IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.1962 of 2023

PRODYUT KUMAR CHAKRAVORTY

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner	: Mr. Kamalesh Bhattacharya, Adv., Mr. Rezaul Hossain, Adv.
For the University	: Mr. Washef Ali Mondal, Adv.
For respondent no.7	: Mr. Sunny Nandy, Adv., Ms. Riya Das, Adv., Mr. Subha Pathak, Adv.
For the State	: Mr. Nilotpal Chatterjee, Adv., Mr. Debraj Sahu, Adv.
Hearing concluded on	: 11.04.2023
Judgment on	: 12.09.2023

Kausik Chanda, J.:-

A tender was floated on September 5, 2022, by Raiganj University for engagement of Security Service at the university and at Vice-Chancellor Bungalow.

2. In response to the notice inviting tender, seven security agencies, including the petitioner and respondent no.7 had applied and submitted their respective bids.

3. The tender Committee of the university opened the technical bids on October 21, 2022. The financial bids were opened on January 9, 2023. Eventually, a letter of intent was issued on January 24, 2023, in favour of the Internal Security Agency, respondent no.7.

4. The writ petitioner has challenged the said decision of the university by filing this writ petition.

5. It has been submitted by Mr. Kamalesh Bhattacharya, learned advocate appearing on behalf of the petitioner, that as per the notice inviting tender, respondent no.7 namely, Internal Security Service was disqualified as it had no solvency certificate of Rs.1 Crore from a scheduled or nationalised bank.

6. It has further been submitted by Mr. Bhattacharya that respondent no.7 had no valid licence issued by the Department of Home of the State under the Private Security Agencies (Regulation)

Act, 2005 for the operation of security services, which was one of the essential conditions to participate in the tender process.

7. Mr. Bhattacharya has submitted that the writ petitioner met all the conditions for participation in the tender process, but the university has allowed respondent no.7 to participate in the tender process without having any power to relax the conditions prescribed in the tender notice.

8. Mr. Bhattacharya has submitted that the petitioner holds a solvency certificate of Rs.1 Crore from the State Bank of India and it also possesses a valid licence for operating the business of security service from the relevant department of the State.

9. To refute the point of maintainability of the writ petition as raised by the university, Mr. Bhattacharya has argued that the petitioner as a partner of a registered partnership firm under the Indian Partnership Act, 1932, can move the writ petition in his own name as per Order XXX Rule 1 and Rule 2 of the Civil Procedure Code, 1908.

10. The learned advocate appearing on behalf of the university, on the other hand, has submitted that for the tender in question, the firm of the writ petitioner was also not qualified. It was found that two bidders namely, Awadesh Security Services Pvt. Ltd. and Internal Security

Service (respondent no.7) had no sufficient solvency certificate as per the said tender notice dated September 5, 2022. The Committee also found that the solvency certificate submitted by the partnership firm (Raiganj Ex-Servicemen Security Agency) of the petitioner from the State Bank of India dated April 12, 2022, was not in terms of the said tender notice inasmuch as the same was based on the audited balance sheet for the financial year 2020-2021, while the relevant tender was issued during the financial year 2022-2023. The university maintains that in allowing the aforesaid three bidders, including the writ petitioner, to take part in the financial bid, it did not confer any undue or special advantage to them. This was done for the best interest of the university in terms of Clause 5 of the terms and conditions of the tender in question. It has been submitted by the learned advocate appearing for the university that the tender committee of the university had exercised the power within its jurisdiction to sub-serve the best interest of the university. Such decision of the tender committee is neither arbitrary nor not discriminatory against any of the bidders as no special relaxation has been given to respondent no.7.

11. The university adds that the writ petition is not maintainable since it has been filed in the individual capacity of the petitioner

without impleading the other partner of the firm as a party to the proceeding and it was not filed in the name of the partnership firm.

