OD-5

ORDER SHEET
WPO 257 OF 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AL-SUMAMA AGRO FOODS PVT. LTD. AND ANR.
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : $11^{TH}$ March, 2021

Appearance:
Mr. Asad Alii, Adv.
Mr. D. Gangully, Adv.
Mr. B. Gayatri, Adv.
Mr. Debabrati Gangully, Adv.
...for the petitioner

The Court : Despite previous direction for filing affidavits, no affidavit in opposition has been filed by the respondents. As such, the writ petition is taken up for hearing on the basis of averments made in the writ petition itself.

Learned Counsel for the petitioner submits that the petitioner was an unsuccessful bidder in a tender floated by respondent No. 2. By relying on Clause 5.16 of the Notice Inviting Tender, learned Counsel submits that the validity of the proposals was for a period of 180 days from the schedule date of submission of proposals. In the present case, such period expired on June 13, 2020, after which the tender was opened by the tender issuing authority, due to no fault of the petitioner.

It only appears from the Minutes of the relevant Committee performing the technical assessment that there were a few digressions from the standard guidelines of the Government of West Bengal in the tender of the petitioner.

However, the email communicating rejection of the bid of the petitioner merely cited technical disqualification as the ground for rejecting the bid. However, upon several representations being submitted by the petitioner for refund of the earnest money, the Kolkata Municipal Corporation, by a cryptic reply dated September 25, 2019, intimated merely that the earnest money deposited by the petitioner had been forfeited as per Clause 5.6(III) of the RFP for misrepresentation of facts.

Clause 5.6, Sub-clause (III) indicates that earnest money deposit can be forfeited for misrepresentation of facts.

However, it is evident from the communication of rejection to the petitioner that no misrepresentation of facts was cited. Moreover, technical disqualification due to digression from the standard guidelines, even if true, could not entitle the respondent No. 2 to allege that there was deliberate misrepresentation of facts by the petitioner.

Hence, there does not appear to be any valid ground cited by the tender issuing authority for withholding the earnest money of the petitioner.

Since none appears for the respondents despite the matter appearing on the list for sometime, there is no option left before this Court but to hear out the writ petition ex parte.

On the reasons given above, the respondent No. 2 failed to disclose sufficient reasons for withholding the earnest money deposit of the petitioner.

Accordingly, WPO No. 257 of 2020 is allowed, thereby directing the respondents to refund the earnest money deposited by the petitioner in terms of the RFP (Request for Proposal) for Operation and Maintenance (O&M) and Overall Management of newly established modern Abattoir within April 10, 2021. In default of refund of earnest money within the date indicated above, interest at the rate of 6% per annum till payment of the said amount is to be made by respondent no. 2 to the petitioner.

No order as to costs.

Urgent certified copies, if applied for, be issued to the parties upon compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

Sbghosh