

SL. 2.
November 11, 2021.
MNS.

HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
(Through Video Conference)

WPA No. 17814 of 2021

Mandeepa Enterprises
Vs.
State of West Bengal and others

Mr. Surojitnath Mitra,
Mr. Sandip Kumar De,
Mr. Shayan Mitra,
Mr. Abhijit Sarkar

... for the petitioner.

Mr. Amitesh Banerjee,
Mr. Md. T. M. Siuddiqui,
Mr. N. Chatterjee

...for the State-respondents.

Ms. Rita Patra,
Mr. Mirza Firoj Ahmed Begg

...for the respondent no. 5

Affidavit-of-service filed in Court today be taken
on record.

A minor issue has cropped up in the present writ
petition. The petitioner, who participated in a bid floated
on October 8, 2021 for collection of toll tax on Ajay
Bridge over river Ajay at Illambazar in the District of
Birbhum, complains that the petitioner's bid was rejected
on a hyper-technical ground, since the said bid did not
comply with Section –B, form-I, a proforma of which is
given in the annexures to the Notice Inviting Tender (in
short 'NIT').

Learned senior counsel appearing for the petitioner, by placing reliance on the said proforma, annexed at page- 29 of the instant writ petition, as compared to the application submitted by the petitioner at page – 67 of the writ petition, points out that the defects were minor in nature.

Learned senior counsel for the petitioner further places reliance on a Memorandum issued on January 15, 2019 by the Government of West Bengal, Public Works Department, Planning Branch, which mandated the authorities implementing the work on behalf of the Public Works Department, Government of West Bengal, to give an opportunity to the bidders, whose technical bids are found defective, to explain their position within seven working days either through e-mail or sending hard copy through any messenger.

The memorandum specifies further that, after receiving the clarification on deficiency, the authorities would be justified in taking appropriate decision on the admission/rejection of the bid, considering the merit of each case.

In the case of the petitioner, such procedure was never followed and the petitioner was informed only by an e-mail dated November 9, 2021, all on a sudden, that the petitioner's bid had been rejected, the application accompanying the same not being in order.

Learned senior counsel appearing for the State-respondents contends that the defects in the petitioner's

application and bid were not merely technical in nature. By highlighting the caption and subject of the said application, it is pointed out that the application was addressed to a wrong authority, being the Superintending Engineer, Western Circle No. 1, Public Works (Roads) Directorate, whereas the tender was floated on behalf of the Superintending Engineer, P.W.D. Directorate, Western Circle No. 1, which are completely different entities. It is further pointed out that, as subject matter of the petitioner's application, a wrong Notice Inviting Bid Number was quoted and the mistake regarding addressing the appropriate authority has been repeated. As such, since the other bidders filed application according to the proforma, there was no scope of entertaining any other objection from the writ petitioner.

Learned counsel appearing for the private respondents submits that sufficient opportunity was available to the petitioner to address the issue by seeking clarification as to the clerical error regarding filing of the application accompanying the bid. Since the petitioner did not seek such clarification, it is submitted that the petitioner's present application ought not be entertained.

Upon going through the Memorandum dated January 15, 2019, annexed at page- 82 of the writ petition, it is evident that the direction on the authorities implementing the work on behalf of the Public Works

Department, Government of West Bengal, to give an opportunity to the bidders, was unqualified and mandatory, in so far as all bidders, whose technical bids were found defective, were to be given an opportunity of seven working days to explain their position on such defects either through e-mail or send hard copy to any messenger. Only after receiving such clarification on deficiency, the authorities would be justified in taking appropriate decision on the admission/rejection of each case.

Irrespective of the provisions for seeking prior clarification as provided in the NIT, in the present case, the procedure as stated in the Memorandum dated January 15, 2019 was not followed at all by the tender-issuing authority.

It is a subject matter of argument as to whether the errors which crept into the application of the petitioner were minor in nature or not, since there were certain discrepancies, undoubtedly, but those might not have affected the merits of the bid. In any event, since learned senior counsel for the petitioner, in his usual fairness, contends that the petitioner is ready to furnish an appropriate application afresh, with an explanation as regards the technical errors committed by the petitioner, by tomorrow morning, and learned senior counsel appearing for the State is gracious enough to accept such proposition, substantial relief would be granted in the event the petitioner is given an opportunity to file his

explanation and/or rectified copy of application in proper form prior to the opening of the bid tomorrow, that is, November 12, 2021 at 2 p.m.

Accordingly, WPA No. 17814 of 2021 is disposed of by directing the respondent-authorities to permit the petitioner to file a rectified application in consonance with the proforma attached to the Notice Inviting Electronic Bid dated October 28, 2021 between 11 a.m. and 12 noon tomorrow, that is, November 12, 2021 in the office of the respondent no. 2. If such a rectified application is submitted, the respondent authorities shall, upon due scrutiny, consider the same as valid, subject to compliance with the formalities as appearing from the NIT and its annexures, and treat the petitioner's bid as technically correct, thereby entitling the petitioner to participate in the tender process.

There will be no order as to costs.

The parties shall act on the communication of the learned advocates, coupled with a server copy of this order, without insisting upon prior production of a certified copy thereof.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)