

03.08.2021  
Item no.18

Aloke  
Ct. no.8

**Through Video Conference**

**W.P.A. 12297 of 2021**

**M/s. Chopra Road Transport & Anr.  
versus  
The Coal India Ltd. & Ors.**

Mr. Srijib Chakraborty, Advocate  
Mr. Sunny Nandy, Advocate  
... for the petitioners  
Mr. Syed Nurul Arefin, Advocate  
... for the respondent nos. 3, 4 & 5

An e-tender notice dated July 17, 2021 is under challenge in the present writ petition.

Learned Advocate appearing for the petitioners submits that, the petitioners are in disadvantageous position since the terms and conditions of the e-tender notice requires the participants to stack sand during the dry season for onward transportation during the monsoon season. He submits that the date of opening of the technical bid is August 6, 2021. During the monsoon season, therefore, it will be impossible for the petitioner as a new participant to stack sand at the locale to comply with the terms and conditions of the tender. He draws the attention of the Court to the e-tender notice and to Clause-2.1.7 of the additional terms and conditions and Clause-9.0.b. of the general terms and conditions. He submits that, there is only one existing contractor at present who is continuing for ten years. The terms and conditions of the tender are engineered to favour such contractor.

Therefore, the terms and conditions of the tender which lays down such conditions should be looked into by the Court.

Learned Advocate appearing for the respondent nos. 3, 4 and 5 submits that the technical bid in respect of the tender number 4342 dated July 17, 2021 is to be opened on August 6, 2021. The contract will commence 120 days thereafter. Therefore, the monsoon season will be over. Consequently, the petitioner cannot allege discrimination. Moreover, the petitioner did not participate in the tender process.

Eastern Coalfields Limited issued an e-tender process bearing No. 4342 dated July 17, 2021 for transportation of sand from a particular Ghat of the Damodar river to a particular place. There are five particulars of work requiring transportation of sand. Of the five particulars work, two are in the monsoon season. Clause-2.1.7 (C) of the additional terms and conditions specify inter alia that sand is to be lifted at first, based on the recommendation of the Ghat Inspection Committee while commencing lifting of sand directly from the river after completion of the monsoon. It also requires a buffer stock of sand to be built and maintained by the contract holder during the dry season for ensuring continuous supply of sand during the monsoon season. The stacking of sand will be done as per written instruction accompanied by permission required by the State authority/Area authority and contractor should comply with all rules/procedure of the State authority related to stacking of sand.

The general conditions of contract specifies a default clause in Clause no. 9. Clause no. 9 of the general terms and conditions of the contract specifies termination, suspension, cancellation and foreclosure of the contract. Clause-9.0.b. states that, the company shall, in addition to either remedial steps to be taken as provided in the conditions of contract, be entitled to cancel/terminate the contract in full or in part, if the contractor fails to achieve a monthly agreed quantity of 70% (Seventy percent) for a period of 6(six) consecutive month or for cumulative period of six months within any continuous period of 18 (eighteen) months, save and except to the extent of non-availability caused by i) a Force Majeure event or ii) an act of omission of company, not occurring due to any default of the contractor.

The e-tender notice specifies the quantity of sand to be lifted during the two monsoon seasons in serial no. 2 and 4 thereof. The monsoon season is ongoing at the present moment in the State of West Bengal. The monsoon season will be over before the expiry of 120 days from date. The contract, if awarded will commence from at least 120 days from date. Therefore, the grievance of the petitioners that, the terms and conditions of the tender are skewed as against the petitioner cannot be accepted. The petitioner will have the dry season to comply with the terms and conditions of the contract.

Moreover, the petitioner is yet to participate in the subject tender. No right of the petitioner stands infringed.

In such circumstances, I find no merit in the present writ petition.

W.P.A. 12297 of 2021 is dismissed without any order as to costs.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all legal formalities.

***(Debangsu Basak, J.)***