

03-01-2022

ct no. 13

Sl. 11

sp

**WPA 20770 of 2021
(Through Video Conference)**

Samsuddin Sekh

-Versus-

The State of West Bengal & Ors.

**Mr. B.B. Sarkar,
Ms. Iti Dutta,
Mrs. Priti Jain,
Mr. P. Sarkar**

....for the petitioners

Mr. Subhabrata Datta

...for the State

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

The writ petitioner is aggrieved by orders dated December 13, 2021, which cancelled the NIT and fresh tendering was proposed. The stated reason was that the rate quoted by the petitioner for collection for toll tax for vehicles plying through the Lochon Das Setu over river Ajoy at Natunhat under Burdwan North Highway Division is not acceptable and. Under the second communication of the same date, it is communicated to the petitioner that the highest bidder, that is the petitioner's bid was below the reserved bid value under the NIT.

The brief facts of the case are that a Notice Inviting Tender for the subject job was published

on June 14, 2021. The petitioner along with four other persons submitted bids. By a communication dated August 5, 2021, all five bids were rejected for various technical reasons.

However, it appears from the records that for some unexplained reason and special consideration, only the writ petitioner amongst the five bidders, was asked to clarify and/or rectify his technical bid. The respondent authorities have gone one step further. They have very curiously written a letter to the notary public, who has verified affidavit of the writ petitioner, ascertaining its veracity. This is unprecedented.

This Court notes with dismay as to how the petitioner came to be treated differently and in a very special manner. The other tenderers have not been given such opportunity to clarify or rectify their technical ineligibility. The respondent authorities have therefore acted properly, in cancelling the entire tender process.

The other argument of the petitioner that he being the highest bidder, could not have been rejected, is contrary to Clause 24 at page 51 of the NIT. It is clearly mentioned that the State reserves its right to reject any bid at any stage if it was less than the specified reserved bid. Counsel for the

petitioner would argue that the calculation of the respondents is incorrect.

This Court is of the view that the cancellation of the tender process, cannot be interfered by the writ Court, given the gross impropriety noted above. The writ petitioner was treated as a very special, exceptional and a dear person as opposed to the other tenderers.

Reliance is placed by Mr. Datta, learned counsel for the respondents on the decision of ***Kanaihalal Agarwal vs. Union of India*** reported in ***(2002) 6 SCC 315***, particularly paragraph 6 thereof. It is argued that it is for the State to determine as to which tender term is essential and which is not. The rejection of the bid under the second part of the Clause 24, in the instant case, is wholly justified and calls for no interference.

For, inter alia, the reasons stated above, the instant writ petition must fail and is hereby dismissed.

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.)