

**27.07.2021**

Ct. No.13

Sl. No.115

pk/akd

**W.P.A. 11891 of 2021** [via video conference]

**[Amallesh Majumdar -Vs- The State of West Bengal & Ors.]**

Mr. Santanu Chatterjee

... .. for the petitioner

Affidavit-of-service filed today in court is taken on record.

Learned counsel for the petitioner submits that he is aggrieved by a clause being No.11 in four several notices inviting tenders issued by the Office of the Superintendent, Egra Sub-Divisional Hospital & SSH, Department of Health & Family Welfare, Government of West Bengal, Egra, Purba Medinipur.

The clause which is common to all four NITs is as follows :-

“11. The undersigned reserves the right to accept or reject or cancelling or adding or reducing or deferring any tender or a part of the Tender without assigning any reason thereof.”

It is argued that the said clause gives uncanalised and unregulated powers to the employer to reject any tender at his whims and fancy. Such clause is available in every other notice inviting tenders published by Central and State Governments and other autonomous bodies all over India. The said clause enables the employer to reject even the highest or the most eligible bidder in the event there are other criteria with which the employer is not comfortable or happy.

This Court sees no arbitrariness or illegality in stipulating such power or reserving of such right by the State Authority since it is essentially the specialised department of the

Government that can determine the suitability of a tenderer for the job sought to be performed and as required by the State.

This clause is in line with the dicta of the Hon'ble Supreme Court that even the highest or most eligible tenderer is not automatically entitled to be awarded the contract in question.

No arbitrariness is therefore seen in stipulation of such condition. It is only the application of such clause to a particular tenderer or condition that could come for consideration before a court of law in a particular given facts and circumstances.

Insofar as the grievance of the petitioner that he has not been paid for certain jobs performed by him, the same cannot be the subject matter in the instant writ petition. The writ petitioner's right to agitate such cause of action in separate proceedings is reserved.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

***(Rajasekhar Mantha, J.)***