

21.10.2022
Sl. No.1
Sn/nb

MAT 1722 of 2022

With
C.A.N. 1 of 2022

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

Mr. Saptangshu Basu
Mr. Swarup Paul
Mr. Surya Maity ...for the Appellant/ Petitioner.

Mr. Amal Kr. Sen
Mr. Shamim Ul Bari .. for the State

Mr. Sagar Bandopadhyay
Mr. Arijit Chakraborty . .for the interveners

This appeal arises out of an order dated September 28, 2021 passed in WPA 21753 of 2022. The appellant is aggrieved by the refusal of its prayer for an interim order.

The learned judge did not pass any interim order on the ground that a previous challenge by the petitioner in respect of a similar tender was negated by a learned single Judge and the order of the learned single Judge had been affirmed by the Hon'ble Division Bench. The tender condition, which had been challenged in the writ petition was within the knowledge of the petitioner at the relevant of point of time when such order was passed on the earlier occasion.

However, the point of maintainability of the writ petition has been kept open by Her Lordship.

Mr. Saptangshu Basu, learned Senior advocate challenges the order impugned on the following grounds.

A similar clause which was inserted by the authorities with regard to the procedure to be followed in case of tie between the L1 bidders, had been considered to be tailor made and had been stayed by a learned single Judge in W.P. no. 15610(W) of 2010. Such order was challenged before the Hon'ble Division Bench in MAT 1030 of 2010. MAT 1030 of 2010 was allowed in favour of the writ petitioner therein, and the stay of the clause with regard to tie had been upheld. The tender notice in which such clause was incorporated was set aside and fresh tender was directed to be notified.

Earlier, the procedure to be followed in case of tie between L1 bidders was that preference was to be given to the highest tax payer in the previous year. This condition was found to be tailor made and hence the tender notice which had incorporated such condition had been set aside by the Hon'ble Division Bench. Retendering was directed.

Mr. Basu, argues that a similar clause has again been incorporated in the memorandum dated June 7, 2022 bearing no. 2320-F(Y) of under Situation III thereof. Mr. Basu submits that when a similar clause had been set aside by the Hon'ble Division Bench of this Court with regard to procedure to be followed in case of a tie amongst L1 bidders, subsequent incorporation of a

similar clause would automatically stand vitiated. He submits that Situation III of the impugned memo was also tailor made, in order to give preference to more financially sound, rich and favourable contractors. According to Mr. Basu, every tenderer has a right to participate in the tender process and has a right to be treated equally. By incorporation of a clause which would give preference in case of a tie to those tenderers whose annual turnover was greater, the authorities have discriminated amongst the tenderers.

Mr. Sen, learned advocate for the State and Mr. Bandopadhyay, learned advocate for the intervenors submit that the Hon'ble single Judge had kept the writ petition pending for final hearing, upon exchange of affidavits. That there was no scope to pass any interim order. That the writ petition did not state any instance. When the petitioner had been deprived from being the L1 bidder or from being awarded the contract by invocation of the Situation III, which is under challenge in the writ petition.

According to Mr. Sen, terms and conditions of a contract was entirely within the domain of experts. The Writ Court should not adjudicate the wisdom of authorities in this regard.

Mr. Bandopadhyay, learned advocate for the intervenors submits that another writ petition had been filed by the petitioner being WPA 16461 of 2022. In the

said writ petition the same impugned memo had been challenged. The challenge was not entertained by a learned single Judge. The Hon'ble Division Bench also did not interfere. No relief on the prayer of the writ petitioner for non-implementation of the Situation III of the memorandum dated June 7, 2022, had been granted. Such contention is, however, disputed by Mr. Basu.

Our view is that the learned single Judge had rightly kept the writ petition pending for hearing upon exchange of affidavits. The legality of the incorporation of Situation III of the memo has to be decided in the light of the facts and circumstances pleaded in the writ petition and also in the light of the steps taken by the authorities while invoking Situation III.

This Court finds that the clause which was set aside on an earlier occasion in MAT 1030 of 2010 is different from the clause which has now been incorporated.

By the impugned memo, the L1 bidders have been given one more opportunity to offer their bids after keeping the lowest amount (tie bid) as the base. In the prima facie opinion of the Bench, the clause allows equal treatment and equal opportunity to all L1 bidders to quote at a price lower than the tied amount. As such, there is no scope for passing any interim order. The writ petition shall be decided as per the direction of Her Lordship.

In the affidavits to be filed as per the direction of the Hon'ble Single Bench, the State respondents shall categorically state how Situation III had been followed in cases of tenders floated subsequent to the memorandum dated June 7, 2022 in case of tie bids, amongst L1 bidders. Special mention as to whether the amount quoted by the L1 bidders had been kept as the base and whether the L1 bidders were asked once again to offer their competitive rates, must be stated. The observations are prima facie and the issues raised shall be decided in the writ petition.

The appeal and the application are disposed of.

There will be, however, no order as to costs.

Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)

(Partha Sarathi Chatterjee, J)