

29th August, 2022
(D/L No.48)
(SKB)

W.P.A. 18494 of 2022

Shristi and others
Versus
Union of India and others

Mr. Siddhartha Banerjee,
Mr. Sudipta Kumar Das,
Mr. Subir Banerjee
... for the petitioners.

Mr. S. Chatterjee,
Mr. Malay Kr. Seal
... for respondent nos.2 to 7.

The petitioners' pray for an order on the tenderer for considering the technical bid submitted by the petitioners.

The undisputed position is that the petitioners failed to submit the technical documents in respect of an Open Tender Enquiry (OTE)/ National Competitive Bidding (NCB), Standard Bidding Document (SBD), Bharatiya Reserve Bank Note Mudran (P) Limited for Management of Health Care Services at Plant Hospital, Salboni, Paschim Midnapore. The petitioners submitted some documents as per its technical bid but came to know on 2nd August, 2022 when the petitioners' security deposit were returned to the petitioners that the petitioners' technical bid has been rejected. The petitioners submitted the documents thereafter by way of a letter dated 3rd August, 2022.

The objection taken by learned counsel appearing for the respondents is that the letter dated 3rd August, 2022 was not received by them. Counsel further places several clauses in the bid documents which given unilateral right to the respondents to cancel and reject all bids without assigning any reason therefor. Counsel also relies on Clause 19 of the documents which puts the onus of submitting complete documents on the bidders and right of the respondents to reject the bid if the bidder fails to submit documents or complete the set of documents within the stipulated time.

After hearing learned counsel, the issue before the court is whether under Clause 27 of the bid documents relating to minor infirmity/irregularity/non-conformity, the respondents are under an obligation to convey an observation on the said minor issues of tenderer by registered/speed post etc.

Admittedly, the document dated 16th June, 2022 regarding clarification of shortfall documents was sent by the respondents to the petitioners by e-mail. The petitioners' case is that they missed the e-mail and came to know of the e-mail only later on 2nd August, 2022 when the petitioners' security deposit was returned.

Clause 27 used the expression "*will convey its observations on such 'minor' issues to the tenderer by*

registered/speed post etc. asking the tenderer to respond by a specified date.” The said clause begins with the respondents having the option of waiving the irregularity and/or non-conformity in a tender, thus making it evident that the irregularity/non-conformity is not a fatal defect.

Second, the words “*registered/speed post and etc.*” must be read in a manner so as to convey the same sense and meaning. This means that the irregularity must be conveyed by the respondents to the tenderer by means of any physical mode of service which is akin to or can be placed within the same meaning as service by registered/speed post. When the respondents did not adhere to the mode of service stipulated in the tender documents of the respondents themselves, the respondents cannot take the stand of the petitioners being in violation of the clauses of the tender documents. The other points of objection raised by the respondents with regard to eligibility of the petitioners can only be taken after the petitioners’ technical bid documents are considered in totality.

W.P.A.18494 of 2022 is accordingly allowed and disposed of with a direction on the respondents to consider the technical bid documents of the petitioners within a period of ten days from the date on which the petitioners submit such documents.

Since the petitioners' documents are already part of the records, the respondents shall consider those documents and any other documents put in by the petitioners within the timeframe as directed. The petitioners may submit additional documents by 6 p.m. tomorrow, i.e. 30th August, 2022. The respondents shall give effect to the tender only after considering the technical documents put in by the petitioners.

(Moushumi Bhattacharya, J.)