12. It has been further submitted by the university since there is no public element involved, this Court should not entertain this writ petition. Furthermore, the university submits that the technical bids were opened on October 21, 2022, and the names of the qualified bidders in the technical bids were uploaded on the website. The writ petitioner did not approach the Court till the opening of the financial bid on January 9, 2023. Only when his firm could not succeed in the financial bid, he approached this Court. The writ petitioner as an unsuccessful bidder, after consciously participating in the bidding, cannot challenge the tender process.

13. The university suggests that after opening the financial bid on January 9, 2023, the tender committee found that one Awadesh Security Services had submitted the lowest financial bid followed by respondent no.7. Since the financial bid of Awadesh Security Services was too low, violating the Minimum Wages Act, it was not accepted by the tender committee. The writ petitioner's agency i.e. Raiganj Ex-Servicemen Security Agency was the fourth lowest bidder. Therefore, the said agency was not selected in the tender process. It has also been submitted by the university that in view of the arbitration clause

contained in the tender notice, the present writ petition should not be maintained before this Court. Regarding the licence of respondent no.7, the university has submitted that the said licence was valid till January 31, 2022, and respondent no.7 had applied for renewal prior to its expiry. During the pendency of the renewal of the licence, the bid of respondent no.7 was considered and the letter of intent was issued in favour of respondent no.7 on January 24, 2023, on the condition that the said agency should produce a valid licence before entering into the agreement with the university.

14. In support of his submission, the learned advocate appearing for the university has relied upon the following judgments of the Supreme Court: **(2005) 6 SCC 138 (*Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*), (2014) 3 SCC 760 (*Maa Binda Express Carrier v. North-East Frontier Railway*), (2007) 14 SCC 517 (*Jagdish Mandal v. State of Orissa*)** and **(2000) 2 SCC 617 (*Air India Ltd. v. Cochin International Airport Ltd.*)**.

15. The learned advocate appearing on behalf of respondent no.7 also has submitted that the writ petition should have been filed by the partnership firm, represented by one of his partners, and not by any partner representing the firm. It has been further submitted that the status of the partnership firm has also not been specifically

disclosed in the writ petition. Though in the writ petition, it has been pleaded that the firm is registered under the Societies Registration Act, 1860, the documents disclosed in the affidavit-in-reply suggest that the said firm has been registered before the Additional District Sub-Registrar at Raiganj.

16. It has also been submitted that the writ petitioner's firm does not fulfill the eligibility criteria as disclosed in the tender notice since its average annual turnover of the previous three financial years was below Rs.1 Crore. It has been submitted that the petitioner has a poor reputation name whereas respondent no.7 has a good reputation and substantial credentials for the tender job.

17. To deal with the maintainability of the writ petition, it needs to be noticed that the Raiganj Ex-Servicemen Security Service agency has been registered under the Indian Partnership Act, 1932, with the Registrar of Firms, West Bengal.

18. The writ petition has been filed by one of the partners, Prodyut Kumar Chakravorty. In the cause title, the petitioner has been described as follows:

> "*Prodyut Kumar Chakravorty, son of late Paresh Chandra Chakraborty, partner of Raiganj Ex-Servicemen Security Agency, residing at Ukilpara, Post Office and Police Station-Raiganj, District- Uttar Dinajpur, PIN-733134.*"

19. The writ petitioner pleads that another partner of the firm is his wife, who empowered him to file the writ petition.

20. It has been held by the Supreme Court in the judgment reported at **(1974) 2 SCC 348 (*Andhra Industrial Works v. Chief Controller of Imports*)** that a firm can maintain a writ petition in its own name as it stands for all the partners collectively. The writ petition filed by the firm is to be deemed to have been filed by all the partners. The relevant part of the said judgment is quoted below:

> "**8.** We find no merit in the preliminary objection that the writ petition on behalf of the "firm" is not maintainable. Since "firm" stands for all the partners collectively, the petition is to be deemed to have been filed by all the partners who are citizens of India. We, therefore, negative this objection."

21. In the present case, the writ petitioner has been filed by one of the partners of the firm though in the tender process, the partnership firm was the bidder.

