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WPA 11258 of 2021
(Through Video Conference)

Chandan Sengupta
Vs.
State of West Bengal & Ors.

Mr. Satrajit Sinha Roy
..for the petitioner

Mr. Samrat Sen
Ms. Manali Ali
..for the State

Mr. Jishnu Chowdhury
Mr. Chayan Gupta
Mr. Sandip Dasgupta
..for the respondent no. 2

The writ petitioner is aggrieved by the tender conditions in the Notice Inviting Tenders (NIT) for providing Facility Management Services at Ayush Hospital, Abash, Paschim Medinipur issued under NIT dated 3rd June, 2021. The petitioner is an existing contractor entitled to work till September, 2021. The writ petitioner's bid opened on 8th July, 2021 was not found eligible as per the stipulated criteria in the NIT. His bid was rejected.

The tender conditions are assailed on inter alia following grounds. That the bid security of Rs. 1.5 lakhs required to be submitted, if calculated in the context of standard tender conditions prescribed by the finance department of the State, dated 1st October, 2019 is only for a tender of 75 lakhs in value. The estimated value of the tender has even otherwise not been stipulated in NIT.

Hence the stipulation that intending bidders are to have a 20 crore turnover during the last three financial years is unreasonableness and arbitrary.

It is further argued that the area to be serviced by the successful bidder of 28761 sq. ft. is not the actual area as is known to the petitioner since he has been providing the service of the hospital since 2015.

It is also submitted that the requirement that bidders have to be incorporated under the Companies Act or as a Limited Liability Partnership has been included in the said NIT is only to make the petitioner in eligible and to favour certain other bidders.

Reliance is placed by the Counsel for the petitioner on the decision of the Supreme Court in **Associated Provincial Picture House Limited V. Wednesbury Corporation** reported in 1947 1 KB 223, **TATA Cellular Vs. Union of India** reported in (1994) 6 SCC 651, **Monarch Infrastructure (P) Ltd. V. Commissioner Ulhasnagar Municipal Corporation & ors.** Reported in (2000) 5 SCC 287, **State of U.P. & Ors. Vs. Renusagar Power Co. And Others** reported in **(199) 4 SCC 59, Jagadish Mandal Vs. State of Orissa & ors.** reported in **(2007) 14 SCC 517** and **Michigan Rubber (India) Limited V. State of Karnataka & Ors**. reported in **(2012) 8 SCC 216.**

The writ petition is vehemently opposed by Counsel, Mr. Jishnu Chowdhury and Mr.Chayan Gupta, for the

Respondent No.2. by placing reliance on the decisions in **Union of India and Another V. N. Chandrasekharan & ors.** reported in **(1998) 3 SCC 694** the decision of Karnataka benches of the Court in **Greentech Environ Management Pvt. Ltd. & Ors. V. Union of India & ors**., **Tapas Kumar Ghosh & ors. V. State of West Bengal & ors.** reported in **2016 SCC OnLine Cal 5794** and **Rabindra Nath Adak V. State of West Bengal & Ors.** reported in **2018 SCCOnLine Cal 14101**.

Having considered the rival contention of the parties and applying the dicta of the Supreme Court laid down in **TATA Cellular (supra)** and **Michigan Rubber (India) Limited (supra)** this Court is of the view that the arguments of the writ petitioner are devoid of merit. It is now well-settled that the Employer and/or a State authority is entitled to "play the joints" for framing all and any conditions for distribution of the state largess. The conditions may differ from time to time and be based on new and changed atmosphere and circumstances. In the instant case it is seen that since after the experience of Covid 19 Pandemic on two occasions, the state has sufficient and good reasons get the best players, even for the prupose of providing security at a hospital. If to achieve the said purpose, the eligibility criteria of minimum turnover of 20 crore is required from an eligible bidder, this court sees absolutely no unreasonableness.

Equally unsustainable is the argument of the petitioner that the requirement of 1.5 lakhs of earnest money deposit itself negates the requirement of 20 crores turnover for past three financial years of each for bidder. The draft NIT framed by the finance department, which the petitioner relies upon are mere guidelines. The same cannot be treated as absolute binding law and rule to be followed by all government department. As already stated by Hon'ble Supreme Court in the case of **Michigan Rubber (India) Limited,** mere change of eligibility criteria cannot lead to any conclusive presumption that the same is aimed at excluding any particular bidder. Paragraph 35 of the aforesaid decision is useful and is set out hereinbelow:

> "**35.** As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

In the said decision, most of the cases cited by the parties have been considered.

For the reasons stated herein above the writ petition fails and is hereby dismissed.

There shall, however, no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)