

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 25725 of 2022

Reliable Facility Services Private Limited & Anr.

Vs.

Chittaranjan National Cancer Institute & Ors.

For the petitioners : Mr. Suddhasatva Banerjee, Sr. Adv.
Mr. Soumabha Ghosh, Adv.
Mr. Sagnik Majumdar, Adv.
Ms. Shalmoli Ghosh, Adv.
Ms. Ananya Das, Adv.

For the respondent no. 5 : Mr. Kallol Basu, Sr. Adv.
Mr. Nilanjan Pal, Adv.

For the respondent nos. 1 to 4 : Ms. Aparna Banerjee, Adv.

Last Heard on : 19.12.2022

Delivered on : 23.12.2022.

Moushumi Bhattacharya, J.

1. The petitioners seek an order of injunction restraining Chittaranjan National Cancer Institute (Institute) from allowing the private respondent no. 5 to continue with the mechanised cleaning services in Chittaranjan National Cancer Research Institute and directing the respondents to forthwith award the tender to the petitioner no. 1. The Institute issued a tender for mechanised cleaning services of the Institute wherein the petitioner no. 1 and the private respondent participated. The petitioner challenged the selection of the private respondent as a successful bidder in an earlier writ petition being WPA no. 3574 of 2020 which was disposed of by a judgment dated 21.9.2022 directing the Institute to revisit the evaluation of the statutory and non-statutory documents required to be submitted by the three bidders in light of the tender conditions and come to a fresh decision within a certain time frame. Pursuant to the direction, the Institute constituted a Technical Re-evaluation Committee consisting of 5 Officers and found the private respondent to be technically-qualified for being awarded the tender over the other two bidders including the petitioner no. 1. The order passed by the Institute dated 11.11.2022 pursuant to the re-evaluation as directed by this Court, is the subject matter of challenge in the present writ petition.

2. The petitioners, through learned counsel, rely on several findings of the Court in the judgment passed in the earlier proceedings. Counsel say that the Institute has disregarded the findings and proceeded to justify the selection of

the private respondent without due regard to the tender conditions. Counsel submits that the fact of the existing contract between the Institute and the private respondent being till 24.2.2023 should not stand in the way of granting relief to the petitioners. Counsel places an order passed in the earlier round of litigation on 18.3.2021 wherein the allotment of work to the private respondent was to abide by the result of the writ petition.

3. Learned counsel appearing for the Institute places Minutes of a Meeting held on 21.10.2022 whereby the Committee found the selection of the private respondent to be proper.

4. Learned counsel appearing for the private respondent no. 5 relies on a document from the website of JSS Hospital which shows that the said hospital has 1800 beds under one roof and is one of India's biggest hospitals. Counsel submits that the private respondent fulfilled the required eligibility criteria in the tender documents and was also selected by reason of quoting the lowest bid price as compared to the petitioner and one other bidder.

5. The dispute, in this second round of litigation between the parties, is whether the Institute justified the decision of awarding the tender to the private respondent without due regard to the eligibility criteria in the tender documents. The petitioners say that private respondent was selected despite failing the required criteria. If the petitioners succeed on this point the Court would then proceed to consider whether the balance of convenience would

demand ending the contract between the Institute and the private respondent; the agreement commenced from February, 2020 and ends on 24.2.2023.

6. The judgment passed in the earlier writ petition filed by the petitioners directed the Institute to re-evaluate the eligibility of the three bidders including the petitioner no. 1 and the private respondent and come to a fresh decision. The judgment however contained certain findings in light of the tender conditions. The tender conditions / Instructions to Bidders consisted of statutory and non-statutory components. Under the first category, the bidder was required to have at least 3 years of experience in mechanised cleaning for 24x7 hours in any Government hospital with a minimum of 500 or more beds. Second, the bidder was to submit suitable documentary evidence in the form of work orders along with the tender application. The non-statutory category required submission of documents including completion certificates from any hospital with 500 or more beds in a single contract.

7. The specific findings of the Court were as follows:

- i) A successful bidder was required to show that the bidder was engaged in the work of mechanised cleaning of hospitals with 500 + beds.
- ii) The successful bidder would have to submit evidence in the form of work orders / completion certificates to show that bidder had successfully completed the work in (i) above.

- iii) The private respondent had not submitted any work order in compliance with Clause 2 of Bid A namely experience in mechanized cleaning in a government hospital with 500+ beds.
- iv) The private respondent did not submit any completion certificate with regard to a hospital with 500+ beds.
- v) Permitting the private respondent to proceed to the post-qualification evaluation level was questionable.
- vi) The documents furnished by the private respondent in the supplementary affidavit in August, 2022 were not in compliance with the tender conditions.
- vii) Awarding of the work order to the private respondent was not supported by the documents placed before the Court.

8. The Court however was not inclined to interfere with the existing contract between the Institute and the private respondent since the contract commenced from February, 2020 and a sudden stoppage of the work would result in difficulties for the Institute.

9. The impugned order dated 11.11.2022, which is under challenge in the present proceeding, supports the selection of the private respondent primarily on the ground that the private respondent performed work in JSS Hospital which is a 1800-bedded hospital. The appointed Committee of the Institute admits to the fact that the private respondent could not produce a work order but instead produced agreements with JSS Hospital. The impugned order also

refers to a performance certificate provided by JSS Medical Hospital dated 16.10.2018. The selection of the private respondent was also found to be proper on the basis of the private respondent quoting the lowest price in the bid. The impugned order, read with the Minutes of Meeting dated 21st October, 2022 of the Institute, shows that the private respondent was found to have three years experience in JSS Hospital and agreements in this regard were found to be sufficient and a substitute for work orders.