22. The Indian Partnership Act, 1932, does not provide a separate and distinct legal identity to a partnership firm from its individual members. In the eyes of law, a partnership firm is not a separate legal entity like a company or corporation. It is considered to be an association of individuals who join together to carry on a business for profit. The partners in a partnership firm are personally liable for the firm's debts and obligations.

23. The aforesaid perspective finds support from the judgment of the Supreme Court reported at **(1977) 1 SCC 431 (*Commissioner of Income Tax, Madras v. R.M. Chidambaram Pillai*)**, where it has been held that a firm is not a legal person even though it has some attributes of personality. Another judgment reported at **(1979) 3 SCC 83 (*Munshi Ram v. Municipal Committee, Chheharta*)** reiterates this position. The relevant part thereof is quoted below:

> "**17.** "Partnership" as defined in Section 4 of the Indian Partnership Act, 1932, is the relation between persons who have agreed to share the profits of a *business carried on by all or any of them* for the benefit of all. The section further makes it clear that a firm or partnership is not a legal entity separate and distinct from the partners. Firm is only a compendious description of the individuals who compose the firm. …"

24. I am, therefore, of the view that though the firm, namely Raiganj Ex-Servicemen Security Service was allowed to participate in the bid, any of its partners had the right to file the writ petition in their own name as a partner of the firm to challenge the action of the university.

25. With regard to the merits of the case, it is an admitted fact by the university that the two bidders namely Awadesh Security Services Pvt. Ltd. and Internal Security Service (respondent no.7), had no sufficient bank solvency in terms of the tender notice dated September 5, 2022. The committee also found that the solvency certificate submitted by Raiganj Ex-Servicemen Security Service from the State Bank of India did not comply

with the terms of the tender notice. The university, however, allowed the said three bidders to participate in a technical bid relying upon Clause 5 of the terms and conditions of the tender notice which reads as follows:

> "**5. Rejection of Bid**
> Any deviation will make the bid liable to rejection/ Raiganj University, reserves the right to accept any tender, not necessarily the lowest, reject any tender without assigning any reason and accept any tender for all or any one or more items for which tender has been submitted."

26. I am of the view that the aforesaid Clause does not permit the university to allow any bidders to participate in the tender process without relaxing the stipulated terms and conditions of the tender. If the university was at all desirous to relax any of the terms and conditions of the tender, it should have done so by invoking Clause 3 of the tender document by issuance of a corrigendum on the website prior to the deadline for submission of the proposals. The said Clause 3 is quoted below:

> "**3. Amendment of Invitation**
> Raiganj University reserves the right to add/modify/delete any portion of this document by issuance of a Corrigendum, at any time 1 day prior to the deadline for submission of proposals that would be published on the website. The Corrigendum shall be binding on all bidders and will form part of the bid documents."

27. The university also admits that respondent no.7, on the date of making the application, did not possess a valid licence issued by the Home

Department of the State though it had applied for the renewal of the said licence before its expiry period.

28. No doubt, the tender notice was a representation before the public at large. The action of the university in allowing the aforesaid three firms, including the writ petitioner, to bid without adhering to the terms and conditions of the tender has deprived the other prospective bidders who could not avail the benefit of such relaxation.

29. While a Writ Court should not sit in appeal over the decision of a tender committee in awarding a tender, it is within the scope of a Writ Court to interfere with the tender process when it has been conducted in violation of the express terms and conditions of the tender, resulting unfair treatment to the bidders or potential bidders.

30. Having regard to the specific factual context of this case as indicated above, it is not necessary to deal with the judgments relied upon by the learned advocate appearing for the university separately since they pertain to different facts. There cannot be, however, any quarrel with the proposition of law as laid down therein.

31. In that view of the matter, the tender process initiated by the university following the notice dated September 5, 2022, is set aside. Consequently, the letter of intent in favour of respondent no.7 is also set aside. The university will be at liberty to issue a fresh tender notice inviting applications from eligible bidders.

32. Accordingly, W.P.A. No.1962 of 2023 is allowed.

33. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)