

AD. 3.
January 29, 2021.
MNS.

W. P. A. 17312 of 2019
(Via video conference)

M/s. Greentech Environ Management Pvt.
Ltd. and another
Vs.
The Union of India and others

Mr. Debasish Kundu,
Mr. Malay Krishna De,
Mr. Loknath Chakraborty,
Mr. Vinod Kumar Singh,
Mr. Dipak Kumar Chakraborty,

... for the petitioners.

Ms. Rajashree Venket Kundalia,
Ms. Rittwika Banerjee

...for the respondent nos. 1 and 2

Mr. Jishnu Choudhury,
Mr. Rabiul Islam

...for the State

Mr. Arjun Roy Mukherjee,
Ms. Debapriya Mitra

...for the Pollution Control Board

Mr. Sakya Sen,
Ms. Manali Ali,
Mr. K. Chakraborty

...for the respondent no. 8.

Mr. Biswaroop Bhattacharya,
Mr. Debasish De

...for the respondent nos. 9 and 10.

The petitioners participated in a tender
dated February 11, 2019 for selection of Common

Bio-medical Waste Treatment Facility (CBMWTF) Operator(s) for Public Health Facilities in the State. The said tender was floated by the Department of Health and Family Welfare, Government of West Bengal.

Learned senior counsel appearing for the petitioners argues that the State Government did not have the jurisdiction to float such tender, not being any of the prescribed authorities stipulated in Schedule III, Serial Nos. 5 and 6 to the Bio-Medical Waste Management Rules, 2016.

Learned senior counsel places reliance on definitions of several terms, as appearing in the 2016 Rules, in particular those of “authorisation” under Clause (c), “authorised person” at Clause (d), “bio-medical waste” in Clause (f), “bio-medical waste treatment and disposal facilities” [Clause (g)], “handling” in Clause (i), “occupier” in Clause (m), “operator of a common bio-medical waste treatment facility” in Clause (n) and “prescribed authority” in Clause (o) of Rule 4 of the 2016 Rules.

Learned senior counsel takes the court through the provisions of Rule 6, which relates to duties of authorities and refers to Schedule III to the 2016 Rules in that regard. The provisions

regarding treatment and disposal, appearing at Rule 7(3), the provisions regarding prescribed authority as found in Rules 9(1) and ((3) and the procedure for authorisation under Rule 10 and provisions regarding Advisory Committee stipulated in Rule 11(1) of the 2016 Rules are also relied on.

Learned senior counsel places particular reliance on Serial Nos. 2, 5 and 6 of Schedule III to the 2016 Rules, which mentions the relevant authorities for performing the corresponding duties.

It is highlighted by the petitioners that, it is the State Pollution Control Board for States and the Pollution Control Committee for Union Territories, which has the authority and the duty for monitoring compliance of various conditions and authorization, granting and renewal or suspension or refusal or cancellation or for authorisation under the Rules, etc., which pertain to the scope of the impugned tender. The State Government of Health merely has an advisory role in that regard, as per Rule 5, it is argued.

Learned senior counsel further places reliance on paragraph nos. 5 and 6 of the affidavit-in-opposition used by the respondent no.

8 to indicate that the State Government of Health arrogated to itself the jurisdiction which has to be exercised by the State Pollution Control Board under the relevant rules as mentioned earlier.

Learned senior counsel cites two judgments, reported respectively at (2019) 20 SCC 143 (with particular reference to paragraph- 86 thereof) and (1986) 1 SCC 133 (particularly paragraphs- 117 and 118) in support of the proposition that an action without jurisdiction is null and void and has to be set aside.

As regards the petitioners having participated in the tender and having failed to be chosen as a successful bidder, learned senior counsel argues that such factor is irrelevant for the present purpose, in view of the tender process itself being vitiated by utter lack of jurisdiction.

Learned senior counsel also seeks to point out several other discrepancies in the tender process, inasmuch as, according to him, the successful bidder does not have sufficient past expertise or knowledge in the field and lacks the experience of having set up a bio-medical waste treatment plant in the State of West Bengal. It is

submitted that the only such plant established by the successful bidder is at Lucknow.

Be that as it may, it does not lie in the mouth of the petitioners to challenge the tender process, after having participated in the same and having turned out to be unsuccessful.

In the event the petitioners did not have any direct interest in the matter and was a third-party to the tender process and if the present writ petition was in the nature of a Public Interest Litigation, there might have been a scope of consideration of the question of jurisdiction as raised herein.

However, the petitioners, being unsuccessful participants in the tender process, do not have *locus standi* to resile now and challenge the tender process itself. The petitioners squarely submitted to the tender process. Although there might have been an alternative argument, that absence of jurisdiction vitiates the process itself, thereby rendering the participation of the petitioners irrelevant, such a proposition cannot be applied in the present case, since the petitioners failed in the tender process, after having participated in the same, thereby

attaching to itself the character of an opportunity-seeker in the present context.

Moreover, the present challenge is premature, since the tender floated was for the purpose of selection of common bio-medical waste treatment facility operators. Even if the authority issuing such tender does not have jurisdiction, the question of contravention of the relevant clauses of Schedule III, as discussed above, come into the play only when licence is granted or assignment is given to the successful tenderer for the purpose of doing the job as contemplated in the tender.

However, in view of the above observations, this Court need not go into the merits of the question of jurisdiction of the tendering authority at all. It is made clear that the merits of the matter have not been gone into in view of the petitioners being held to have no *locus standi* to prefer the instant writ petition in the light of the aforesaid discussions.

Accordingly, W. P. A. 17312 of 2019 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the

parties upon compliance of the requisite formalities.

(Sabyasachi Bhattacharyya, J.)