

41
08.03.2021
KC

WPA 6188 of 2021

Suman Pal
Vs.
State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharya
Mr. Subhankar Das.
... for the petitioner.

Mr. Susovan Sengupta
Mr. Subir Pal.
... for the respondents.

The petitioner has prayed for, *inter alia*, a writ in the nature of mandamus to float a fresh tender for appointment of contractor for handling and transportation of food grains at Jangipara RIDF relating the disqualification clause disqualifying the rice mill owner to participate in the tender for appointment of handling and transport contractor. The tender was actually an e-tender for appointment of contractor for handling and transportation of food grains and allied services at WBSWC managed warehouses/godown.

WBSWC stands for West Bengal State Warehousing Corporation, which is a government undertaking. Annexure 'P-3' annexed to the writ application

is actually a tender document which is second call of the tender. I am told by the learned advocate for the State that in the first call there was only one applicant and, therefore, that tender could not be proceeded with and a second call with identical terms and conditions was made. The first call was on 27th November, 2020 and the present second call has been published on 10th February, 2021. The closing date and time of submission of the bid is 6th March, 2021 at 11.30 hours.

The petitioner here has challenged the disqualification conditions which are in Section 6 of the said tender document specially the paragraph 5 thereof under paragraph 6.1 stating that this ineligibility criteria has been laid down without any reason and, therefore, this criteria should be set aside and should not be allowed to be given effect to. The petitioner here is a flour mill owner. The disqualification condition contained in paragraph 6.1.5 is as follows:

- "5. (a) Tenderers who are in possession of a Govt. License issued by the Food & Supplies Department, Govt. of West Bengal or in possession of any Rice Mill or a Flour Mill

will be ineligible.

- (b) The private investor that is owner of the PEG godowns will not be eligible to apply."

The petitioner has referred to three judgments one reported in **(1979) 3 SCC 489 (Ramana Dayaram Shetty Vs. International Airport Authority of India)**, **(1980) 4 SCC 1 Kasturi Lal Vs. State of Jammu and Kashmir & another** and the third one is **(2012) 6 SCC 502 Brij Mohan Lal Vs. Union of India & others**. The first two decisions are relating to disclosing adequate reasons. According to the petitioner, if the adequate reasons are not given in support of disqualification the clause in the tender document should be set aside or cancelled. The third judgment is on policy decision of State and when the same can be interfered by the Courts in the face of the general principle that policy decisions are generally not interfered with by Courts.

In support of his statement, learned advocate for the State Mr. Sengupta has placed three judgments one is **(2005) 1 SCC 679 (Association of Registration Plates Vs. Union of India & Ors.)**, **(2005) 6 SCC 138 (Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P)**

Ltd. & Anr.) and the last one is **(2014) 3 SCC 493(Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Limited & Ors.)**. These judgments are for demonstrating when the Court will not interfere with the tender conditions of a tender.

I have heard the parties extensively but I am of the opinion that this is purely a contractual matter. An instrumentality of the State being WBSWC has invited for appointment of contractor and has laid down certain criteria namely eligibility criteria in Section 4 of the tender document and laid down disqualification condition in Section 6. Section 11 of the said tender document also speaks of resolution of dispute by way of arbitration. I find on perusal of the petition and the documents enclosed therein and after hearing the parties, there is no public law element involved in it. It is out an out a contract of commercial nature for which there cannot be any claim of legal right and violation of the same and remedy to be enforced by a writ court. All the rights arise from the contract and not from any statute. This contract is also not a statutory contract.

For the reasons as aforesaid, I restrain myself from interfering with the tender and the tender conditions

as there is no public law element involved in it and this Court will not exercise its extraordinary writ jurisdiction for redressing the grievance of the petitioner arising from clauses of a contract and not from any statute or from any instrument having statutory force.

Hence, this writ application is dismissed without any order as to costs.

(Abhijit Gangopadhyay, J.)