

23.12.2021.
Court No.13
Item No. 22
ap

**W.P.A. No. 20872 of 2021
(Through Video Conference)**

**M/s. Classic
Versus
The State of West Bengal & Ors.**

Mr. Kalyan Kumar Banerjee, ld. Sr. Advocate,
Mr. Abhishek Halder,
Ms. Deboleena Ghosh,
Mr. Rahul Kumar Singh.

...For the petitioner.

Mr. Amitesh Banerjee, ld. Sr. Standing Counsel,
Mr. Raja Saha,
Ms. Ipsita Banerjee.

...For the State.

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

The writ petitioner is aggrieved by Clause 4.5(A)
Sub-clause (d) of the NIT for Construction of Water
Detention Structure Schemes, Susunia-03 WDS,
Mouza – Susunia, Block – Raipur in Bankura District
under Matir Shristi Project. The said clause is as
follows:-

“(d) A bidder can participate in only one no. bid i.e.
any one number of serial of sl. No. 20 to 61 of bid
reference no:**20/2021-22/ MS/ EE DPMU/ BANK
to 61/2021-22/ ME/ EE DPMU/ BANK**”

By reason of the aforesaid Clause, each bidder
was restricted to submit a bid only for one of about 41
works under the NIT. The writ petitioner, however,
submitted bids for about 6 works.

Mr. Kalyan Kumar Banerjee, learned Senior
Advocate appearing on behalf of the petitioner fairly

submits that since his client was placed at L-III in one particular work, he cannot be aggrieved, on that score.

Grievance is, however, with regard to the five other bids of the petitioner where he was qualified in the technical stage and found L-I in the financial stage. The said bids were rejected citing the aforesaid Clause 4.5 (A) (d) of the NIT that the petitioner cannot be permitted to submit bids for more than one of the said works.

Mr. Banerjee would argue that the Executive Engineer, DPMU, Bankura, WBADMIP, did not have the authority to include the aforesaid Sub-clause (d) since there is no policy decision spelt out by the State in that regard. It is further submitted that in respect of the NITs for similar works/projects in Purulia District, no such restriction has been fixed or available.

On being questioned by this Court whether the petitioner should be permitted to challenge any Clauses in the NIT after having participated in the tender process, Mr. Banerjee, would rely upon few judgments. The first of the said decision is in the case of ***Olga Tellis & Ors. – Vs. – Bombay Municipal Corporation & Ors.*** reported in ***(1985) 3 Supreme Court Cases 545*** at paragraphs 28 and 29 thereof. It is submitted by reference to the said paragraphs that there is no estoppel against the law and that fundamental rights cannot be waived.

To the same effect is the decision of the Hon'ble Supreme Court in the case of ***Nar Singh Pal – Vs. – Union of India & Ors.*** reported ***in (2000) 3 Supreme Court Cases 588*** at paragraph 13 thereof.

This Court, having carefully considered the arguments of Mr. Kalyan Kumar Banerjee and the cited decisions, is of the view that Clause 4.5(A)(d) referred to above is not something that would affect any basic and fundamental rights of a citizen under Article 19(1)(g) of the Constitution of India. The same would come within the meaning of the expression 'reasonable restriction' which is an accepted exception to all fundamental rights. The rational nexus with the object ought to be achieved, as argued by Mr. Amitesh Banerjee is that the State wanted to hedge and limit the fall out of failure by one person to fulfill many contracts.

The fundamental principle applied in administrative law particularly in tender processes and service laws is that a person who knowing fully well the terms and conditions of NIT and/or recruitment, participates in the same cannot subsequently turn around and challenge the propriety and legality of such terms of NIT/Rules. The reason, therefor, is that had the petitioner succeeded in the tendering or recruitment process, would certainly not have raised any grievance with regard to the said Clause.

Mr. Kalyan Kumar Banerjee, learned Senior Advocate appearing for the petitioner next has relied upon Rule 177 of sub-rule (vii) relating to tender of West Bengal Financial Rules which has prescribed that the lowest tender is normally accepted in the event such lowest tender is not accepted sufficient reasons should be available.

The decision of the Hon'ble Supreme Court of India in the case of ***Tata Cellular – Vs. – Union of India*** reported in ***(1994) 6 Supreme Court Cases 651*** is relied upon by the Counsel for the petitioner particularly paragraphs 22 and 70. It has been held that the State is required to act in all fairness and in a transparent manner even while entering into a private contract with citizens and/or persons. In the instant case, this Court does not see absence of transparency or any unfairness or any vital or basic fundamental rights of the petitioner being affected by reason of the aforesaid Clause 4.5(A)(d). The State, however, must be allowed play in the joints and some freedom in the contracting process. Reference in this regard is made to Clause (5) at paragraph 94 of the said ***Tata Cellular*** decision (supra).

Applying the aforesaid tests, this Court is of the view that the restriction in Clause 4.5(A)(d) above, is reasonable. The authority of the Executive Engineer to impose the Clause cannot be questioned. Rule 177 of

the FR is not attracted nor has been violated by the State.

For the reasons stated hereinabove, the instant writ petition must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)