

Sl No. 17
04.03.2022.
Ct No. 2

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)**

**WPA 188 of 2022
Swastik Traders**

-versus

State of West Bengal & Ors.

Mr. Sandip Mandal
Mr. Abhilash Mittal
... for the petitioner.

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman
... for the State respondents.

The District Magistrate, Darjeeling published a Notice Inviting e-Quotation from self help group/bonafide Carrying & Storing agents for lifting and carrying of rice from the godown of Food Corporation of India, Siliguri to different zonal godowns of the different ICDS projects of the Darjeeling district and carrying of food items from zonal godown to various Anganwadi Centres. The eligibility of the contractor to participate in the said tender mentions "having similar nature of work".

The petitioner participated in the tender process. The technical bids have been opened and the process is pending at the financial bid stage. The petitioner as well

as the private respondents qualified in the technical bid stage.

From the documents uploaded in the portal of the respondent authority, the petitioner could lay his hands upon certain documents, which were allegedly submitted and relied upon by the private respondents in support of their eligibility to participate in the tender process.

One of such experience certificates mentions that the party concerned successfully supplied safety and hygiene kits to the AWCs of Matigara ICDS Project, Darjeeling. A further certificate from the Prodhan of the Gram Panchayat in favour of a separate candidate mentions that the candidate has successfully completed the work "Construction of pucca road from Jagadish Barman house to river side at Nimai". The other certificate mentions that the participant(s) have successfully supplied various materials and equipments including sanitizers, hand wash and mask to the Anganwadi centres under Kharibari ICDS Project.

According to the petitioner the aforesaid documents does not show that the candidates have the experience of performing similar nature of work.

The petitioner submits that the aforesaid candidates ought not to be held successful in the technical bid stage.

The petitioner filed a representation before the District Magistrate, Darjeeling on November 9, 2021 highlighting the illegalities which were allegedly committed at the time of opening the tender bid.

The petitioner alleges that the representation has not been considered till date.

Learned advocate representing the respondents submits that for the purpose of deciding the eligibility criteria of a participant is whether the participant had a proper godown or not. The certificate of previous experience, if any, ought to have been enclosed. It has been submitted that it may not be necessary that all the participants have experience of performing similar nature of work. The Courts ought not to entertain petition from competing participants especially in tender matters.

Learned advocate for the petitioner has relied upon a judgment delivered by the Hon'ble Division Bench of Chhattisgarh High Court on March 25, 2021 in the matter of Raipur Construction Pvt. Ltd. v. State of Chhattisgarh wherein a similar issue with regard to the eligibility of a tenderer was taken into consideration.

It appears from the submissions made on behalf of the parties and the documents relied upon that the tender was called specifically for the purpose of carrying and storing food items i.e. rice etc. The documents in respect of the private respondents annexed to the writ

petition certainly do not speak of experience gained by the tenderers for storing or carrying food items.

Whether the aforesaid documents were at all taken into consideration by the respondent authority or whether there are other documents supporting their eligibility in terms of the NleQ has to be looked into by the tender conducting authority. The objection raised by the petitioner by way of representation is pending consideration before the District Magistrate, Darjeeling.

Accordingly, the instant writ petition is disposed of by directing the District Magistrate, Darjeeling to consider the representation filed by the petitioner and to enquire as to the documents relied upon by the tenderers in support of their eligibility in terms of the NleQ No. 1 dated October 8, 2021.

The aforesaid respondent shall pass a reasoned order within a period of six weeks from the date of communication of a copy of this order and communicate the reasoned order to the petitioner immediately thereafter. If required, the District Magistrate shall afford an opportunity of hearing to all the participating tenderers to take a decision in the matter.

The District Magistrate shall not finalize the tender in question prior to deciding the objection raised by the petitioner.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)