

S/L 13
15.02.2022
Court. No. 19
GB

W.P.A. 2677 of 2022

Pallimangal Enterprise
VS
The State of West Bengal & Ors.

*Md. Sarwar Jahan,
Mr. Mobaidur Hossain.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Rudranil De.*

...for the State.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner participated in an e-tender process floated by the office of the Raipur Gram Panchayat. The notice inviting e-tender was issued on January 13, 2022 by the Pradhan, Raipur Gram Panchayat. The petitioner participated in the work name and styled as 'Construction of (Cover) drain from Babon pandey house to Nadir Dhar at Ullaspur Sansad-VI Under Raipur GP under 15th CFC(tied) 2020-21 Activity Code:-34757495'. The type of work was to cover the drain.

The petitioner is aggrieved by the rejection of the technical bid of the petitioner. The grounds for rejection are:

a) The documents uploaded were not self-attested.

The date and the attestation by the petitioner was missing.

b) Affidavit on Rs.20/- stamp paper was not uploaded; and

- c) The special terms and conditions of the tender duly signed by the petitioner was not uploaded.

The grounds of challenge by the petitioner are that;

- i) All the documents uploaded contained the digital signature of the petitioner;
- ii) Mistake with regard to the affirmation of the affidavit on a Rs. 10 stamp paper instead of Rs. 20 was a minor one which could have been rectified at the time of submission of the original documents and the bid should not have been rejected.
- iii) The special terms and conditions were not available on the portal and as such, the petitioner could not download the same for submission with his signature.
- iv) MS Great India Construction, whose name appears at serial nos.1 and 3 of the checklist published by the authority, indicating the result of the technical bid was allowed to participate twice for the same work. This was contrary to the procurement manual which categorically provided that one person or one bidder could not participate twice for the same work and if such participation was detected, the bid of the person would be rejected and such bidder would be disqualified and lastly;
- v) The authority could not proceed further on the basis of the results of the technical bid if the

candidature of MS Great India Construction would be rejected as per the provisions of the procurement manual.

The terms and conditions of the e-tender were clear and unambiguous and the petitioner was required to upload a notarised affidavit of Rs.20/- stamp paper. The authorities were not wrong in rejecting the said tender in view of such deficiency in the documents uploaded. Such decision was within the domain of the authority. Regarding the decision of rejecting the bid of the petitioner for non-submission of self attested copies of the documents, the court finds that the rejection was justified as the same was not done.

With regard to the rejection on the other ground of non-submission of the signed copy of the special terms and conditions, the Court finds that the tender documents had categorically mentioned that such documents were required to be uploaded by the bidder. It is the specific contention of Mr. Mahata that such terms and conditions are available in a separate portal and if the bidder clicked on the link, such special conditions could have been downloaded. The Court does not find that the petitioner even approached the authority when the petitioner could not access the documents on the portal. Sufficient time was available to the petitioner to approach the authority within the intervening period, from the date of issuance of the e-tender and up to the last date of submission of the documents. The petitioner ought to have approached the authority with the problem that was faced in this regard.

This Court is of the opinion that the authorities have not acted contrary to law in rejecting the bid of the petitioner.

The only point which survives for decision is whether MS Great India Construction could have been allowed to participate twice in the same tender for the same work contrary to the procurement manual. This Court is of the opinion that for adjudication of this issue, the matter has to be relegated to the Block Development Officer, respondent no.5, who shall consider the allegation with regard to the two bids of MS Great India Construction in respect of the work at serial No. 3, in the tender notice. A reasoned order shall be passed upon hearing the petitioner, the representative of MS Great India Construction as also the panchayat authorities. The eligibility of MS Great India Construction to continue to participate in the bidding process shall be accordingly decided. The order shall be communicated.

This Court does not express any opinion on this issue only because MS Great India Construction is not before this Court. The Court relegates the matter to the authority for a decision upon hearing all parties. The Block Development Officer, Nowda Development Block shall treat the writ petition as a representation and dispose of the same on the issue framed hereinabove, within a period of seven days from date. The financial bid in respect of serial no.3, which is due to be opened today, shall be opened but the result shall not be disclosed before the decision is taken by the authority as

directed by this Court. The decision shall be kept in a sealed cover.

A reasoned order shall be passed and communicated to all concerned. There is no embargo upon the panchayat authorities to proceed with the tender in respect of other works.

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)