

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

Reserved on: 19/02/2021

Pronounced on: 02/03/2021

WPA (P) 48 of 2021

Subhajit Som

.....Petitioner

Through:-
Mr. Sakya Sen, Advocate
...present through VC with
M/s. Rajarshi Dutta and Avirup Chatterjee,
Advocates
...present in Court

-Vs-

The State of West Bengal & Ors.

.....Respondents

Through:-
Mr. Kishore Dutta, Advocate General
Mr. Sayan Sinha, Advocate
... Advocate, present through VC
Ms. Sumita Shaw and Mr. Debabrata Chatterjee,
Advocates
...present in Court

Coram: THE HON'BLE JUSTICE RAJESH BINDAL
THE HON'BLE JUSTICE ANIRUDDHA ROY

ORDER

Rajesh Bindal, J.

1. The petitioner, who claims himself to be working as a clerk with an Advocate at Baruipur Court, has filed the present petition in public interest raising an

issue that for procurement of LED street lights the instructions issued by the Government of West Bengal have been violated by the Chandernagore Municipal Corporation (for short 'the Corporation').

2. At the very outset, Mr. Kishore Dutta, learned Advocate General appearing for the respondents raised a preliminary objection regarding locus of the petitioner to file the present petition in public interest. He submitted that it is a proxy litigation by some of the business house who may not have been successful in the tendering process. Credentials of the petitioner are not there to show that he is a public spirited person, who had earlier filed petition raising any issue of larger public interest. In the absence thereof, the present petition, filed for an oblique motive, deserves to be thrown out at the threshold. He referred to Rules framed by this Court regarding entertainment of the public interest litigation. His argument is that there is complete violation thereof and in terms of Rules 56 and 57 the present petition does not deserve to be entertained. In support reliance was placed upon judgment of the Supreme Court in *State of Uttaranchal Vs. Balwant Singh Chauhan* reported at (2010) 3 SCC 402.

3. He further argued that the petitioner claimed that he is working as a law clerk with an advocate in Baruipur Court. He is a resident of Garia East Boalia, District-South 24 Paraganas and the cause sought to be expounded is pertaining to Chandernagore. Hence, it cannot be justified on any ground that the petitioner will have any interest for the area where he is not living. However, no judgment specifying the territorial limits for a petitioner to raise an issue in public interest, has been cited.

4. Mr. Sakya Sen, learned counsel for the petitioner while refuting the arguments raised by the learned Advocate General submitted that the petitioner is a proxy litigant, who is espousing the cause of any business house, is not made out from any affidavit or document placed on record by the respondent. The petitioner is

working as a law clerk with an Advocate at Baruipur Court. When he came to know about the illegalities committed by the Corporation, immediately the present petition was filed. It is a question of saving public money. Once the cause has been espoused by the petitioner, where he is not personally interested and the result thereof is procurement of quality product at competitive rates by the Corporation, the Court can always entertain and interfere in the subject- matter.

5. As far as the merits of the controversy is concerned, he submitted that the Government of West Bengal, Department of Urban Development and Municipal Affairs had issued instructions to various authorities including all the Chairpersons/Administrators of Urban Local Bodies, Commissioners of all the Municipal Corporations and C.E.O/E.O. of all Development Authorities vide No.1528(3)-UDMA-13013(99)/3/2020-ESTT-TCP SEC-Dept. of UDMA dated December 08, 2020 providing technical specifications, for procurement of LED street lights under Green City Mission Project. It was mentioned in the aforesaid communication that the instructions issued are required to be strictly adhered to. The documents annexed with the instructions provided for technical specifications for LED street lights also includes the period of warranty. It is also provided for a vendor list giving names of the manufacturers and the models for different wattage of LED lights. It further provided that the procurement can be of '*Any Other Reputed Make Having Same Technical Specifications Attached*'. However, while inviting the tenders, the Corporation vide Memo No.3133/TP Cell/Tender/2020/10 dated January 15, 2021 clearly violated the directions issued by the Government. It provided for a warranty of three years as against seven years provided in the technical specifications issued by the Government. Besides this, as against four brands of different manufacturers mentioned in the instructions issued by the Government, in addition to any other reputed brand having the same specifications, the offers were invited only

