

6 15.12.2022

gd/ssd

MAT/1951/2022
IA NO: CAN/1/2022
MIR ABU ZAR
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Tapas Kr Ghosh,
Mr. Tanmay Chowdhury
..for the Appellant.

Mr. Nilotpal Chatterjee,
Ms. Amrita Panja Mallick
..for the State.

By this intra court appeal the appellant (writ petitioner) has challenged the order of the learned Single Judge dated 6th December, 2022 passed in WPA 26834 of 2022 dismissing the petition without any order as to costs.

The appellant had approached the writ court with the plea that the Notice Inviting Electronic Tender (NIET)-2022 dated 17.10.2022 was published by the concerned respondent and the appellant had submitted the bid and also uploaded the scanned copy of the demand draft as per NIET condition whereas the other bidders though had submitted the scanned copy of the demand drafts but they did not submit the demand drafts in original appearing before the office in physical. The first NIET dated 17.10.2022 was cancelled and thereafter the second NIET dated 24.11.2022 was

issued wherein the requirement of submitting the scanned copy of the demand draft was omitted.

Before the learned Single Judge appellant had raised the argument questioning the omission of requirement of submission of scanned copy of the demand draft in the second NIET.

Learned Single Judge has examined the same and has rejected the writ petition.

Submission of learned counsel for the appellant before this Court is that the appellant had duly complied with the condition of submission of demand draft in response to the first NIET dated 17.10.2022, hence the contract should be awarded to the appellant.

Having examined the record, it is noticed that admittedly the NIET dated 17.10.2022 has been cancelled and the cancellation of the NIET has not been challenged in the writ petition, therefore, appellant cannot contend that he should be awarded the contract in pursuance to the NIET which has already been cancelled.

Even otherwise learned counsel for the State has rightly relied upon the judgment of the Supreme Court in the matter of *Maa Binda Express Carrier and Another v. North-East Frontier Railway and Others* reported in (2014) 3 SCC 760 wherein it has been held that submission of tender in response to the NIET is no

more than making an offer which the State or its agencies are under no obligation to accept. He has also pointed out Clause 31 of the NIET dated 17.10.2022 which gives power to the tendering authority to cancel the tender without assigning any reason.

In the aforesaid circumstances of the case, we are of the opinion that the learned Single Judge has committed no error in dismissing the writ petition. Hence, no ground for interference in the present appeal is made out. The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj J.)

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