

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

MAT 170 of 2021
With
CAN 1 of 2021

(Through Video Conference)

Reserved on: 17.11.2021

Pronounced on: 25.11.2021

Shiba Prosad Banerjee

...Appellant

-Vs-

State of West Bengal & Others.

...Respondents

Present:-

Mr. Saptansu Basu, Senior Advocate,
Mr. Swarup Pal,
Mr. Surjya Maity,
Ms. Amrita Maji,
Ms. Mrinalini Majumdar, Advocates
... for the appellant

Mr. Amrita Panja Moulick, Advocate
... for the State

Mr. Arabinda Chatterjee, Senior Advocate
Mr. Arkadipta Sengupta, Advocate
... for the private respondent

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this appeal writ petitioner has challenged the order of the learned Single Judge dated 22.01.2021 whereby WPA No. 1724 of

2020 has been dismissed. The appellant had filed the writ petition with the plea that the respondent no. 6 had floated the tender dated 27.05.2019 for supply of cooked diet for indoor patients admitted in T. L. Jaiswal State General Hospital, Howrah. The appellant participated in the tender process and technical bid was opened on 15.07.2019 and uploaded on the website. The bid of the appellant was rejected. The appellant had questioned the rejection of the technical bid and award of the contract to the respondent no. 10. Learned Single Judge has found that the writ petition was filed belatedly and it had no merit.

2. Submission of the learned Counsel for the appellant is that the bid of the appellant has wrongly been rejected and that proper explanation for delay in filing the writ petition was furnished.

3. Submission of the learned Counsel for the respondent is that the order passed by the learned Single Judge does not suffer from any error and that the petitioner has no case on merit and there was no justification for the delay.

4. Having heard the learned Counsel for the parties and perusal of the records, it is noticed that technical bid of the appellant was rejected on 15.07.2019. Undisputedly it was uploaded on the website at that time itself and had come to the knowledge of the appellant but the appellant had filed the writ petition after more than 6 months. In the meanwhile, the contract was awarded to the respondent no. 10 by issuance of work order on 26.07.2019. The reliance of the learned Counsel for the appellant on the explanation furnished in paragraph 17 of the writ petition is of no consequences as the appellant could have challenged the rejection of his technical bid without uploading of the

work order on the web portal. Hence, learned Single Judge is justified in reaching to the conclusion that the appellant had approached the Court belatedly without any sufficient explanation for the delay.

5. It is also worth noting that meanwhile the contract period is almost over and only 7 months are now remaining. Thus, even otherwise at this belated stage in the facts and circumstances of the case no reason exists to interfere.

6. It being a contract matter, the appellant was required to be prompt and should have come to the Court without any unnecessary delay. By remaining silent for such a long time the appellant had permitted the circumstances to change therefor his prayer on the ground of delay has rightly been declined.

7. Even otherwise the appellant has no case on merit. The technical bid of the appellant was rejected on the ground that "Performance certificate not submitted in prescribed format as per clause 3". Clause 3 of the NIT contains the eligibility and in terms thereof, the intending tenderer was required to produce credential of similar nature of a complete single work having requisite minimum value during last 2/3 years. This clause also contains proforma for performance statement. Learned Single Judge has minutely examined the bid which was submitted by the appellant and has rightly reached to the conclusion that it had not submitted the specific documents in terms of the clause 3.1. A perusal of the details furnished by the appellant in the prescribed proforma reveals that the appellant had not provided the full particulars as required in column 1 and 3 thereof. Learned Single Judge has compared the details submitted by the appellant and the respondent no. 10 and has found that the respondent

no. 10 had submitted all the specific details which were required by the tendering authority whereas the appellant had failed to do so. So far as the issue raised by the appellant in respect of the deficiency in the bid of the respondent no. 10, it is noticed that the learned Single Judge has also examined the said issue in detail and has found that bid submitted by the respondent no. 10 does not suffer from any material deficiency.

8. In the above circumstances, we are of the opinion that the learned Single Judge has not committed any error in dismissing the petition. No case of interference in the order of the learned Single Judge is made out.

9. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.11.2021

PA(SS)