from three manufacturers. It limited the process of competition. In fact, it was nothing else but monopolisation of the trade. The other reputed manufacturers of the LED lights with same wattage and fulfilling the technical specifications could not participate in the process. As a result, the Corporation would suffer immense loss. It will be a drain on the public exchequer. It was nothing else but favouritism. He further submitted that the stand taken in the affidavit-in-opposition is that the list provided in the instructions issued by the Government is not exhaustive but indicative. The submission was that in that eventuality there could be more vendors, who should have been allowed to participate in the process. Rather the manner in which the tender has been issued by the Corporation shows that the manufacturers have been specified. It is nothing else, but showing favour to them. In support of the argument reliance were placed upon the judgments of the Supreme Court in *Akhil Bhartiya Upbhokta Congress Vs. State of M.P. & Ors.* reported at (2011)5 SCC 29, *Centre for Public Interest Litigation & Ors. Vs. U.O.I. & Ors.* reported at (2012) 3 SCC 1 and *Institute of Law, Chandigarh & Ors. Vs. Neeraj Sharma & Ors.* reported at (2015) 1 SCC 720.

6. In response, the learned Advocate General submitted that the instructions issued by the Government provided for adherence to the technical specifications and not the brand name. There is nothing in tender issued by the Corporation which violates the instructions issued by the Government. The technical specifications are built in the models of different manufacturers as specified in the list of vendors circulated to various authorities for procurement of LED street lights. It is not the case of the petitioner that the technical specifications have been violated. There could also be one brand specified for procurement of any item by the Government. Reference was made to the technical specifications as provided in the instructions issued by the Government. He however, could not respond to the difference in the technical

specifications provided in the instructions regarding warranty of the LED lights as compared to one provided in the tender document. In the instructions the period provided was for seven years whereas in the tender document the period provided was three years.

7. Reliance was placed upon the judgments of the Hon'ble the Supreme Court in *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & Ors.* reported at *(1999) 1 SCC 492* and *Tata Cellular Vs. Union of India* reported at *(1994) 6 SCC 651* to submit that in tender and policy matters the Court should not normally intervene as delay in execution of projects is not in larger public interest. The Court cannot examine which of the terms can be better as it is always for the experts to decide the same. He further submitted that the financial bids have been opened. The lowest bidder has quoted rates 28.05% less than the estimated rate, Work order was issued on February 04, 2021. However, considering the pendency of the present petition in this Court, he had issued instructions to the Corporation not to take any supplies.

8. Learned Advocate General did not state anything on the issue regarding procurement of the material from the GeM portal (Government e-Marketplace).

9. Heard learned Counsels for the parties and perused the relevant referred record.

10. Before proceeding to deal with the issues on merits, this Court would deal with the preliminary objection raised by the learned Advocate General regarding maintainability of the present petition with reference to locus of the petitioner. One of the grounds, raised was that the petitioner, who claims to be working as a law clerk in Baruipur Court and is resident of Garia East Boalia, District-South 24 Paraganas, but the cause sought to be raised is of Chadernagore Municipal Corporation area. As the petitioner is not resident of that area he could not possibly raise the issue pertaining

thereto. The concept of territorial jurisdiction with reference to residence of a petitioner, who approaches the Court raising an issue in larger public interest was sought to be raised. However, we do not find any merit in the submission made. Residence of a person will not limit his right to espouse the cause, which may be in larger public interest. His residential area does not bind him to raise the dispute only pertaining to that area. There are number of issues considered by the Hon'ble Supreme Court in various petitions filed in larger public interest by the NGOs who are based in Delhi or at other places in the country expousing various issues pertaining to different places in the country. What has been opined by the Court is that, if a person files a writ petition raising certain issue of public importance, which may have some relation with his private interest as well, it is the duty of the Court to enquire into the matter and to see whether entertainment of the petition is in larger public interest or not. Reference for the purpose can be made from the relevant para of the *Akhil Bhartiya Upbhokta Congress's* case (supra) as extracted below:-

“80.That apart, as held in *Shivajirao Nilangekar Patil vs. Mahesh Madhav Gosavi reported as (1987) 1 SCC 227*, even if a person files a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the court to enquire into the matter.”

