

6.
30.09.2021
S.D.

WPA 14531 of 2021

Manas Kumar Banerjee
Vs.
The State of West Bengal & Ors.

Mr. Arbinda Chatterjee, Ld. Sr. Adv.,
Mr. Satrajit Sinha Roy
....for the petitioner.

Mr. Sirsanya Bandyopadhyay, Ld. Jr.St.Counsel,
Mr. Arka Kumar Nag
....for the State.

Mr. Probal Kumar Mukherjee, Ld. Sr. Adv.,
Mr. Shaket Sharma
Mr. Shirshendu Chowdhury
...For Respondent No. 9.

The petitioner's case is that he participated in the tender issued by the respondent authorities for the 4th RE-E TENDER (NIT) under Memo No. 1179/DMGMCH issued on 30th July, 2021.

Mr. Arbinda Chatterjee, learned Senior Counsel appearing on behalf of the petitioner at the outset invites my attention to annexure "P 3" to submit that in response to the NIT for Washing Drying and Ironing of Linen articles including articles soiled with Blood, Foot Mattress etc. of Deben Mahata Government Medical College & Hospital, Purulia, he participated in the tender process, but he was

unsuccessful. It is pointed out that the bidders in terms of the NIT, must quote unit rate for all the items and the lowest unit rate in all the listed items quoting bidder will be selected and therefore, the petitioner having quoted unit rate in respect of the listed items as per the annexure 1, the respondent authority ought to have accepted the bid offered by the petitioner. Now, my attention is invited to annexure at page 30A to point out that the petitioner's bid has been rejected though he had offered 51.900 in respect of the unit price for 22 items. Then my attention is drawn to the Minutes of a Meeting dated 26.08.2021 at page 35A thereby and thereunder the respondent authority decided to reject all the bidders who have quoted below the total of all the 22 items' base price (Per Unit) i.e. Rs.173.50 (Rupees One Hundred Seventy Three and Fifty Paisa only).

Accordingly, the petitioner has sought for writ in the nature of mandamus directing the respondents and each of them to act in accordance with law by assigning the reasons as to why the Work Order issued to the private respondent no. 9 under the Memo No. 1376/DMGMCH dated 1.9.2021 being annexure "P 1" should not be set aside and to consider the case of the petitioner by recalling the order of rejection of the petitioner's bid.

Mr. Sirsanya Bandyopadhyay, learned counsel for the State respondent invites my attention at the outset to the averments made in paragraph 4 of the writ application to submit that the contention made at bar is *de hors* from what has been averred in the writ application and then invites my attention to sub-paragraph of paragraph 4 at page 5 of the writ application pointing out that the petitioner has averred that inasmuch alleged rejection of the petitioner was made by the respondent no. 8 with malafide intention only to disqualify the petitioner fixing the base price of Rs.175/- (Rupees One Hundred Seventy Five) after submission of the bid document which is bad, illegal and the respondent authorities acted in malafide to pick up the favourite bidder of their choice and as such the act and conduct of the respondent nos. 6 and 8 are far from bonafide which necessitated judicial review and urges that such averment is absolutely not in tune with the tender notice and terms given therein as appearing in page 24 which enclosed annexure 1 with the List of Linen articles with base/reserve rate. It is also pointed out that the petitioner offered lowest price undoubtedly i.e. below the base price. The base price as fixed by the respondent authority is absolutely based on the market rate for the raw materials used for the washing of the linen of a hospital. Therefore, the

respondent authority has rightly rejected the bids of the tenderers who had submitted the lowest price below the base price. It is then pointed out that the private respondent no. 8 has been accepted because he offered the unit rate as per the base price of the respondent authority and that really served the purpose for the washing, ironing etc. of the linen of the hospital for the use of the doctors and paramedical.

Mr. Chatterjee, learned Senior Counsel submits that in the NIT, the terms which have been given by the respondent authority that they can reject the tender without assigning any reason is bad in law and therefore, the tender notice which contains such terms should not be acted upon.

Now, this Court is taken to the Minutes of the Meeting and the final order taken by the authority which reads thus:

“Hence the TIA decided to reject all the bidders who have quoted below the total of all the 22 items’s base price (Per Unit) i.e. Rs.173.50 (Rupees One Hundred Seventy Three and Fifty Paisa only).”

Therefore, in my view, it cannot be said that the respondent authority passed the said order without assigning any reason.

On behalf of the respondent no. 9, Mr. Probal Mukherjee, learned Senior advocate submits that the tender of the respondent no. 9 has been accepted on the basis of the

financial evaluation of the bid list as reflected in the page 30 annexed to the writ application. The respondent no. 9 is Maa Tara Traders who offered base price being Rs.173.00 which stood accepted and the above base price, the amount which has been offered by serial nos. 3 and 4 are also not accepted in terms of tender notice which provided acceptance of the lowest bidder since the bid of the respondent no. 9 was accepted as per the base price, whereas the bidders who quoted the lowest price below the base unit were rejected. Hence, respondent authority has reasonably applied their discretion to reject the bid of the petitioner by assigning reason in term of the Tender Notice.

Therefore, I do not find any merit in the writ application and for the reason the petitioner knowing fully aware that he had received the annexure 1 (List of Linen articles with base/reserve rate) for 22 items for the washing and ironing is in clear crystal term he averred that the respondent no. 8 with malafide intention only to disqualify the petitioner fixing the base price of Rs.175/- (Rupees One Hundred Seventy Five) after submission of the bid document which is bad, illegal and the respondent authorities acted in malafide to pick up the favourite bidder of their choice and as such the act and conduct of the respondent nos. 6 and 8 are far from bonafide

which necessitated judicial review. This fact, however, is absolutely uncalled for and is the suppression of the real fact made in the case.

Therefore, the writ application being W.P.A. 14531 of 2021 is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand) to be deposited by the petitioner with the Member Secretary West Bengal State Legal Services Authority for the use of juvenile delinquents.

(Shivakant Prasad, J.)