

Court No. 24

23.09.2021

(Item No. 9)

(AB)

**W.P.A 15401 of 2021
(Via Video Conference)**

Bishnupur Public Institute of Medical Science & Anr.
vs
The State of West Bengal & Ors.

Mr. Lutful Haque

..... for the petitioners

Mr. Samrat Sen, Sr. Adv.

Mr. Amitava Mitra

.....for the State

The matter relates to an advertisement dated 14th September, 2021 published by the department of Health and Family Welfare for setting up of Private Medical College. The Expression of Interest was to be submitted on or before 21st September, 2021 up to 5.00 P.M. through e-procurement portal.

As the petitioners applied pursuant to the earlier advertisement dated 5th December, 2020 which stood rejected and the appeal preferred by the petitioners before National Medical Commission is pending, the petitioners thought it fit not to apply afresh in terms of the subsequent advertisement dated 14th September, 2021.

However, after hearing of the earlier writ petition which was filed by the petitioners and pursuant to the order dated 21st September, 2021 passed in the said writ petition (W.P.A. 15077 of 2021 Bishnupur Public Institute of Medical Science & Anr. Vs. The State of West Bengal & Ors.) the petitioners,

without prejudice to their rights and contentions in the pending appeal, applied in response to the said advertisement.

It is the categorical statement of the petitioners that the Earnest Money Deposit of Rs.25,00,000/- (Rupees Twenty Five Lakh only) which was supposed to be deposited in accordance with the advertisement dated 14th September, 2021 was paid through RTGS from Bank of India, Bishnupur Branch at 4.00 P.M. It was thereafter that the petitioners got to know that it would take at least five hours to update the tender portal and until and unless the payment is updated the tender documents cannot be submitted.

On 21st September, 2021 when the earlier writ petition was taken up for consideration at around 3.45 P.M. it was the specific submission of the learned senior advocate representing the State respondents, upon taking instructions from the department, that there was time left till 5.00 P.M. and the petitioners may apply along with all supporting documents.

The petitioners relying upon the aforesaid submission made on behalf of the State respondents, applied and paid the Earnest Money Deposit of Rs. 25,00,000/- but the documents could not be uploaded in the portal as it required minimum four hours time to update the payment. The payment was made by the petitioners at around 4.00 P.M. The

petitioners thereafter, finding no other alternative, forwarded all the documents through e-mail to the department at around 5.00 P.M. and the petitioners have produced documents to show in Court that the documents were sent through e-mail at 5.00 P.M.

The petitioners in the earlier writ petition prayed that their application may be considered with the other applications and accordingly such direction was passed in the order dated 21st September, 2021. The bid was to be opened at 5.00 P.M. on 22nd September, 2021.

Yesterday, i.e. 22nd September, 2021 at the first sitting of the Court, the writ petitioners sought leave to obtain Tender Number and move the present writ petition on urgent basis, as they sought to pray for a direction upon the respondent authorities for consideration of their application along with other applications at the time when the bid will be opened. Accordingly, leave was granted to the petitioners to obtain Tender Number and to serve notice upon the respondents and the matter was directed to be taken up for consideration at 2.00 P.M as urgent unlisted motion.

When the matter was taken up for consideration on 22nd September, 2021, none appeared on behalf of the State respondents to oppose the prayer of the petitioners. However, as on the

earlier occasion the State was represented through learned counsel, the Court thought it fit to direct the matter to appear in the list today, to give one more opportunity to the respondents to disclose their stand with regard to the application forwarded by the petitioners by way of e-mail uploading all the necessary documents.

Today when the matter is taken up for consideration, a document has been handed over to the Court on behalf of the State respondents, wherein it has been mentioned that the tender in question stood cancelled as no bids were received.

The petitioners submit that as they applied in response to the advertisement in terms of the order passed by this Court, accordingly their application ought to be considered.

The submission of the respondents is that as the tender has been cancelled due to non-receipt of bids, accordingly, there is no scope for the respondents to consider the application of the petitioners, as the same was not filed within the specified time.

The submission of the State respondents cannot be appreciated by the Court. In fact, it was the specific submission of the State that the petitioners may apply within the time and if the application is made, the same will be considered. The respondents

ought to have intimated the Court that by the time the order was passed, at around 3.45 P.M., there was no scope for uploading any document by an intending applicant. Had the same been mentioned before the Court on 21st September, 2021, then necessary orders could have been passed after taking into consideration the said submission.

The Court, as well as the petitioners were practically misled and relying upon the submission of the State respondents, the petitioners applied and paid the Earnest Money Deposit within 4.00 P.M. and tried to upload all the necessary documents in the portal within the specified time limit of 5.00 P.M.

The bona fide intention of the petitioners to participate pursuant to the said advertisement is absolutely clear. The respondent authorities ought to have candidly submitted before the Court that though time limit was fixed for uploading the documents but an applicant can avail the benefit of applying within the said time limit, had the earnest money been deposited at least four hours prior to the ultimate time limit fixed.

When time limit has been provided till 5 P.M., the authority ought to accept the application irrespective of the fact whether the earnest money was deposited at least four hours prior to the time limit fixed. It really makes no sense in fixing a time limit

and thereafter submitting that the said time limit can be availed of only if money is deposited four/five hours earlier thereto. The same not being specified in the advertisement, the authorities ought to consider the application made by the petitioners.

Whether the application of the petitioners will be allowed or not is a different question altogether, but the authorities cannot take the plea of not considering the application of the petitioners when they made the application relying on the submission made on behalf of the learned senior advocate representing the State respondents, upon obtaining instructions from the department.

In view of the above, the respondent authority specially the Health and Family Welfare department is directed to consider the documents filed by the petitioners in response to the advertisement dated 14th September, 2021 which was uploaded and forwarded by the petitioners by way of e-mail.

In the event, the respondents find that the documents provided by the petitioners are in order, then necessary consequential steps shall be taken in the matter.

The respondents shall consider the matter by 5 P.M. tomorrow (24.09.2021) and intimate the fate of the application to the petitioners immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)