11. The issue regarding locus of a petitioner to file a petition in public interest was also considered by the Hon'ble Apex Court in *Institute of Law, Chandigarh & Ors's* case (supra). It was opined that wherever any public wrong is caused by the act or omission by a public authority, any member of the public acting bona fide can maintain a petition for redressal of such public wrong or injury. The principle that only the person affected can raise a grievance stands relaxed. It is to be examined that the person who raises the grievances is not a mere busybody or a

meddlesome interloper. It is true that the risk of legal action against the State or public authority by any citizen induces such authorities to act with great responsibility. The locus of a litigant approaching the Court in public interest has to be examined by the Court keeping in view the facts of each case as there cannot be any straight jacket formula laid down for the purpose. Relevant paras are extracted below:-

“19. Further, as stated in the writ petition, the petitioner is a resident of State of Punjab and is also an income tax payee. It has neither been shown nor proved by the appellants that he is a (i) meddlesome interloper, (ii) that he is acting under mala fide intention, or (iii) that he has been set up by someone for settling his personal scores with Chandigarh Administration or the allottee.

20. Dealing with the question of locus standi of the writ petitioner, we would like to refer to certain decisions of this Court to hold that the writ petition filed by the first respondent is a public interest litigation to protect public interest. In *Fertilizer Corpn. Kamgar Union Vs. Union of India* reported as (1981) 1 SCC 568, the Constitution Bench of this Court has held as under: (SCC pp.581 & 589, paras 29 & 47-48)

“29. Where does the citizen stand, in the context of the democracy of judicial remedies, absent of an ombudsman? In the face of (rare, yet real) misuse of administrative power to play ducks and drakes with the public exchequer, especially where developmental expansion necessarily involves astronomical expenditure and concomitant corruption, do public bodies enjoy immunity from challenge save through the post-mortem of Parliamentary organs. What is the role of the judicial process, read in the light of the dynamics of legal control and corporate autonomy?

47. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the

fundamental rules of reasonable management of public business, if breached, will become justiciable.

48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But, if he belongs to an organization which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226”.

21. Similarly, in *S.P. Gupta v. Union of India* reported at (1981) Supp SCC 87 this Court has categorically laid down the law in relation to locus standi as under: (SCC p. 212-13, 215 & 218, paras 18-20 & 23)

“18. ...whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to

act with greater responsibility and care thereby improving the administration of justice. ...

It is also necessary to point out that if no one can have standing to maintain an action for judicial redress in respect of a public wrong or public injury, not only will the cause of the legality suffer but the people not having any judicial remedy to redress such public wrong or public injury may turn to the street and in that process, the rule of law will be seriously impaired...

19. *There is also another reason why the rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man... In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at the best would be able to exercise only a limited control at worst, might become a participant in misuse or abuse of*

power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual.

20. ..If public duties are to enforced and social collective ‘diffused’ rights and interest are to be protected, we have to utilise the initiative and zeal of public-minded persons and organizations by allowing them to move the court and act for a general or group interest, even though, they may be directly injured in their own rights. It is for this reason that in public interest litigation- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, ‘diffused’ rights and interests or vindicating public interest , any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. *What is sufficient interest to give standing to a member of the public would have to be determined by the court in individual case. It is not possible for the court to lay down any hard-and-fast rule or any straitjacket formula for the purpose of defining or delimiting ‘sufficient interest’. It has necessarily to be left to the discretion of the court.*

23. We would therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of the public duty or from violation of some provisions of the Constitutions or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions.” (emphasis supplied)

12. Reference can also be made to paras 99-101 of the judgment of Hon’ble the Supreme Court in ***Centre for Public Interest Litigation and Others’s*** case (supra), wherein it was opined that, the power of judicial review can be

exercised in larger public interest when a public interest is exposed. It is the duty of the Court to examine the matter to ensure that the institutional integrity is not compromised by those on whom the people have reposed trust. The relevant portions are extracted below:-

“99. In majority of the judgments relied upon by the learned Attorney General and the learned counsel for the respondents, it has been held that the power of judicial review should be exercised with great care and circumspection and the Court should not ordinarily interfere with the policy decisions of the Government in financial matters. There cannot be any quarrel with the proposition that the Court cannot substitute its opinion for the one formed by the experts in the particular field and due respect should be given to the wisdom of those who are entrusted with the task of framing the policies. We are also conscious of the fact that the Court should not interfere with the fiscal policies of the State. However, when it is clearly demonstrated that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the Court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised parameters.

