

S/L. 7.
August 17, 2022.
MNS.

WPA No. 16794 of 2022
with
CAN 1 of 2022

Biswajit Saha
Vs.
The State of West Bengal and others

Mr. Sarwar Jahan,
Mr. Jayanta Samanta,
Mr. Anisur Rahman

... for the petitioner.

Mr. Raja Saha,
Mr. Nilotpai Chatterjee,
Mr. Varun Kothari

...for the State.

Mr. Joydip Kar,
Mr. Mohan Kumar Sanyal,
Mr. Arunesh Pathak,
Mr. Dwaipayan Sanyal

...for the added respondent.

Re: CAN 1 of 2022(Addition of party)

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

Since the original application for addition of
party is not available on record, a copy of the
same is handed over on behalf of the applicant
be kept on record and be treated to be the
original application.

The scope of the present writ petition is a challenge to the rejection of the petitioner's bid in a tender process.

The applicant in CAN 1 of 2022, an application for addition of party, seeks to be impleaded in the capacity of a respondent in the writ petition on the ground that the applicant was the successful bidder in the said tender process.

Upon hearing learned counsel for the parties, it is evident that the present applicant has a direct and substantial interest in the outcome of the writ petition.

Accordingly, CAN 1 of 2022 is allowed without any order as to costs, thereby impleading the applicant, that is, Sagar Enterprise, as a respondent to the writ petition.

Necessary consequential amendments in the cause title of the writ petition shall be carried out by the learned Advocate-on-record of the petitioner during the course of the day.

Learned counsel for the petitioner contends that the rejection of the bid of the writ petitioner in a tender process floated on behalf of the District Magistrate, Murshidabad, the Additional District Magistrate (ICDS), Murshidabad, inviting online tenders for a scheme

of carrying and storing of foodstuff and other articles, is bad in law.

It is submitted that the Notice Inviting Tender (NIT) contemplated facilities for 27 separate projects. The petitioner applied for three of them, bearing Serial No. 4 (Hariharpara), Serial No. 5 (Nowda) and Serial No. 10 (Raninagar-II) projects. It is pointed out that the bid of the petitioner was rejected on the sole ground that the petitioner's proprietorship concern was not willing to storage salt (foodstuff) in the godown.

It is submitted that inasmuch as the Nowda project is concerned, the NIT itself clarifies that the said project is only in respect of carrying and there is no scope of storage, for which the ground is rendered invalid inasmuch as the Nowda project is concerned.

Even in respect of Hariharpara, the agreement, a copy of which was uploaded by the petitioner with the bid document, does not indicate any refusal or bar to storage of salt or other food stuff. As such, at least in respect of the Hariharpara and Nowda projects, the rejection of the petitioner's bid cannot stand the scrutiny of law.

Learned counsel appearing for the respondent authorities submits that the tender contemplated a single bid process and single bid documents of the petitioner and others were uploaded respectively.

As such, it is submitted that there was no scope of segregating the projects *inter se* while considering the validity of the technical bid.

That part, it is contended that subsequently the financial bids have been opened and approved by the District Magistrate as well as by the District Level Tender Committee and the ensuing contract is about to be issued to the successful bidder. Hence, the tender process ought not be interfered with under Article 226 of the Constitution of India at this stage.

The learned Senior Advocate appearing for the added respondent submits, apart from adopting the arguments of the respondent authorities, that the agreement in respect of the Hariharpara project in respect of a godown indicated that the same was a renewal agreement and that the original agreement conditions would apply. However, no copy of the original agreement was uploaded by the petitioner,

therefore keeping the authorities in the dark in respect of the said godown.

Upon hearing learned counsel for the parties, it transpires from the NIT-in-question that the same invited single bid documents inasmuch as each of the participants was concerned. There is no scope, accordingly, of segregation of the validity of the bids with regard to each project separately in respect of individual bidders. As such, the bids would stand or fall in their entirety for all the projects even for disqualification in respect of one.

As evident from the technical bid evaluation conditions, annexed at page 24 (Annexure P4) of the writ petition, Clause –3 thereof indicates that the bid document of Saha Construction was rejected since the agency was not willing to store salt (foodstuff) in the godown.

It is seen from Clause 13 of the terms and conditions of the NIT that a godown ought to be provided by the bidder, which should have a capacity of storing the quantum of approximately 250 metric tons of “any kind” of foodstuff or other articles in safe manner. Clause – 14 envisaged the submission of sketch map in respect of the said godown. Clause – 15, on the other hand,

provided that the agent shall have to take necessary care to avoid loss, damage, deterioration of the stock and to safeguard the foodstuff from damage etc.

As such, the NIT clearly contemplated the availability of a godown as one of the mandatory conditions for the technical bid being allowed. Such qualification not being fulfilled by the petitioner in respect of the three projects, for which the bid was offered, the respondent authorities are perfectly justified in rejecting the technical bid of the petitioner.

That apart, it is well-settled that a tender process is generally not interfered with in the writ jurisdiction unless there are gross *mala fides* or arbitrariness or illegalities involved. This court does not find any such arbitrariness or other infirmity in the present case since there were several possible interpretations of the NIT conditions. The employer, that is, the respondent authorities could not be faulted for adopting one of such interpretations in rejecting the bid of the petitioner at the technical stage.

Hence, there is no scope of interference in the writ petition under Article 226 of the Constitution of India.

Accordingly, WPA No.16794 of 2022 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)