10. The reasons given for reiterating the selection of the private respondent gloss over the specific findings of the Court in the judgment dated 21st September, 2022. The Court found the selection of the private respondent to be a departure from the tender conditions, both statutory and non-statutory. The Court also found that the private respondent was not able to show any completion certificate with regard to performing mechanised cleaning services in a hospital with more than 500 beds. The Institute has clearly sought to fill in the gap of submission of required documents by relying on agreements entered into between the private respondent and JSS Hospital.

11. The reliance on JSS Hospital documents is however misplaced for the following reasons. First, the fact of JSS Hospital having 800 beds would appear from a document downloaded from the JSS Hospital website. This document can by no means be treated as evidence of the private respondent executing and successfully completing the work of mechanised cleaning services for a Hospital with 500+ beds. The document also shows that the critical and

emergency care facility has 260 beds which further lends to the ambiguity of whether the private respondent actually performed similar work for JSS Hospital with 500+ beds in one single contract.

12. Reliance on such document would also be contrary to the object of the tender conditions which is to ensure that the eligible bidders would furnish proof of having performed similar work for a hospital with 500+ beds and also having successfully completed the said work. Second, reliance on the downloaded document also amounts to an admission that the private respondent did not furnish the required documents at the relevant stage of the tender. This would be corroborated from the statements made by the private respondent in the supplementary affidavit filed in the earlier round of litigation. In this context, a particular noting in the Meeting of the Institute held on 21st October, 2022 is significant where the Committee notes that information available with the members of the Committee with regard to JSS Hospital having more than 500 beds was used in support of the private respondent. This further goes to show that the Committee ignored the weak links in the selection of the private respondent which were specifically found by the Court in the judgment dated 21st September, 2022.

13. It is relevant to point out that in taking a fresh decision, the Institute was bound to preserve the fairness of the process by re-evaluating the eligibility of the private respondent against the specific tender conditions. The Institute was hence required to state, with due regard to the evidence before the

tendering authority at the relevant point of time, that the selection was not guided by any extraneous conditions. The impugned order and the Minutes do not satisfy this benchmark of probity. The Institute has instead simply reiterated its selection and sought to gloss over the infirmities in the selection process.

14. This Court is hence of the view that the impugned decision does not stand the test of transparency which is expected in tender matters. The impugned order is accordingly quashed and set aside.

15. The other issue is whether the balance of convenience would call for interfering in the existing contract between the Institute and the private respondent. This is particularly relevant since the private respondent started its work for the Institute in February, 2020 and the contract will come to an end on 24th February, 2023. Certain conditions in the tender assume relevance in this regard. The tender/Instruction to Bidders contemplate that the second ranked bidder (the petitioner no. 1) shall be kept in reserve and may step in if the first ranked bidder (the private respondent) withdraws or fails to deposit the bank guarantee or meet the other obligations. The tender conditions also provide that an agreement / work order issued to the preferred bidder will be terminated on a material misrepresentation or false information given by the preferred bidder. The tender conditions hence provide that the second ranked bidder will take the position of the first ranked bidder on the happening of certain events.

16. The fact that the Institute, through its Committee simply returned the findings and justified its earlier selection in the cusp of completion of the agreement with the private respondent is of further significance. The writ petitioners had approached the Court in 2020 and got an order on 21st September, 2022. The Institute passed the impugned order in November, 2022. The passage of time between the filing of the earlier writ petition and the impugned order cannot be held against the petitioners if the Institute has not satisfied the expected standard of re-evaluation. The petitioners cannot be at the receiving end or be made to suffer the effect of a work order which has wrongly been issued to the private respondent in disregard of the tender conditions. In other words, an illegality cannot be permitted to continue on the defence of balance of convenience.

17. The view of the Court is strengthened by an order of a Coordinate Bench in the earlier writ petition which directed that any work allotted by the respondent would abide by the writ petition. This order was passed on 18th March, 2021 when there was sufficient time left for completion of the contract with the private respondent. If the petitioners are not given any relief despite findings in their favour, the order would be rendered meaningless. It is also significant that the respondents did not challenge the judgment passed by this Court on 21st September, 2022 directing the respondents to come to a fresh decision.

18. High Courts exercising power under Article 226 of the Constitution of India can issue a writ of mandamus or in the nature of a mandamus or necessary directions where the High Court comes to a view that a public authority has failed to exercise discretion conferred upon it by a statute, a rule or a policy decision. The High Court in its writ jurisdiction can intervene in cases where the discretion has been exercised by taking into account irrelevant considerations or by ignoring relevant considerations in a manner which is not consonant with the object for which discretion has been conferred on the authority. The object of issuing of a mandamus is to compel the performance of an act by an authority which comes within the fold of Article 226 and to prevent miscarriage of justice. The ultimate rationale of a 226 jurisdiction is to secure justice for those whose rights under Part III of the Constitution have been infringed by an authority amenable to writ jurisdiction. This Court takes inspiration from the words of Justice D.P. Madon in *Comptroller and Auditor-General of India, Gian Prakash, New Delhi vs. K.S. Jagannathan*; (1986) 2 SCC 679.

19. Therefore this is a fit case where the discretion exercised by the Institute is found to merit interference.

20. The impugned order passed by the Chittaranjan National Cancer Institute on 11.11.2022 is quashed for the above reasons. The Institute is directed to take immediate steps to terminate the contract with the private respondent no. 5 and award the remaining time of the tender to the next

eligible bidder. The Institute shall consider the findings in the judgment dated 21st September, 2022 and deal with the same and take the required steps by 1.1.2023.

21. WPA 25725 of 2022 is disposed of in accordance with the above.

22. Learned counsel appearing for the private respondent prays for stay of the operation of the judgment. Considering the findings of the Court in the judgment, the prayer for stay is considered and refused.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)