100. When matters like these are brought before the judicial constituent of the State by public-spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest and ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken an oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill-will and who, as any other citizen, enjoy fundamental rights and, at the same time, are bound to perform the duties enumerated in Article 51-A. Reference in this connection can usefully be made to

the judgment of the three-Judge Bench headed by Kapadia, C.J. in *Centre for PIL vs. Union of India* reported as (2011) 4 SCC 1.

101. Before concluding, we consider it imperative to observe that but for the vigilance of some enlightened citizens who held important constitutional and other positions and discharged their duties in larger public interest and non-governmental organisations who have been constantly fighting for clean governance and accountability of the constitutional institutions, unsuspecting citizens and the Nation would never have known how the scarce natural resource spared by the Army has been grabbed by those who enjoy money power and who have been able to manipulate the system.”

13. The judgment of the Hon’ble the Supreme Court in *Raunaq International Ltd.’s* case (supra) cited by learned Advocate General will not come to the rescue of the respondents as, the facts in that case are altogether different. The issue raised in the aforesaid judgment was regarding construction of thermal power station wherein Hon’ble the Supreme Court opined that on account of delay there could be cost overrun. It was further found that the decision had been taken bona fide on legitimate considerations and not arbitrarily. The judgment in *Tata Cellular’s* case (supra) is not applicable in the facts of the case as the Court is also not sitting over the decision of the experts, as a Court of appeal. Rather is examining the allegation of the petitioner that the instructions issued by the Government itself are not being followed by the authorities to whom these are addressed. The binding nature thereof is not in dispute.

14. In the case in hand, no doubt, it is sought to be argued that the petitioner may be a proxy litigant but there is nothing on record to substantiate that argument. No material has been placed on record to suggest that he has his own interest in the litigation. All what could be gathered from the pleadings or the arguments addressed

is regarding violation of the instructions issued by the Government to various authorities for procurement of LED street lights.

15. The rules pertaining to entertainment of public interest litigation as framed by this Court will also not debar entertainment of the present petition where on facts it is found that the issue raised is in larger public interest, where public money is involved.

16. Now coming to the merits of the controversy, the Government of West Bengal, Department of Urban Development and Municipal Affairs issued instructions to all the Chairpersons/Administrators of Urban Local Bodies, Commissioners of all the Municipal Corporations and C.E.O/E.O., of all Development Authorities vide No.1528(3)-UDMA-13013(99)/3/2020-ESTT-TCP SEC-Dept. of UDMA dated December 08, 2020. These instructions pertain to procurement of LED street lights under Green City Mission. These instructions provide for technical specifications and direction was issued for strict adherence thereof. The detailed project report had to be prepared as per the technical specifications, vendor list provided along with the instructions. Annexures attached to the aforesaid communication provided for specifications such as mechanical, electrical, optical besides providing for test report/warranty. One of the important condition mentioned in the 'test reports/warranty' is that luminaries shall have seven years replacement warranty from actual date of completion of work including driver/control gear, LED, all accessories, etc. A vendor list is also annexed along with instructions which provided for different brands and the models thereof for procurement of LED street lights of different wattage. Besides, mentioning four brands along with the relevant models it was further provided therein that '*Or Any Reputed Make Having Same Technical Specifications Attached.*' The relevant technical specifications and the vendor list are extracted below:-

