

24.02.2022.
Court No.13
Item No. 12
ap

**W.P.A. No. 2840 of 2022
(Through Video Conference)**

**Murshidabad District Contractors' (Builders')
Association & Ors.**

**Versus
The State of West Bengal & Ors.**

Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Samik Sarkar.

...For the petitioners.

Mr. Samrat Sen, Id. AAAG,
Mr. Nilotopal Chatterjee.

..For the State.

Mr. Satyaki Banerjee.

...For the respondent nos.2, 3 & 4.

Affidavit-of-service filed in Court today be taken
on record.

The writ petitioners are aggrieved by a Notice
Inviting Tender dated 22nd January, 2022 for operation
and guarding of the pumping machinery at P.H. No. I,
II & III & High Lift (AIRP) under Andulberia & High Lift
(AIRP) under Sadhukhali Water Supply Scheme, under
MEDB, P.H.E. Dte. in the District of Murshidabad.

It is submitted that the tender conditions have
been tailor-made to favour a particular class of
persons and deprived other existing players like the
petitioners. It is further submitted that the petitioners
are operating pumps at various blocks and places in
Murshidabad. It is also submitted that their contracts
are valid until 28th July, 2022.

In support of the argument that the terms of the
contract are tailor-made, it is submitted that as

opposed to the earlier conditions that they would be separate tenders for each different pumps stations and/or group of pump stations, one operator is now being selected for a large lot of pumping stations. Secondly, it is submitted that eligibility criteria for participation in tender would clearly exclude persons like the petitioners.

*“3. Eligibility criteria for participation intender:
(i) (a) Intending tenderers should produce credential of at least **1 (one) completed work** during last 5 (five) years prior to the date of issue of this NleT of **Similar nature of work** of under central govt./state govt./semi govt. organization of a minimum value of **40%** of the estimated amount put to tender*

OR

*(b) Intending tenderers should produce credential of **2 (two) completed work** during last 5 (five) years prior to the date of issue of this NleT of **Similar nature of work** under central govt./state govt./semi govt. organization, each of the minimum value of **30%** of the estimated amount put to tender*

OR

*(c) Intending tenderers should produce credential of **1 (one) single running work** during last 5 (five) years prior to the date of issue of this NleT of **Similar nature of work** under central govt./state govt./semi govt. organization, which has been completed to the extent of **80%** or more and value of which is not less than the desired value at 3. i(a) above*

Completion certificate produced as credential should clearly indicate the description of works, value of contract, executed work value, date of award, actual date of completion etc. and name, address, telephone no. of the client. Supporting work order with schedule of works should be uploaded.

In Case of running works, certificate of satisfactory running work from the concerned Executive Engineer mentioning that the work is running satisfactorily total value of work and executed value of work on % (percentage) progress should be submitted.”

It is also argued by Mr. Kallol Basu, learned Advocate for the petitioners, vociferously and

vehemently, the petitioners cannot qualify even in one of the three different categories of eligibility. It is only after July, 2022 that they would come within the scope of (that too) one such criteria.

This Court is of the view that merely because a tender condition stipulates an eligibility criteria that may have effect of excluding an existing player and/or contractor, the same would not ipso facto become arbitrary.

The very object and purpose of the law and the jurisprudence behind distribution of the State largess is equitable distribution and equal participation.

Reference in this regard made to the decisions of the Hon'ble Supreme Court of India in the cases of **Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors.** reported in **1979 AIR 1628** and **Monarch Infrastructure (P) Ltd. Vs. Commissioner Ulhasnagar Municipal Corporation & Ors.** reported in **(2000) 3 SCR 1159** and **Sterling Computers Ltd. Etc. Vs. M & N Publications Ltd. & Ors.** reported in **1996 AIR 51** this Court is of the view that NIT in the instant case is hit by the mischief indicated in the aforesaid decisions.

The instant writ petition must fail and is hereby dismissed.

It is, however, made absolutely clear that the existing contract being performed by to the writ petitioners shall not be disturbed and they shall

continue to complete the same, on the terms of their engagement and/or the tender and/or any formal agreement that may have been executed with them.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)