

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
Taken up by the Principal Bench
(via Video Conference)**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 6334 of 2020
IA No: CAN 1 of 2020
(Old No: CAN 4877 of 2020)**

**M/s Srishaila Constructions Pvt. Ltd.
Vs.
Union of India and others**

For the petitioner	:	Mr. Anjili Nag,
For the private respondent	:	Mr. Arul Prasanth
For the respondents U.O.I.	:	Mr. V.D. Sivabalan
Hearing concluded on	:	28.01.2021
Judgment on	:	02.02.2021

Sabyasachi Bhattacharyya, J:-

1. IA No: CAN 1 of 2020 (Old No: CAN 4887 of 2020) is disposed of in view of the urgency involved and the matter is taken up for hearing.
2. At the outset, it may be recorded that, in compliance with this court's order dated January 20, 2021, a report was given by the concerned Section on January 29, 2021 stating that no affidavit-in-opposition and reply appears to have been filed by the advocates for the parties. However, subsequently it was detected, upon consultation with the Registrar of the Port Blair Circuit Bench of this Court, that an affidavit-in-opposition was filed in the form of a 'Report' on behalf of the respondent nos. 1 to 4. However, no affidavit-in-reply could be

traced to have been filed.

3. The short contention raised by the petitioner is that the private respondent ought not to have been permitted in the second tender issued by the respondent-authorities in the matter of construction of Eastern side jetty on bored pile foundation at Kadamath Island in the Andamans.
4. It is contended by learned counsel for the petitioner that initially a tender was floated, wherein the petitioner came out as the only successful bidder. The private respondent's bid was found to be ineligible. However, subsequently the said tender was cancelled and a fresh tender floated, wherein the petitioner as well as the private respondent, along with other bidders, were held to be eligible for participation. The petitioner challenges the acceptance of the private respondent as an eligible bidder, since the scope of work in both the tenders is identical and the private respondent came out ineligible in the first tender.
5. Learned counsel for the petitioner argues that the second tender was apparently floated for the specific purpose of including the private respondent, despite the latter having failed to reach the eligibility mark in the first tender. Since the petitioner was the only successful bidder in the first tender, the second tender ought to be awarded to the petitioner as well.
6. Learned counsel appearing for the respondent-authorities argues that the private respondent successfully uploaded all requisite documents

with its bid in the first tender, as well as sent physical copies of such documents by Speed Post well within time. Yet, those documents could not reach the tendering authority before the last scheduled date due to inordinate delay occasioned by the Postal Authorities. Since there was no fault on the part of the private respondent, the tender was cancelled and a fresh tender was called. In view of the pandemic situation prevailing at the relevant juncture, the ineligibility of the private respondent in the first tender was merely technical and due to no fault of the said respondent. It is further submitted that the petitioner could not have challenged the present tender process after having participated therein.

7. Learned counsel for the private respondent submits that the present challenge pertains to the first tender and has become infructuous on such tender being cancelled. Moreover, the petitioner having participated in the second tender, cannot now resile from such position and challenge the said tender.
8. Learned counsel for the petitioner, in reply, submits that the second tender was issued, upon cancellation of the first tender, during pendency of the writ petition. As such, the relief now sought by the petitioner is in aid of the writ petition and a necessary consequence thereof. Moreover, it is argued, the petitioner is not challenging the second tender in its entirety but merely challenges the acceptance of the bid of the private respondent, since the said respondent failed in the first tender, issued for the self-same work.

9. In this context, learned counsel for the petitioner relies on *Sorath Builders vs. Shreejikrupa Buildcon Limited and another*, reported at (2009) 11 SCC 9. It was held therein that the first respondent was negligent and insincere in not submitting his pre-qualification documents within the stipulated time, though he had the information that there was a time schedule attached to the Notice Inviting Tenders. The terms and conditions of the tender were required to be adhered to strictly and, therefore, respondent no.2 was justified in not opening the tender submitted by respondent no.1, which was late by three days. No grievance could be made by respondent no.1 as the lapse was due to his own fault. On such findings, the Supreme Court held that the tender submitted by the appellant therein was the lowest and accepted as reasonable and plausible. Thus, it was held that the High Court went beyond its jurisdiction in setting aside the decision of the University, in which there was no fault or arbitrariness in the decision-making process.
10. In the present case, the ratio of the cited report is not applicable, since the private respondent was not at fault, as explained by the respondent-authorities themselves, unlike the reported case. The online bids were submitted within time by the private respondent. The physical documents required were also sent well before the stipulated last date, but could not reach the tendering authorities due to laches on the part of the Postal services. Even such laches might have been justified in view of the pandemic situation.

11. Even without going into such question of such *bona fides* on the part of the private respondent in the first tender, in view of the cancellation of the tender and participation of the present writ petitioner in the subsequent tender, although for the same work, the petitioner is barred by waiver and acquiescence from challenging the second tender.
12. It is beyond the scope of the tendering authority, rather it would be inappropriate on their part, to preclude a particular bidder from participating in the second tender. If a tender is floated and valid bids are submitted by several participants, the tendering authority has to declare all such bids eligible and accept those for consideration in the tender process. The petitioner's prayer for the bid of the private respondent to be selectively declared ineligible, although the same met the requirements of the second Notice Inviting Tender, is unheard of and *de hors* the principles of law and natural justice. If the bid of the private respondent is valid and the process of tender is not even challenged otherwise by the petitioner, there is no scope of interference by this Court by debarring the acceptance of a particular bidder, if otherwise eligible.
13. The tendering authority was absolutely justified in accepting all valid and eligible bids, including that of the private respondent, in the second tender. The petitioner, having itself participated in the second tender, has no right or *locus standi* to stand in the way of such participation of the private respondent or, for that matter, of any other

eligible candidate for consideration in the tender. The entire scope of challenge in the present writ petition is *mala fide* and designed only to suit the selfish purpose of the petitioner for eliminating fair competition. Competition and inclusiveness is the very spirit of a transparent tender process. Such processes ought to be designed in such a manner as to ensure maximum participation and to cut out monopolistic bids and cartelization. The petitioner's prayer is an antithesis to such spirit and, as such, the attempt ought to be deprecated.

14. Accordingly, WPA No.6334 of 2020 is dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand), to be paid by the petitioner to the private respondent within a week from date.
15. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)