

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**Present :**

**The Hon'ble Justice Moushumi Bhattacharya**

**W.P.A. 613 of 2023**  
**With**  
**CAN 1 of 2023**

**Dulal Biswas**  
**Versus**  
**The West Bengal Council of**  
**Higher Secondary Education and others**

|                         |   |                                                                                                    |
|-------------------------|---|----------------------------------------------------------------------------------------------------|
| For the petitioner      | : | Mr. Anindya Bose, Adv.<br>Mr. Suman Banerjee, Adv.                                                 |
| For the WBCHSE          | : | Mr. Santanu Kumar Mitra,, Adv.,<br>Mr. Amartya Pal, Adv.                                           |
| For the respondent no.5 | : | Mr. Partha Sarathi Bhattacharyya,, Adv.<br>Mr. Raju Bhattacharyya, Adv.<br>Mr. Arunava Maiti, Adv. |
| Last Heard on           | : | 11 <sup>th</sup> May, 2023                                                                         |
| Delivered on            | : | 12 <sup>th</sup> May, 2023                                                                         |

**Moushumi Bhattacharya, J.**

1. The petitioner was granted an interim order by a co-ordinate Bench on 9<sup>th</sup> January, 2023. By the said order, the work order issued by the

respondent, West Bengal Council of Higher Secondary Education in favour of the private respondent no.5 was directed to be stayed. The said interim order was passed in the absence of the respondents which is recorded in the interim order itself.

2. The respondent/Council has since filed an application being CAN 1 of 2023 for vacating the interim order dated 9<sup>th</sup> January, 2023, the application as well as the writ petition are both being disposed of by this judgment.
3. The tender-in-question was floated on 7<sup>th</sup> December, 2022 by the Council for disposal of stacked materials (Non-lab Project Note Book-Exam 2022); this is the description of the work reflected in the Quotation Inviting Tender.
4. The petitioner challenged the Terms and Conditions of the Tender specifically on Clauses 5 and 9 of the Terms. Clause 5 requires the bidder to submit a credential certificate of the successful satisfactory completion of Rs.40 lacs over a single job from any educational department of Government organization and Clause 9 requires an experience certificate of 5 years for similar type of job for any Educational department of the West Bengal Government organization.
5. The petitioner says that these clauses are arbitrary as the bidders should not be required to provide either an experience certificate or a credential certificate showing satisfaction as to completion of work from a

Government organisation/department of West Bengal. The petitioner also says that the nature of work contemplated in the Tender does not warrant either of the certificates under Clauses 5 or 9.

6. The material disclosed in the vacating application filed by the Council contains a minutes of meeting of the Tender Sub-Committee of the Council held on 27<sup>th</sup> December, 2022 which states that the members of the Tender Sub-Committee evaluated the technical proposal submitted by the bidders and that the petitioner's technical bid was rejected due to the Solvency Certificate not containing any reference to the current bank balance which is mandatory for checking the solvency of the bidder. The minutes also record the rejection of two other bidders on the ground of the solvency certificates not having been submitted.
7. In the context of the rejection indicated in the minutes, the solvency certificates enclosed in the pleadings and submitted by the petitioner states that the turn over of the petitioner for the accounts of the last financial year 2021-2022 is over Rs.75 lacs.
8. Several conclusions can be drawn from the documents disclosed by the Council. First, that the rejection of the petitioner's technical bid was not with reference to the requirements of Clauses 5 or 9 of the Terms and Conditions but with reference to Clause 4 of the Terms. Second, Clause 4 of the Terms requires the bidder to provide among other documents a

Solvency Certificate of the amount of Rs.50 lacs from any Nationalized Bank. In the present case, the Solvency Certificate furnished by the petitioner states that the petitioner's turn over as would be reflected from the accounts of the last financial year of 2021-2022 is Rs.75 lacs.

9. A reasonable construction of Clause 4 of the Tender Terms is that the prospective bidder must prove solvency to the extent of Rs.50 lacs on the date of uploading the tender documents. The document furnished by the petitioner does not satisfy this requirement as on the date of submission of the tender documents. Solvency Certificate simply states that the petitioner's accounts in the financial year 2021-2022 is Rs.75 lacs. The Solvency Certificate is dated 24<sup>th</sup> November, 2022. The concerned tender was floated on 7<sup>th</sup> December, 2022. Apart from the reasonable condition given by the court, it is settled that the construction of the terms and conditions of the Tender would depend on the construction given to such terms by the Tendering Authority which, in this case, is the Council. Even otherwise, the Tender Sub-Committee which evaluated the bids given by the bidders clearly indicated the reason for the petitioner's rejection. Hence, it cannot be said that the petitioner's rejection suffers from a lack of reasons or is arbitrary.

10. With reference to Clauses 5 and 9 even though these clauses were not taken into consideration by the Council, it is well settled that the bidder cannot dictate the terms of a tender document. Reference in this context

may be made to (2004) SCC 19 (*Directorate of Education and others Vs. Educomp Datamatics Ltd. and others*) where the Supreme Court gave the Government/Tendering Authority a free hand in setting the terms of the tender and held that it must have reasonable play in the joints in framing the terms in an administrative sphere. The Supreme Court further held that courts could not strike down the terms of the tender prescribed by the Authority and substitute them with terms which are fairer, wiser or more logical to the court.

11. More significantly, the petitioner has not challenged the rejection of the petitioner's technical bid at the time of filing of the writ petition. The challenge was only subsequently made in an application filed by the petitioner. The application, hence, can be seen as after thought made only after the petitioner became wiser.
12. In (2022)6 SCC 127 (*N. G. Projects Limited Vs. Vinod Kumar Jain and others*) Supreme Court further cautioned the High Courts from in matter of this nature and held that even where the court finds total arbitrariness in the tender, the court should refrain from interfering in the grant of tender but should relegate the parties to seek damages for the wrongful exclusion.
13. The above reasons persuade this court to deny the relief prayed for. This court finds no arbitrariness or *mala fides* on the part of the respondents in the facts of the present case. The interim order dated 9<sup>th</sup> January, 2023,

which, in any event, was not passed on considering the merits, is hence vacated.

14. W.P.A.613 of 2023 along with CAN 1 of 2023 are disposed of in terms of the above.

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

**(Moushumi Bhattacharya, J.)**