“MECHANICAL SPECIFICATION

HOUSING/CONSTRUCTION

- LED Street Light luminaries should be powder coated and housed in a single piece Pressure die cast non-corrosive Aluminium alloy enclosure with optimal fins for Heat Sink Mechanism.
- Luminaries should have UV stabilized, Injection molded heat resistant PC lens cum cover.
- Luminaries must have Thermally Isolated Driver of same make and Optical compartments for efficient heat management and to ensure sustainable operation.
- The fixture shall have Ingress Protection of IP 66 Rating for both for Optical & Electrical Compartments.
- IP Test Report for the same need to be furnished from any Govt. Approved or NABL accredited Laboratory.
- Windage area should not exceed 0.125 Sq.Mtr. per fixture till 150W & 0.17 Sq.Mtr. per fixture till 250W.
- Luminaries should be rated with Impact resistance of minimum IK07.

ELECTRICAL SPECIFICATION

DRIVER

- Luminaries should consist of Universal Voltage driver to handle wide operating voltage range from 140-300V AC and frequency range of $50 \pm 3\%$ with isolated type operation in constant current topology.
- Driver housing should be made of extruded Aluminium case and Silicon potted to ensure safety against shock risk, also increase the reliability against internal heat and moisture ingress. Potted Driver for luminaries below 45W may be ignored.
- Driver shall have high efficiency $>80\%$ and have inbuilt safety features like Over voltage, Short circuit, Over load, Thermal protection and reverse Polarity protection.

- The luminaries should have an internal surge protection of 4KV L-L and 6 KV L- and provide integrated SPD with 10 KV protection. Driver should work continuously up to 320V AC without any failure.
- The driver should be rated for IP66 or more against dust and moisture for a longer life.
- Power Factor shall be Equal to 0.95 or more.
- THD of the luminaries shall be <5%.
- Driver should preferably be of same make.

LIGHT ENGINE

- The light engine should use Metal Core PCB with high grade aluminium (AL-5052) and should have a thermal conductivity of >2W/mK.
- The Junction temperature of LED shall be <85 degree Celsius. Thermal Test Report from NABI, approved/accredited lab will be submitted to support the same.
- Rated Operating Temperature should be 0 degree to + 55 degree C with a relative humidity of 10-95% RH
- THD of the luminaries shall be <5%.

OPTICAL SPECIFICATION

- Approved make for LED shall be Nichia/Cree/Osram/Lumileds make LED Chips.
- The LED shall be of Surface Mounted Design (SMD).
- Life of LED shall be rated at 50,000 hrs. Or above L70.
- System Efficacy at Luminaries Level shall be minimum 120 Lumens/Watt for 90 watt and above and for luminaries below 90watt above, System Efficacy at Luminaries Level shall be minimum 115 Lumens/Watt whereas LED Chip level efficacy shall be minimum 160 Lumens/Watt.
- CRI (Colour Rendering Index) shall be >70 or above.

- Correlated Colour Temperature shall be nominal 5700K (with variation limits of ± 355 K) per ANSI C78.377A CCT standard.
- The light engine should have a suitable secondary optics to deliver desired light distribution to meet the luminous criteria.

The luminaries should be capable of withstanding voltage stress of 440V for 8 hrs., should have an auto shutdown 325V and have an auto recovery feature.

TEST REPORT/WARRANTY

Following reports shall be submitted from NABL accredited Lab.

- (a) IM 79 for Luminaries
- (b) IP 66 or more Test for Luminaries
- (c) Driver IP 66 & IEC 61000-4-5
- (d) IK 07 Test Report
- (e) Thermal Test Report
- (f) Compliance to IEC 60598: Type Test Report
- (g) Compliance to IEC 61347-2-13: Driver Test Report
- (h) Compliance to IEC 6238-1: Driver Performance Test Report
- (i) Compliance to IEC 61547: EMI and EMC (k) Compliance to CISPR-15
- Bidder shall provide LM 80 report from LED chip manufacturer and will carry Watermark of Luminaire manufacturer
- Luminaries shall have seven years replacement warranty from actual date of completion of work including Driver/Control Gear, LED, all accessories etc.
- The manufacturers of the Luminaries must have its own R & D wing within house testing facility are redirected by NABL

- Drivers & Luminaries should have mandatorily BIS certified
- CE Certified
- ROHS compliant

The manufacturer should submit the following in-house testing facility along with bid for quality checks:

- (a) Test Bench for EMI/EMC measurement.
- (b) Test Bench for high voltage, surge, burst and voltage dips.
- (c) Test Chamber for humidity and temperature environmental testing.
- (d) Photometry Laboratory with Gonio photometer and/or Integrating Sphere for complete light fixture, to be able to create IES files.”

