

29.07.2022
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Sl. No. 09
Ct. No. 05

WPA 16461 of 2022

Basirhat Food Supply Mohila Co-operative Society Ltd.
& Anr.
-Versus-
The State of West Bengal & Ors.

Mr. Saptangshu Basu
Mr. Swarup Paul
Mr. Guru Saday Dutta

..... for the petitioners

Mr. Debashish Ghosh
Mr. Amrita Panja Moulick

....for the State

The supplementary affidavit of the petitioner is kept on record.

The petitioner claims to be a self-help group run and managed by women. The petitioner participated in a tender for providing security services to hospitals. The petitioner is aggrieved by a Memorandum dated 7th June, 2022 issued by the Principal Secretary, Finance Department, Government of West Bengal.

The case sought to be made out by learned counsel appearing for the petitioners is that the petitioner responded to a tender floated by the Department of Health & Family Welfare on 2nd June, 2022. The tender conditions existing on that date provided that in case of more than one L1 bidder, the provisions mentioned in the Memo dated 29th October, 2021 would be applicable. The petitioner participated in the bid on the basis of the condition that in the event

there were more than one L1 bidders, there would be draw of lots done on 18th July, 2022 and the selected bidders would be chosen on that basis. The impugned Memorandum of 7th June, 2022 was published in supersession of the earlier Memorandum and providing that the credentials of the bidder would be evaluated.

Learned counsel appearing for the State opposes the reliefs in the writ petition on the basis that the writ petition does not challenge the Memorandum on the ground of being arbitrary or *mala fide*. Counsel further submits that the change in the conditions would make the selection more reasonable compared to the draw of lots.

The point before the Court is whether the petitioner, as one of the selected L1 bidders, has been prejudiced by the subsequent Memorandum dated 7th June, 2022. It is evident that the petitioner was selected by the Notice dated 24th June, 2022 providing that the L1 bidder would be decided by the draw of lots in case there were more than one L1 bidders. This position was subsequently changed by the impugned Memorandum of 7th June, 2022 by which the competing L1 bidders were to submit their credentials.

On perusal of the documents, it appears that the conditions of tender as existing on 2nd June, 2022 on the basis of which the petitioner participated did not contain any condition for draw of lots for selecting the

successful bidder among the competing L1 bidders. This was brought into effect only on 24th June, 2022 when the petitioner was selected as one of the L1 bidders. Hence the contention that the rules of the game were changed after the petitioner had entered into the arena does not apply to the facts of the case. It would have been applicable had the draw of lots been one of the tender conditions when the petitioner participated in the tender, namely on 2nd June, 2022. Moreover, the impugned Memorandum of 7th June, 2022 was already in place when the petitioner was selected as one of the L1 bidders. Hence the petitioner cannot complain that the goal post was removed after the petitioner entered the zone of consideration. Further, the apprehension of the petitioner of losing out if assessed by credentials may be speculative. Since the petitioner is yet to appear before the tendering authority on 1st August, 2022, this apprehension is yet to be tested.

The decisions shown to this Court involved facts where the rules were palpably altered after the entire process of selection was over. This is not the case here.

Having found that the petitioner has not suffered any prejudice and the apprehension may at best be speculative, WPA 16461 of 2022 is dismissed without any order as to costs. The petitioner shall be at liberty

to appear before the authority on 1st August, 2022 in terms of the Notice dated 25th July, 2022.

(Moushumi Bhattacharya, J.)