

December 9, 2021
Item No.06
Court No.1
SG/s.biswas

MAT 865 of 2021
With
CAN 1 of 2021

Amitabha Mitra
vs.
West Bengal Medical Services
Corporation Limited and others

(Through Video Conference)

Mr. Pratik Dhar, Senior Advocate
Mr. Ritwik Pattanayak,
Ms. Nandini Khaitan,
Mr. Sachin Shukla,
Ms. Debdatta Ray Chaudhury, Advocates
... for the appellant

Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Saaquib Siddiqi, Advocates
... for the respondent Nos.1 to 3

Mr. Ratnako Banerji, Senior Advocate
Mr. Shaunak Mitra,
Mr. Sheetaank Nigam,
Mr. Akash Agarwal, Advocates
... for the respondent No.4

By this appeal the appellant has challenged the order of learned single Judge dated 12.08.2021 dismissing WPA 12362 of 2021.

The appellant was one of the bidders in response to the Notice Inviting e-Tender issued by the respondent No.1 on or about 24.06.2021. The NIeT was in respect of procurement of the medical equipment for the hospitals in the State of West Bengal. The respondent No.4, in the process of evaluation of the bid, was found to be L-I and the appellant was found to be L-II. The appellant had moved to the Court with the allegation that the respondent No.4 had submitted the fabricated documents and had questioned the award of contract to the said respondent.

Learned single Judge has examined the matter and has not found any error in the decision making process or any perversity in the action of the official respondents. Hence, he has refused to interfere.

Learned counsel for the appellant submits that the respondent No.4 had submitted the fabricated documents and that the Dott Medical Company Limited is not the manufacturer of the equipment and that the equipment is not CE certified and he has also submitted that there are discrepancies in respect of the Form-6 and raised the submission that the respondent No.4 in fact was not eligible to submit the bid.

Learned counsel for the respondent Nos.1 to 3 has informed that after awarding the contract to the respondent No.4, the supply of the equipment in question is already over, therefore, nothing survives in the matter. He has submitted that Dott Medical Company Limited in fact is the manufacturer of equipment and documents in this regard were submitted by the respondent No.4 in the bid process and the same were also evaluated and thereafter the contract was awarded. He has also submitted that there was no fabrication or fraud in the submission of documents.

Learned counsel for the respondent No.4 has also supported the order of learned single Judge and has submitted that the learned single Judge had examined the original documents before dismissing the petition.

We have heard learned counsel for the parties.

The scope of interference in such contractual matter is very limited. This Court does not sit as an Appellate Court to examine the bid process. The Hon'ble Apex Court in the matter of the ***Silppi Constructions Contractors vs. Union of***

India and Another reported in **2020 (16) SCC 489** has held that *“The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court’s interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case. ”*

Learned single Judge has examined the matter in the light of the limited scope of interference and has considered the grievance which was raised by the appellant. In that process, the original record was also produced by the respondent No.1 and after examining the record it has been noted that the Tender Evaluation Committee had duly considered the grievance raised by the appellant against the respondent No.4 and thereafter the allegation was found to be baseless.

Even otherwise the issue, which the appellant is raising, is factual in nature which cannot be gone into in limited exercise of the writ jurisdiction.

Learned counsel for the respondent Nos.1 to 3 and for the respondent No.4 have pointed out that meanwhile supplies

have already been made by the respondent No.4. Therefore, for all practical purposes, the matter has become academic.

The documents which have been pointed out by learned counsel for the respondents reveal that the eligibility criteria of the bidder being the manufacturers authorized distributor is fulfilled. Hence, we are of the opinion that the plea of the appellant that the respondent No.4 was not even eligible to submit the bid cannot be accepted.

In these circumstances, we find no reason to interfere in the order of learned single Judge.

The appeal is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]