

WPA 26408 of 2022

M/s. New Siemech Engineering & anr.
Vs.
The State of West Bengal & Ors.

Adv. Poshit Deb,
Adv. Dipayan Kundu,

...for the petitioners.

Adv. Ayan Banerjee,
Adv. Debasree Dhamali,

...for the Corporation.

Adv. Subrata Guha Biswas,

...for the State.

Affidavit of service filed by the petitioners is taken on record.

The petitioners are aggrieved by an order of rejection of their technical bid by the respondents for the reason that the petitioners inadvertently uploaded the labour licence whose expiry date was 28th September, 2022 instead of the renewed labour licence which is due to expire on 29th September, 2023. The petitioners submitted an application before the concerned authority for acceptance of their technical bid upon accepting the renewed labour licence submitted by the petitioners.

It is submitted on behalf of the respondents that it is the discretion of the respondents to decide whether petitioners are eligible for the bid and the technical bid of the petitioners was rejected upon consideration of the documents submitted by the petitioners. Learned counsel has placed reliance on the authority in **B.S.N. Joshi &**

Sons Ltd. vs. Nair Coal Services Ltd. & ors. reported in **(2006) 11 SCC 548** in support of his contention, wherein the Hon'ble Supreme Court has observed that in case of failure of the party to comply with the requisite conditions which were essential for consideration of its case by the employer, the same cannot be supplied at a later stage upon ascertaining the rate quoted by others.

Though learned counsel for the respondents submits that the financial bid was opened on 5th November, 2022 and the application was submitted by the petitioners on the same day, it cannot be automatically inferred that the application was filed after the petitioners were aware of the financial bid quoted by the other bidders.

In terms of a memorandum for acceptance of tender issued by the Government of West Bengal, Finance Department, Audit Branch, Group T on 7th June, 2022, in case of minor clerical/rectifiable deficiencies in the uploaded documents of the bidders, the tender inviting authority may give an opportunity to the bidders whose technical bids are found defective due to such deficiencies, to explain their position within seven working days through e-mail.

In view of the above, this Court is inclined to hold that since according to the petitioners an earlier labour licence was uploaded in place of the renewed document, which was subsequently submitted by the petitioners before the authority, the authority be directed to consider

the application submitted by the petitioners for acceptance of the documents by recalling the decision disqualifying the petitioners, taken on 5th November, 2022.

Accordingly, the writ petition being WPA 26408 of 2022 is disposed of directing the 5th respondent to reconsider the application submitted by the petitioners dated 5th November, 2022 in the light of the observation made in the memorandum of acceptance of tender dated 7th June, 2022, upon affording reasonable opportunity of hearing to the petitioners, in accordance with law, within one month from the date of communication of this order.

Pending disposal of the application, no further step shall be taken by the authority in respect of the tender in question.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)