IMPORTANT NOTE

- The Manufacturer Name and Logo should be engraved/Embossed on the housing/body to allow traceability till the life of the fixture. No sticker will be accepted.
- Lighting Supplier shall have his own Manufacturing, Powder coating and assembly facility
- The project shall be awarded only after witnessing the production and assembly of the Luminaire in the Supplier's Manufacturing facility.
- Design Requirement Conformity: All lighting design must be done in Dialux Software latest version with design maintenance factor not greater than 0.85 Original Design done in Dialux to be submitted and original IES file used for the design to be submitted.

The average minimum lux level should be as per ISIS1944:Part 1&2: 1972

Tender Procedure for Procurement of LED Luminaries & Evaluation Committee:-

- Two bid system of Notice is compulsory.
- Requirement of Lumen output should be properly addressed in the notice & bidder should be encouraged to provide maximum lumen output with minimum watt so the power consumption should be low.
- A technical committee with sufficient technical experience should be constructed for technical evaluation and acceptance of the technical bid would only be carried out after evaluation.
- Strict Penal action including prohibition of future participation should be included in the notice for any wrong and wilful statement”.

(emphasis supplied)

“VENDOR LIST

For 30W Street Light Luminary Complete

Make and Model No.:

1. Bajaj (Model No.ENXTP30LWHCRPCSD)
2. Philips (Model No.BRP045LED32CWMR1S1 PSU GR SPD)
3. Crompton (Model No.LSTS-30-CDL-M)
4. Havells (Model No.ENDURA CITYLITE PLATPLU SSL 30W LED 757SASY BO PC)

OR ANY Reputed Make Having Same Technical Specification Attached.

For 45 Watt

Make and Model No.:

1. Bajaj (Model No.ENXTP54LWWCRPCSD)
2. Philips (Model No.BRP056LED47 PSU S1)
3. Crompton (Model No.LSTS-45-CDL-M)
4. Havells (Model No.ENDURA CITYLITE PLATPLU SSL 45W LED 757SASY BO PC)

OR ANY Reputed Make Having Same Technical Specification Attached.

For 60 Watt

Make and Model No.:

1. Bajaj (Model No.ENXTP60LWH CRPCSD)
2. Philips (Model No.BRP062 LED 65 CW SLC S1 PSU)
3. Crompton (Model No.LSTS-60-CDL-M)
4. Havells (Model No.ENDURA CITYLITE PLATPLU SSL 60W LED 757SASY BO PC)

OR ANY Reputed Make Having Same Technical Specification Attached.

For 90 Watt

Make and Model No.:

1. Bajaj (Model No.BRTFG120W LEDCR)
2. Philips (Model No.BRP406 LED 130 CW SLC FG PSU GR V2)
3. Crompton (Model No.LSTS-90-CDL-M)
4. Havells (Model No.ENDURA PEARL LMAG SL120W LED 757PASY TOP CASTHO)

OR ANY Reputed Make Having Same Technical Specification Attached.”

(emphasis supplied)

17. The Corporation issued Notice Inviting e-Tender (for short ‘NIT’) on January 15, 2021 for supply and installation of 25, 45 and 90 watt LED street lights. Condition No.6 in the NIT provides that the bidder will have to maintain the installation for a period of three years from the date of successful completion of the work. The relevant clause is reproduced hereunder:-

“6. The prospective Bidder shall have to execute the work in such a manner so that the appropriate service level of the work is maintained during the progress of work and a period of 3

(Three) year from the date of successful completion of the work to the entire satisfaction of the Authority. If any defect/ damage are found during the period as mentioned above, the contractor shall make the same good at his own co to the specifications at par with the instant project work. On failure to do so, penal action against the contractor will be imposed by the Department as deemed fit. The contractor may quote his rate considering the above aspect. Refund of Security Deposit will only be made after successful maintaining of appropriate service level of the work as mentioned above 3 (Three) year from the date of completion of the work. Terms and Conditions of Chandernagore Municipal Corporation shall be treated superseded. Vide Order No-592/1((125)/MA/10/3S-21/2013 dt. October 28, 2016.”

