, J.)