

10.02.2021
Ct. No.3
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

W.P.A. 342 of 2021

Ashutosh Ghosh
Vs.
State of W. B. & Ors.

Mr. Kalyan Kr. Chakraborty
Mr. Satrajit Sinha Roy
Ms. Ria Pal
...for the petitioner.

Mr. Subir Kr. Saha, AGP
Mr. Bikramaditya Ghosh
Mr. M. Rahman ..for the State.

Heard learned advocates for the parties.

In this matter, petitioner has challenged the impugned Notice Inviting Tender (NIT) dated 27th January, 2021 on the ground that he is not satisfied with the terms and conditions and the rate quoted in the tender (NIT).

According to the petitioner, rate should have been more than the amount quoted in the tender (NIT) and on the ground that the action of the authority in floating the tender in

question is in violation of principles of natural justice and there is mala fide on the part of the authority and he has filed this writ petition in the interest of the patients. It is noticeable that the petitioner has not participated in the tender in question and he is a proposed tenderer and his another ground is that the judgment of this Court dated 21st August, 2009, passed in WP 11766 (W) of 2009 (Bablu Mitra & Ors. Vs. State of W. B. & Ors.) was not taken into consideration in NIT, by the respondent authority concerned.

Learned advocate for the State respondents has submitted that this writ petition is not maintainable since the petitioner is not a participant to the tender in question so the question of his being aggrieved by such tender does not arise at all.

He further submits that while floating the tender in question, the aforesaid unreported judgment of this Court in Bablu Mitra (supra) has been taken into consideration and to substantiate his argument he had placed several clauses of the impugned tender notice

(NIT) being annexure P-2 to the writ petition, namely, clause 6.1, 6.3, 6.6 and 11.4 of the aforesaid impugned tender notice.

Writ Court is not an expertise or an authority in the specified field of determining the prices of various food items to be supplied by a supplier to the hospitals' patients. Secondly, court sitting in its writ jurisdiction cannot amend or modify the terms and conditions of a tender. It can only interfere if it is found that it is in violation of any Act, statute, rules and regulations, laws or bye-laws, notification etc. which the petitioner could not point out and demonstrate during argument before me with regard to the rate of food items to be quoted in NIT.

Allegation of violation of principles of natural justice also could not be substantiated by the petitioner in his argument as to how and in what way principles of natural justice has been violated in the case of the petitioner while issuing NIT. It is the basic principle of natural justice that any order or any action to be passed or taken by an authority must not

be behind the back of that person who is going to be affected by such action of the authority and it does not appear from NIT that the authority have committed any such violation in the case of the petitioner. Furthermore in the facts of the case question of violation of natural justice does not arise while floating impugned tender notice since the petitioner is not a participant. Here all the terms and conditions are available on the official website of the authority for the petitioner and the public in general. Nothing is concealed and hidden.

The allegation of the petitioner with regard to the mala fide is also on surmises and conjectures. Petitioner has failed to substantiate his allegation of mala fide against the authority and specific person and he should have impleaded such person by name in the writ petition if it at all so happened.

Allegation of the petitioner that the rate quoted in the tender is not just and proper, is not tenable since no one has asked or compelled him to participate in the tender in question if according to him it is not profitable.

If the petitioner feels that the rate quoted in the tender is not profitable to him, he has got full liberty to not to participate in the tender in question.

So far as the allegation of the petitioner that the rate quoted in the tender in question will be detrimental to the interest of the patient since quality of food will be sub standard, to which I am of the view that this writ petition is not a Public Interest Litigation and this writ petition has been filed for his own business interest from the view of his individual benefit and profit.

It appears to me that the sole intention of the petitioner is to stall this tender proceeding for his own personal business interest and having a smell of business rivalry, through this judicial proceeding without having any legal substance to which writ court cannot be a party.

I am also satisfied with the submission of the learned advocate for the State respondents that while floating tender in question, respondent authorities have taken into

consideration the aforesaid judgment of this court in the case of Bablu Mitra (supra).

In view of the discussion made above, I am not inclined to entertain this writ petition and accordingly this writ petition is dismissed with no order as to costs.

Urgent certified photostate copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Md. Nizamuddin, J.)