

31.1.2022
Sl. No.19
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W.P.A. No. 1257 of 2022
Halder Construction & Anr.
Vs.
The State of West Bengal & Ors.

Mr. P.S. Deb Barman
Mr. Shamik Bagchi
....for the petitioners
Mr. Tapas Kumar Mondal
Ms. Priya Ghosal
Ms. Priya Ray
..for the Zilla Parishad
Mr. Raja Saha
Mr. Avishek Prasad
..for the State

The Court finds that the petitioners have raised a very valid point before the Court in this writ petition. The petitioners participated in the e-Tender process for different works. The tender notice no. 1364/ZP/PW/Tender/21 dated November 9,2021 was floated by the District Engineer, South 24 Parganas Zilla Parishad. According to the petitioners, although the original copies of the required documents as per Notice Inviting Tender had been submitted in the office of the Zilla Parishad, their bids were not accepted at the technical stage on the ground that the hard copies of the documents were not submitted as per the procedures.

Mr. Deb Barman, learned senior advocate appearing on behalf of the petitioners relies on two letters written by the petitioners both dated November

25, 2021 to the District Engineer, South 24 Parganas Zilla Parishad, separately thereby submitting the hard copies of the original documents as per the requirement under the Notice Inviting Tender. Stamp and seal of the Zilla Parishad had also been affixed on the receipts which show that the said letter was received in the office of the Zilla Parishad.

Mr. Deb Barman submits that despite receiving the complaints on January 19, 2022, that is, the date on which the technical bids were rejected, the authorities did not take into account such complaints and proceeded with the tender process.

Mr. Mondal, learned advocate appearing on behalf of the Zilla Parishad submits that Clause 24 of the Notice Inviting Tender specifies that the hard copies have to be submitted in the office of the Zilla Parishad either by registered post or by hand in the box placed in the office of the District Engineer. According to him, the documents submitted by the petitioners, if at all, at the reception of the Zilla Parishad could not be looked into as such delivery of the documents were contrary to the Notice Inviting Tender. Thus, Mr. Mondal submits that the authorities did not act contrary to the provisions of the Notice Inviting Tender. The documents of the petitioners which purportedly were submitted at the reception could not be accepted. Whether at all they were sent to the tendering committee from the said reception was also doubtful. Moreover, those

documents were not verified at the reception and the correctness of such statements was questionable.

He further submitted that the receipts annexed to the writ petition with regard to the submission of hard copies of the documents were not proof of the fact that Clause 24 of the Notice Inviting Tender had been complied with. He further submits that two work orders dated January 24, 2022 have been issued and the successful bidders have been asked to take up the work. The successful bidders have been granted 45 days and 30 days respectively to complete the work.

In view of the amendment to the Specific Relief Act, and as the successful bidders have already started the work, there is no scope for the court to stall the work. These are time bound public projects and the successful tenderers have already started the work. This Court does not think it fit to interfere with the tenders at this belated stage.

However, the Court finds that the contention of the petitioners with regard to the applicability of Clause 15 of the Notice Inviting Tender is correct. Even if it is accepted that the hard copies were filed at the reception contrary to the provisions of Clause 24 of the Notice Inviting Tender, but as per Clause 15 of the NIT the complaints lodged by the petitioners on 19th January 2021 i.e. on the same day when their technical bids were rejected, ought to have been disposed of before the financial bids were opened. In the reading of the Court, granting 48 hours to the aggrieved

participants to lodge complaints after being rejected at the technical bid, casts a duty upon the authorities to dispose of such complaints before proceeding further. Otherwise, inclusion of Clause 15 in the Notice Inviting Tender and limiting the time to file the complaints to 48 hours from the rejection of the technical bid, becomes redundant and ornamental.

There is nothing on record before the Court, which would show that the complaints of the petitioners were disposed of as per Clause 15 of the Notice Inviting Tender.

However, the law is well settled that if a tendering process had come to an end, third party rights had been created and the successful bidders had started the work, the relief of the aggrieved party, if found to be successful in their challenges/complaints, would be in the form of damages from the authorities for the illegal and unlawful rejection of their bids.

Under such circumstances, I am *prima facie* satisfied that the petitioners have raised a valid point with regard to non-compliance of Clause 15 of the Notice Inviting Tender. This Court is of the opinion that the District Magistrate, 24-Parganas South who is the Executive Officer of the Zilla Parishad and a very senior official and on whom the Court reposes immense faith, must dispose of the writ petition as the complaint of the petitioners and make an enquiry into the issues involved. The District Magistrate shall give a hearing to the petitioners as also officials in the office of the

Zilla Parishad and members of the tendering committee in order to come to a conclusion with reasons. Such decision shall be communicated to the parties. If the decision is in favour of the petitioners, the rights of the petitioners to proceed against the authorities in an appropriate proceeding shall remain open and the petitioners may approach the appropriate forum and sue for damages.

The documents filed by the Zilla Parishad is taken on record.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)