18. The aforesaid specification of period of three years runs totally contrary to the instructions issued by the Government providing for replacement warranty for a period of seven years.

19. Further in the price schedule while providing for description of the items to be procured for 25, 45 and 90 watt of LED street lights, three brand names were mentioned, namely, Philips, Havells and Crompton. Warranty period of five years has been provided in the manner as follows:-

No. #	Text#	No.#	Text #	No.#	No.#	Text#
Sl No.	Item Description	Quantity	Unit s	Estimate d Rate	Total Amount without Taxes	Total Amount in words
1	2	4	5	6	53	55
1	Supply of 25 Watt LED street Light [Make- Philips/ Havells/ Crompton Brand Warranty Period- 5 Years, BIS (IS 16107, 10322) approved] Ref: NIT No.- IA/T/2020-2021/106,Dt. 09/09/2020	1187.00	each	1095.00	1299765	INR Twelve Lakh Ninety Nine Thousand Seven Hundred & Sixty Five Only

2	Supply of 45 Watt LED street Light [Make-Philips/ Havels/ Crompton Brand Warranty Period- 5 Years, BIS (IS 16107, 10322) approved] Ref: NIT No.- IA/T/2020-2021/73,Dt. 03/08/2020	213.00	each	1997.00	425361	INR Four Lakh Twenty Five Thousand Three Hundred & Sixty One Only.
3	Supply of 90 Watt LED street Light [Make-Philips/ Havels/ Crompton Brand Warranty Period- 5 Years, BIS (IS 16107, 10322) approved] Ref: NIT No.- IA/T/2020-2021/133,Dt. 12/10/2020	13.00	each	3175.00	41275.00	INR Forty One Thousand Two Hundred & Seventy five Only

The aforesaid descriptions of items again run totally contrary to the specifications prescribed by the Government to be strictly adhered to. Firstly, one of the models was left out and secondly, the more important condition, namely, '*Or Any Other Reputed Make Having Same Technical Specifications Attached*', was totally missed out. It made the tendering process brand specific and not generic. Once replacement warranty was required for a specified period any reputed manufacturer having the same specifications as provided by the Government in the instructions issued, should have been permitted to participate. In fact, while issuing the NIT the Corporation has violated the instructions issued by the Government and as a result it may have caused loss to the public exchequer, which is always short of funds and is sourced by the taxes collected from the public, hence, the public can always hold them accountable. In fact in the case in hand, if the State had issued the instructions to the lower authorities, it should have ensured compliance thereof, instead of defending the action of the lower authority which was in violation of the instructions.

20. The stand taken by the respondent that the vendor list is not exhaustive but only indicative goes against them. If the vendor list is not exhaustive the tender condition should have permitted more reputed manufacturers to participate in the

tendering process. However, the case in hand is otherwise, as even the vendor list provided by the Government in the instructions issued has not been followed.

21. There is nothing on record to suggest as to why the procurement of materials is not being made by the Corporation through the GeM portal, which has now stabilised and is a platform on which both the buyers and suppliers meet without forming a cartel. There is not much delay also in procurement of materials.

22. As in the case in hand this Court is not required to examine the policy or the decision taken by the experts by super imposing its own opinion on any technical issues, it makes out a case for interference as the simple issue raised in the petition is regarding non-adherence of the instructions issued by the Government to various local authorities for strict compliance. The binding nature thereof is not in dispute.

23. For the reasons mentioned above, the impugned NIT is quashed. The Corporation is at liberty to issue fresh NIT strictly in terms of the specifications provided by the Government and also explore the possibility of procurement of material on GeM portal.

(RAJESH BINDAL)
JUDGE

(ANIRUDDHA ROY)
JUDGE

Kolkata

02/03/2021

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