

24-03-2022
ct no. 13
Sl. 29
sp

**WPA 18465 of 2021
(Through Video Conference)**

Banamali Karmakar

-Versus-

The State of West Bengal & Ors.

**Mr. S.C. Dhara,
Mr. S.P. Lahiri**

....for the petitioner

Mr. Amitava Mitra

....for the State

Affidavit of service filed in Court today is taken on record.

The writ petitioner participated in the Notice Inviting Tender (NIT) for engagement of 46 unskilled scavenging personnel at Bankura Sammilani Medical College & Hospital, Bankura. The NIT was published in May, 2021. It is specified in a form regarding percentage BOQ to be quoted by intending bidders that the figure should be quoted in excess only otherwise the bid will be rejected. The estimated rate already fixed in the NIT was Rs. 100.00. The petitioner quoted 100.01%.

It appears from the records that as many as four other bidders also quoted above 100.01% and in excess thereof. Three bidders, however, equally quoted only Rs. 100.00 and were listed as L-1. The contract was awarded to the respondent no.6,

Chandan Sengupta, who has chosen not to be represented before this Court.

Mr. Lahiri, counsel for the petitioner would argue that a plain reading of the BOQ stipulation would indicate that if the bidders did not quote in excess of Rs. 100.00, their bids would stand rejected.

This Court finds merit in the argument advanced. Under normal circumstances, the bids of Bhranti Bhushan Singha, Dolphin Enterprise and Chandan Sengupta should also have been rejected since they have not quoted in excess of Rs. 100.00.

A gray area appears to emerge which would have otherwise entitled the petitioner to be eligible for being awarded the tender since he has quoted in excess of Rs. 100.00 and that too by .01%. He is admittedly the next lowest bidder after Bhranti Bhushan Singha, Dolphin Enterprise and Chandan Sengupta.

The petitioner was communicated of the rejection of his tender on October 10, 2021 after hierarchy bid was published. The work order, however, appears to have been issued on September 16, 2021.

The writ petition has been affirmed on November 18, 2021. The petitioner appears to

have been reasonably diligent in approaching this Court.

For the purpose of considering relief to the petitioner, this Court refers to the decision of the Hon'ble Supreme Court rendered in the case of M/s. N.G. Projects Limited vs. M/s. Vinod Kumar Jain & Ors. in Civil appeal No. 1846 of 2022 rendered on March 21, 2022. The work of scavenging at a hospital is a vital and important service which cannot under any circumstances be interfered with or interrupted. The work order, in the peculiar facts and circumstances of the case is, therefore, not interfered with.

This Court, however, inclined to direct the Director of Health Services, Government of West Bengal, Department of Health and Family Welfare, Swasthya Bhawan, Salt Lake, Kolkata, being respondent No.3 to consider the records of the entire case and the representation of the writ petitioner dated 25th October 2021. Suitable decision shall be taken by the Director on the tender process including recommendation of initiation of appropriate departmental enquiry against the concerned persons.

The Director shall furnish a copy of the decision to the writ petitioner and also the Vigilance Commission of the State, for necessary action.

The Director in his direction may also consider if the work order needs to be interfered with given the prima facie impropriety visible to this Court.

The aforesaid exercise shall be carried out by the Director within a period of three weeks from the date of communication of a copy of this order mandatory and positively.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)