10th November, 2022
(D/L No. 7)
(SKB)

W.P.A. 15129 of 2022

Neelkanth Transport and another
Versus
Durgapur Steel Plant and others

Mr. Partha Sarathi Bhattacharyya,
Mr. Atarup Banerjee,
Mr. Tapodip Gupta,
Mr. Raju Bhattacharyya
... for the petitioners.

Mr. Sauvik Nandy
... for respondent nos.1 to 3.

Mr. Kamalesh Bhattacharya,
Mr. Triptimoy Talukder,
Mr. Ranajit Ghosh
... for respondent no.2.

Mr. Ratnanko Banerji,
Ms. Vineeta Meharia,
Mr. Suman Chatterjee,
Mr. Jaydeb Ghorai,
Mr. Diptesh Ghorai
... for respondent nos.4 & 5.

The petitioners pray for a mandamus on the respondents/Tendering Authority for issuing the Letter of Intent in favour of the petitioners. The petitioners participated in a tender floated by the Durgapur Steel Plant (DSP) for maintenance and upkeep of a park in Durgapur. The Tendering Authority/DSP are respondent nos.1 to 3 and the service provider (M. Junction Services Limited) are respondent nos.4 and 5.

The petitioners are aggrieved by rejection of the bid put in by the first petitioner for the same tender. The outlines of the petitioners' grievance would appear from a complaint dated 1st July, 2022 which was primarily against the inaction of the respondents/Tendering Authority to confirm the bid put in by the petitioners on 30th June, 2022.

The challenge to the act of the respondents in rejecting the petitioners' bid is based on certain conditions of the auction as contained in a Report filed by the Service Provider. The first limb of challenge is that the petitioners should have been given an additional 8 minutes after the closing time of the auction provided the conditions under Clause 3.3 of the specific terms and conditions of MSTC auction were fulfilled. The second relates to Clause 3.5/ "Automatic/Proxy Bidding" wherein in case of a tie between the highest bid offered by the bidder and the maximum value opted by an automatic/proxy bidder, the proxy bidder would be acknowledged as the H1 bidder.

The petitioners' objection is to the manner in which the bid was conducted and also that the mechanism adopted lacked transparency. The petitioners, as expressed through learned counsel appearing for them, say that the manner in which the H1 bidder was selected is arbitrary and *mala fide*.

The submissions made on behalf of the Service Provider are seconded by the Tendering Authority.

Learned counsel appearing for respondent nos.1 to 3 and 4-5 take the same stand in respect of the auction held on 30th June, 2022. According to counsel, the petitioners were put on notice of the proxy bid as well as the additional time conditions and further that the petitioners participated in a training programme whereby the authorised person of the petitioner no.1 was made aware of the implications of these conditions. It is also the contention that the conditions which the petitioners are objecting to are a part of an auction of MSTC and not the Tendering Authority/respondent nos.1 to 3.

The controversy in the writ petition centres around two aspects. First, that the petitioners were allegedly not given an additional 8 minutes from the closing time of the auction indicating thereby that the petitioners were deprived of the chance to better the last bid put in by the H1 bidder; and second, that the petitioners and the H1 bidder came to a tie at the same time i.e. 14:57 hrs. and for the same value: 6,56,000/-. The record of the bid proceedings would appear from the detailed Report of the Service Provider. The last two entries indicate that the petitioners and the H1 bidder (Rang Construction) put in the same amount of bid i.e.

6,56,000 at 14:57:51hrs. The Report also shows that the petitioner no.1 put in three earlier bids during the duration of the auction from 14:46 to 14:57 hrs.

The main question would be whether the writ court can interfere in the facts of the present case by reason of any arbitrary or *mala fide* steps taken by the respondents with a specific motive to oust the petitioners from the auction.

The material on record shows that the second petitioner who is the proprietor of the first petitioner, attended a training on the conduct of the auction as required under Clause 4 of the Letter of Interest. The training was to be provided by the Service Provider to the participants to facilitate participation in Online Forward Actions. The details of the training programme contained sufficient information as to the nature and implication of a proxy bid. The confirmation of the second petitioner attending the training dated 12th March, 2018 is also a part of the records. Hence, the grievance that the petitioners were unfairly treated by reason of inclusion of a proxy bidder in the auction or that the petitioners were unaware of the implication of such proxy bidder cannot be accepted.

With regard to the additional time limit of 8 minutes which the petitioners claim to be entitled to after the closing time of the auction, the said additional time limit is part of the terms and conditions of MSTC Auction which requires that 8 minutes would have to be given after the closing time for non- coal auctions. The relevant pleading in the report referring to the MSTC Auction in paragraph 9 makes it clear that the MSTC auction has been alluded to as evidence of the fact that proxy bidding is popular in industry practices followed by various auctioners including MSTC. Hence, reliance on Clauses 3.3 and 3.5 of the MSTC Auction document is misplaced.

An additional time of 3 minutes was to be given by the Tendering Authority in the present case. This would be evident from the Training Manual Bidding Process which is part of the Report of the Service Provider. In fact, 3 minutes and 1 second was given for the present auction which would also be evident from the Report. The last recorded bid was put in by the petitioner no.1 and H1 bidder at 14:57:51 hrs. and the auction effected at 15 hours in fact, 15:00:52 hrs., to be specific. It is also not disputed that the petitioners did not put in any other bid after 14:57:51 hrs. and the last bid put in by the petitioners is recorded at 6,56,000.

Having attended and participated in the training programme, the petitioners cannot now complain that the conditions in the bid documents or the manner in which the auction was conducted reflects a lack of transparency or arbitrariness on the part of the tendering authority.

Hence the relief sought for, namely commanding the respondents to issue the Letter of Intent in favour of the petitioners, is not supported by the material disclosed to the court.

W.P.A.15129 of 2022 is accordingly dismissed without any order as to costs.

The interim order granted on 14th July, 2022 is vacated.

(Moushumi Bhattacharya, J.)