

03-12-2021
ct no. 13
Sl.108
sp

WPA 6536 of 2019
With
CAN 6 of 2019
(Old No. CAN 9545 of 2019)
with
CAN 7 of 2021
Raj Kumar Mall
-Versus-

The State of West Bengal & Ors.
(Via Video Conference)

Mr. Deepan Kumar Sarkar,
Mr. Ayush Jain,
Ms. Ruchika Mall

...for the petitioner

Mr. Samrat Sen, Sr. Adv.
Mr. Amitava Mitra,
Mr. Saikat Chatterjee

....for the State

Mr. Joydeep Kar, Sr. Adv.

....for the respondent no.4

Mr. Arkaprava Sen,
Ms. Deboleena Ghosh,
Mr. Rahul Kumar Singh,
Mr. Tapajit Das

....for the respondents

Mr. Vinay Shraff

...Intervenor

In re: CAN 7 of 2021

CAN 7 of 2021 has been filed seeking intervention of this Court in process of NIT dated February 28, 2019 issued by the respondents which is the subject matter of the original writ petition being No. WPA 6536 of 2019. Urgency is pleaded and early hearing is sought.

The grievance in the writ petition is that in the NIT No 2/2019-20 for supply of LDPE/LLDPE

Black Polythene Tarpaulin Stitched and Reinforced by Jute in Sheets, eligibility condition has been specified which cannot be complied with by the petitioner. It is submitted that this particular requirement has been inserted to exclude the writ petitioner from the tender process.

Admittedly, the tender has been awarded for a period of three years from the year 2019. It is also submitted by counsel for the State that the entire supply under the contract with the successful tenderer has already completed all supplies for the entire three years.

This Court notes that the argument, as advanced by the petitioner was considered by the Hon'ble Supreme Court in the case of **M/S Michigan Rubber(I) Ltd vs State Of Karnataka & Ors** reported in **(2012) 8 SCC 2016**

By reference to series of earlier judgements of the Hon'ble Supreme Court, it was held that merely because a Tenderer cannot comply with a particular condition of eligibility in an NIT, it cannot be deemed that the State intended to deprive or exclude any particular class of persons. The State is entitled to play in the joints and specify eligibility criteria as per the specification of the goods that it seeks to procure.

Therefore, this Court is of the clear view that the claim of the petitioner cannot be entertained. Hence, the writ petition fails and shall stand vacated.

In view of the above, CAN 7 of 2021 is rendered infructuous. CAN 6 of 2019 shall also stand disposed of without any orders.

All other pending applications shall stand disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)