

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 46 of 2022
With
CAN 1 of 2022

(Through Video Conference)

Reserved on: 27.01.2022
Pronounced on: 01.02.2022

Samsuddin Sekh

...Appellant

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. B. B. Sarkar,
Ms. Iti Dutta,
Ms. Priti Jain,
Mr. Pratit Sarkar, Advocates
... for the appellant

Mr. Subhabrata Datta,
Mr. Debashis Sarkar, Advocates
... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. The appellant is aggrieved with the order of the learned Single Judge dated 03.01.2022 whereby WPA 20770 of 2021 has been dismissed.

2. The appellant was one of the bidder in response to the notice inviting electronic bid dated 14th of June, 2021 for the work of collection of toll tax from the vehicular traffic plying through the Lochon Das Setu over river Ajoy at Natunhat under Burdwan North Highway Division. Initially the technical bid of the appellant was

rejected but thereafter the respondents had entered into correspondence with the appellant but ultimately the impugned order dated 13.12.2021 was issued cancelling the tender on the ground that rate quoted by the highest bidder was less than the reserved bid value.

3. Learned Single Judge considering the entire circumstances of the case has found that surprisingly in the bid process out of the 5 bidders only the appellant was asked to clarify and rectify his technical bid. The plea of the appellant that though he was the highest bidder but the bid was wrongly rejected, has been examined and it has been found that the cancellation of the tender process could not be interfered by the writ Court and noting the circumstances of the case learned Single Judge has declined the petition.

4. Submission of the learned Counsel for the appellant is that the bid submitted by the appellant was more than the reserve price and that the reserve price should be calculated on the basis of the earnest money which is 2% of the reserve price. Opposing the prayer learned Counsel for the respondents submitted that reserve price was duly fixed and the cancellation of tender does not suffer from any error.

5. Having heard the learned Counsel for the parties and perusal of the records, we have noticed that the law in regard to interference in the tender matters is well settled. This Court does not sit as a Court of appeal in such matters and some fair play in the joints is required by the authorities in such commercial decisions and that unless the action of the tendering authority is grossly arbitrary or discriminatory or found to be suffering from malafides, no interference of this Court is required. Hon'ble Supreme Court in the matter of **Silppi**

Constructions Contractors vs. Union of India and Another, (2020)

16 SCC 489 has held that:

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.”

6. In the present case the tender has been cancelled on the ground that rate quoted by highest bidder was less than the reserve bid

value. It is pointed out by the learned Counsel for the respondents that reserve bid value was fixed as Rs. 1,42,325/- and was duly conveyed vide communication dated 16.11.2021 by the Joint Secretary to the Chief Engineer, Headquarter, PWD and that the reserve price was fixed on the basis of survey conducted by the State authorities. The bid of the appellant was less than the reserve price. That apart, nothing has been pointed out to show that the decision of the respondents suffers from any malafide or the tender has been cancelled to favour any particular party. Clause 24 of the tender document clearly stipulates that in the event of highest bid money turning out less than the specified reserve bid money, it may not be accepted and fresh bid may be invited and that the tendering authority had all the rights either to accept or reject any or all the bids without assigning any reason whatsoever. Record further reflects that fresh ENIB dated 14th of December, 2021 has also been issued.

7. In the aforesaid circumstances, we are of the opinion that the order passed by the learned Single Judge does not suffer from any error and no case for interference in this appeal is made out which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
01.02.2022

PA(SS)