

22.02.2023
sayandeep
Sl. No. 02
Ct. No. 05

WPA 8 of 2023
With
IA NO: CAN 01 of 2023

Chena Ram Choudhury
-Versus-
West Bengal State Warehousing Corporation & Ors.

Mr. Debabrata Saha Roy
Mr. Subhankar Das
Mr. Neil Basu
Mr. Shankha Biswas

.....for the petitioner

Mr. S. N. Mookherjee
Mr. Kamalesh Bhattacharya
Mr. Anindya Bhattacharya

.....for the WBSWC

Mr. Kishore Dutta
Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal

.....for the respondent No. 6

This application has been filed by the respondent no. 6, in the tender under consideration, for vacating an interim order passed by a Coordinate Bench on 2.1.2023. By the said interim order, the respondent West Bengal State Warehousing Corporation was restrained from issuing any work order in the impugned tender till 31.1.2023. The interim order was extended by this Court on 31.3.2023 till 10.3.2023.

The applicant who seeks vacating of the interim order is the successful tenderer in the e-Tender floated by the Corporation for handling and transportation of

food grains at Corporation managed warehouses and godowns.

The case of the writ petitioner is that the writ petitioner was not declared as the successful bidder in terms of a technical evaluation sheet dated 12.12.2022. The writ petitioner accordingly sought for a restraint on the respondents from issuing any other communications / orders in favour of the private respondent no. 6 in terms of the financial bid summary.

The contention of the petitioner, as made by learned counsel, is that the respondent no. 6 was selected as the successful bidder despite the said respondent not fulfilling the tender conditions of uploading documents which were required to be uploaded under the Tender terms. Counsel submits that the Corporation has acted in an arbitrary manner in selecting the private respondent no. 6 and rejecting the technical and financial bids of the petitioner. Learned counsel appearing for the Corporation seeks to rely on a Minutes of Meeting dated 28.11.2022 by which the private respondent no. 6 was called upon to submit work experience certificate mentioning the volume of work from the Issuing Authority.

Learned counsel appearing for the private respondent no. 6 relies on the Minutes of the Meeting of the Tender Committee held on 21.12.2022 wherein the

complaint made against the private respondent / successful bidder was found to be unjustified. Counsel submits that this Minutes were not disclosed by the petitioner to the Court at the time of obtaining the interim order.

The dispute revolves around the relevant terms of the e-Tender and the Tender documents in relation to the Notice inviting e-Tender. Clause 7.6 stipulates that bidders must upload scanned copies of the documents referred to in Clauses 7.1. – 7.4 in respect of their eligibility. Clause 7.6 further provides that if any of the documents are found to be manipulated during verification, the EMD of the bidder shall be forfeited and the bidder shall be disqualified from future participation in the tenders of the Corporation for 5 years. The contention of the petitioner that the respondent no. 6 was shown undue favours by not putting in required documents under Clause 7.6.1 and being allowed to put in additional documents after the opening of the Tender would be belied by Clause 8.1.4 of the Tender documents which provides that the Committee may summon any of the bidders and seek clarification/information or additional documents or originals of the documents already submitted during tender evaluation. Clause 8.1.4 does not contain any embargo on the Committee to call for additional

documents after the date on which the documents were to be uploaded. The Clause also does not mention any time limit within which additional documents will have to be called for from the bidders for the purpose of clarification. The Minutes of the Meeting of the Tender Committee held on 28.11.2022 shows that the private respondent was called upon to submit documents with regard to work experience certificate mentioning the volume of work from the Issuing Authority. Hence, the Minutes read with Clause 8.1.4 shows that the Tender Committee did not show any undue favours to the private respondent since Clause 8.1.4 authorises the Committee to call for documents during evaluation.

Moreover, the Minutes of the Tender Committee Meeting dated 21.12.2022 shows that the Committee considered the complaint against the private respondent and found that the complaint was not justified. This was not shown by the petitioner to the Co-ordinate Bench on 2.1.2023 at the time of obtaining the interim order. The interim order hence proceeded on the basis that the respondent no. 6 was selected despite not fulfilling the mandatory Tender conditions. The Minutes dated 21.12.2022 was a vital document which changes the initial impression given by the petitioner.

Both the Minutes of the Tender Committee dated 28.11.2022 and 21.12.2022 shows that the Tender

Committee considered the complaint against the private respondent and came to a decision. Clause 8.1.4 also does not assist the petitioner in having the interim order continued.

All the above factors dispel any contention of arbitrariness or favouritism on the part of the Corporation. The documents do not disclose any undue favours granted to the respondent no. 6 who, like several others, was called upon to submit further documents as is reflected from the Minutes dated 28.11.2022. *Hari Shankar Das vs. Indian Oil Corporation*, a decision of a Co-ordinate Bench in WP 24486 (W) of 2012 may not fully apply to the facts of this case since in that case the petitioner was also called upon to produce additional documents which led the Court to hold that there was no nepotism or favouritism.

CAN 1 of 2023 is allowed and disposed of for the above reasons. The interim order dated 2.1.2023 and all further extensions of the interim order are vacated.

Since this court has not found any arbitrariness on the part of the Corporation in awarding the Tender to the respondent no. 6, nothing further remains to be adjudicated in the writ petition. WPA 8 of 2023 is accordingly dismissed without any order as to costs.

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

(Moushumi Bhattacharya, J.)