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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 6112 of 2021

Ashutosh Ghosh

-vs.-

The State of West Bengal & Ors.

Mr. Satrajit Sinha Roy
...for the petitioner

Mr. T.M. Siddique,
Mr. Nilotpal Chatterjee Railway
...for the State-respondents

The petitioner is one of the participants in a tender process, for which notice was issued on February 12, 2021, for supply of cooked diet for indoor patients of government health facilities. The cardinal point on which the petitioner assails the tender is that, the rates mentioned in the tender, for work which is to commence in the year 2021, pertains to old rates as on January 15, 2018, as indicated in the Notice Inviting Tender itself. By specifically pointing out the rate charts of the present tender and a previous tender, floated in the year 2018, learned counsel for the petitioner contends that, the rates are exactly the same. It is argued that it is practically impossible to provide diets meeting the standards as expected by virtue of the tender, at such old rates. This, it is contended, will

encourage malpractice insofar as the quality of the food provided may suffer.

Learned counsel for the petitioner places reliance on an unreported judgment, dated August 21, 2009, passed inter alia in *W.P. No. 11766(W) of 2009 (Bablu Mitra & Ors. Vs. State of West Bengal & Ors.)*, wherein a coordinate Bench of this Court had discussed precedents in connection with a challenge to a tender and, quoting *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation*, reported at (2000) 5 SCC 287, the Court had recorded that the legal position is that the government is free to enter into any contract with citizens but the Court may interfere where it acts arbitrarily or contrary to public interest. In view of the contentions raised by the petitioner, it is argued that the tender is patently contrary to public interest, inasmuch as the same will necessarily compromise the quality of food supplied to the patients.

Learned counsel appearing for the State-respondents indicates that similar contentions were raised in a previous writ petition by the petitioner against another tender, which was subsequently recalled.

In the order passed on the said writ petition, dated February 10, 2021, a coordinate Bench of this Court had held, inter alia, that the writ court does not

have expertise or authority in the specified field of determining the prices of various food items to be supplied by a supplier to the hospitals' patients and the court, sitting in its writ jurisdiction, cannot amend or modify the terms and conditions of a tender. It was further held that a tender can be interfered with by court under very limited circumstances. Any arbitrariness and/or any proof that the clauses of the tender were tailor-made to suit certain persons having not been established, the writ court ought not to interfere with the present tender.

As far as the previous order dated February 10, 2021 passed in W.P.A. No. 342 of 2021 is concerned, the same is not directly relevant in the present context, irrespective of the findings of the same, since the tender process itself, in respect of which the same was passed, was recalled.

However, in the present case, a mere future apprehension that malpractice may occur in view of the prices fixed in the tender, cannot be sufficient ground for setting aside the tender. Such low rates, if at all, might hamper the rights of the petitioner individually, but cannot be said to be *ipso facto* contrary to public interest. Rather, the impugned NIT fixes the standards of food to be provided along with the rates therefor. Hence, there is always scope for interdiction by the Tender Issuing Authority in the event the food supplied

is not up to the mark, adhering to the standards laid down in the NIT itself. There being no arbitrariness or any condition to show that the tender was tailor-made to suit the purpose of certain persons or a cartel, there is no scope for interference with the same.

Accordingly, W.P.A. No. 6112 of 2021 is dismissed 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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)