

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

**MAT 891 of 2022**

**With**

**CAN 1 of 2022**

**CAN 2 of 2022**

Reserved on: 24.08.2022

Pronounced on: 05.09.2022

Rajib Roy

...Appellant

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Satrajit Sinha Roy, Advocate

... for the appellant

Ms. Amrita Panja Moulick, Advocate

... for the State

Mr. Saptansu Basu, Sr. Advocate

Mr. Swarup Paul,

Mr. Surya Maity,

Ms. Amrita Maji, Advocates

... for the respondent Nos. 4 and 5

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

**Prakash Shrivastava, CJ:**

1. By this intra-court appeal writ petitioner has challenged the order of the learned Single Judge dated 13.01.2022 dismissing WPA 19550 of 2021 and the subsequent order of the learned Single Judge dated 10.06.2022 dismissing the review application being RVW 14 of 2022.

2. The appellant had filed the writ petition with the plea that he was one of the prospective bidder of NIT dated 7<sup>th</sup> of October, 2021 issued by the respondent No. 3 for establishment, operation,

maintenance and management of mechanized laundry facility at Bankura SMCH on public private partnership mode. The appellant participated in the pre-bid meeting held on 26<sup>th</sup> of October, 2021 and raised verbal objection on the tender terms and conditions contained in the NIT. According to the petitioner, earlier the tender notification dated 16<sup>th</sup> of September, 2019 was issued with the criteria of minimum average annual turnover of Rs. 1 crore in the last 3 financial years but this was cancelled and subsequently, after 2 years, by splitting, 4 separate NITs for different zones were issued. The appellant was aggrieved with the condition of e-tender issued for Bankura Zone dated 7<sup>th</sup> of October, 2021, therefore, he had filed the writ petition questioning the said e-tender.

3. Learned Single Judge by order dated 13<sup>th</sup> of January, 2022 had examined the plea of the appellant and had dismissed the writ petition. The appellant had approached the Division Bench by filing MAT 56 of 2022 and raising the plea that due to the technical glitch Counsel for the appellant could not argue before the learned Single Judge all the grounds in support of challenge to the NIT. By order dated 27<sup>th</sup> of January, 2022, appellant had withdrawn MAT 56 of 2022 with liberty to file an appropriate application for review/recall of the order before the learned Single Judge. Learned Single Judge by order dated 10.06.2022 has dismissed the application for review.

4. Submission of the learned Counsel for the appellant is that the criteria of an average annual turnover of Rs. 3 crore is arbitrary, which a bidder with 200 bed hospital cannot achieve and that 72 hours prescribed in appendix III for performing the work is too short keeping in view the distance.

5. As against this, learned Counsel for the respondent has supported the impugned order.

6. We have heard the learned Counsel for the parties and perused the record. The law relating to scope of interference in contract matters is well settled. Hon'ble Supreme Court in the matter of **Silppi Constructions Contractors vs. Union of India and Another** reported in **(2020) 16 SCC 489** has held that Court should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters and that they should not use a magnifying glass while scanning tenders and make every small mistake appear like a big blunder. It has also been held that the Courts must give "fair play in the joints" to the government and public sector undertakings in the matter of contract and that the Courts do not sit like a court of appeal against the orders of the appropriate authorities. It has also been settled that the Court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.

7. Learned Counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ramana Dayaram Shetty vs. International Airport Authority of India and Others** reported in **(1979) 3 SCC 489**, but in that case it has been held that the Courts may refuse relief to the petitioner if the equities are in favour of the respondent who meanwhile has changed his position. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Tata Cellular vs. Union of India** reported in **(1994) 6 SCC 651** wherein the Hon'ble Supreme Court has culled out the principle relating to scope of interference as under:

“94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

8. Examining the present matter in the light of the limited scope of interference, we find that the criteria of minimum average annual turnover of Rs. 3 crores in last 3 financial years was later reduced to 2 crores. So far as clause 2.2.4 sub-clause I(2) is

concerned, the requirement was of having the experience in providing laundry services to minimum 200 beds in aggregate in last 3 years. It has been pointed out by the learned Counsel for the State that several bids have been received in response to the impugned NIT. Hence, it cannot be said that the criteria of having minimum average annual turnover was arbitrary or tailor made. The number of bids received indicate also that there is no substance in the argument of the Counsel for the appellant that it is not practicable to do the work prescribed in the tender within the stipulated period because of the distance mentioned in appendix III.

9. We have also been informed that in meanwhile the contract has been awarded to the successful bidder, hence subsequent development furnishes additional ground for not interfering with the order of the learned Single Judge.

10. Considering the above factual and legal position, we find that no ground is made out to interfere in the present appeal. Hence, the appeal is dismissed.

**(PRAKASH SHRIVASTAVA)**  
**CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)**  
**JUDGE**

Kolkata  
05.09.2022

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PA(SS)

(A.F.R./N.A.F.R.)