

22.06.2021.
Item no. 85.
Court No.13
ap

**W.P.A. No. 9856 of 2021
(Through Video Conference)**

**Ashajyot Mercantile Private Limited & Anr.
Versus
The State of West Bengal & Ors.**

Mr. Raja Basu Chowdhury,
Mr. Tanoy Chakraborty,
Mr. Chhandak Dutta.

...For the petitioners.

Mr. Mainak Bose,
Mr. Anurag Bagaria.

..For the respondent no.3.

Mr. Srijib Chakraborty,
Mr. Jaydeb Ghorai,
Mr. Diptesh Ghorai.

...For the respondent no.4.

Mr. Anirban Roy, Id. G.P.
Mr. T.M. Siddiqui.

...For the State.

The writ petitioners challenge the result of an e-auction for “Sale Of Decommissioned Plant And Machinery Items of COGP/DPL and Unit-6”, Durgapur Projects Limited. The auction was conducted through a private auction house called “mjunction”. The last date of receiving of participation notices was 12th February, 2021 and the auction was to be held on the same day. The reserved price was fixed of Rs.73.50 crores. The amount of bids was to be in multiples of Rs.20 lakhs. The petitioner no.1 last submitted at around 5.47 p.m. a bid of Rs.105.7 crores. The same was revised 106.1 crores. However, later the private respondent no.3 had submitted a bid for 106.3 crores.

Counsel for the petitioners submits that his clients immediately thereafter enhanced their bid to Rs.110 crores but the same could not be registered with the e-auction portal.

The petitioners claim that sometimes thereafter at about 6.18 p.m., they communicated by an e-mail a bid for Rs.110 crores to the respondents.

It is submitted that in view of the Pandemic, the petitioners could not pursue their remedies with the respondents and came to know subsequently that the letter of intent was issued to the private respondent no.3 on 22nd February, 2021.

A threefold argument is advanced by Mr. Raja Basu Chowdhury, Counsel for the petitioners. Firstly that his client's bid for Rs.110 crores albeit submitted by e-mail at 6 hours 18 minutes on 12th February, 2021 was the highest bid and ought to have been accepted. It is submitted that the petitioners had, in fact, submitted the same amount as the highest bid after seeing the bid of the private respondent no.3 at Rs.5.63 crores but the same could not be communicated at the e-auction site.

The bidding process was conducted on an e-auction site and as a matter of practice, the bidding process is closed after the last highest bid upon completion of time period. The petitioners ought to have known this. This Court is unable to accept that the petitioners' bid for Rs.110 Crores could not be

registered on the e-auction site. This Court is informed that there were about 100 rounds of bidding and therefore it is all the more difficult to countenance the alleged failure to register a bid for Rs.110 crores.

In any event this becomes a disputed question of fact that cannot be decided in a writ petition.

It is the next argued by the Counsel for the petitioners by reference to Clause 9 of the Auction Category that the successful bidder upon acceptance, is required to put in 50% of the entire bid amount immediately to allow him to commence dismantling. The successful bidder could begin to lift the dismantled material only upon putting in balance 50% of the amount within 120 days.

This, according to the petitioner, was unilaterally altered in the letter of intent which by definition of the expression 'sale order', must be deemed to be the letter of intent dated 20th February, 2021.

This Court is unable to accept the said submissions since the petitioners lose any locus with regard to the sale process, once he has failed to better the highest bid received.

It is argued thirdly that the letter of intent itself has been unilaterally revised by the Durgapur Projects Ltd. It is submitted that the original letter of intent dated 22nd February, 2021, came to be altered by a subsequent letter of intent dated 27th March, 2021.

Post completion of the bidding process, the terms and conditions of the sale and alteration thereof or otherwise is exclusively at the discretion of the Durgapur Projects Limited. An unsuccessful bidder cannot be allowed to question the same.

In view of the above, the writ petition must fail and is hereby dismissed.

There will be no order as to costs.

Supplementary documents filed in Court today are taken on record.

All parties are directed to act on a server copy of this order on usual undertakings.

(*Rajasekhar Mantha, J.*)