AD-29
Ct No.09
18.12.2023
TN

WPA No. 3879 of 2023

M/s Neogi Construction and Company and another
Vs.
The State of West Bengal and others

Mr. S. Majumder,
Mr. H. Ghosh

.... for the petitioners

Mr. Samrat Sen,
Mr. Deepnath Ray Chowdhury,
Ms. Manali Ali

.... for the State

1. Learned counsel for the petitioners contends that the petitioner no.1 participated in a tender for providing security personnel.

2. The first such tender was cancelled, since none of the participants fulfilled necessary criteria.

3. The bid of the respondent no.4, M/s Debnath Construction was rejected, *inter alia,* on the ground that it failed to produce the professional tax certificate.

4. Subsequently it is argued, a fresh tender was floated in which both the petitioners and the respondent no.4 also participated along with others. Whereas the petitioner no.1's bid was rejected on other grounds, the bid of the respondent no. 4 was accepted on the premise that the bid was as per norms. Learned counsel for the petitioners contends that the respondent no.4 did not have any professional tax certificate in the name of the said firm even at the juncture of the subsequent tender and, as such, the selection was improper and *de hors* the conditions of the tender document.

5. Learned counsel for the petitioners places reliance on Clause 18.3 of the tender document which indicates that if any document required to be submitted for e-Tender by the bidder in his technical proposal is not submitted or is found to be deficient in any manner at any stage after opening of bid, the bid may be summarily rejected.

6. By placing reliance on the chart of the documents required to be produced, which is also a part of the tender, it is argued that the said check list included professional tax registration/any challan deposited in last six months from scheduled date of e-tender opening.

7. Insofar as *locus standi* is concerned, on the query of court, learned counsel for the petitioners argues that if the petitioners succeed, the entire tender process is required to be cancelled, as the respondent no.4 was the only successful bidder, in which case a fresh tender has to be issued, in which the petitioner can also participate.

8. Learned senior counsel appearing for the respondent-authorities places reliance on Clause 21.2 of the tender document, which provides that during evaluation the Committee may summon bidders and seek clarification/information or additional documents or original hard copies of documents submitted online.

9. Also placing reliance on the averment of the petitioners in the writ petition at page-5 of the same, it is pointed out that even as per the petitioners, since there is no registration of professional tax in the name of respondent no.4, as such there is no name of respondent no.4 in the concerned tax enrolment but after making payment of professional tax in the name of Ratan Kumar Debnath, the respondent no.4 was selected as successful bidder in respect of the said NIT.

10. It is also pointed out that the impugned tender was on its third call. Learned counsel also places reliance on the second call annexed at page-17 and submits that as per the same, the tender is only for one year, subject to renewal at the end of each completed year.

11. Learned counsel for the petitioners contends that the respondents are about to renew the contract in favour of respondent no.4; thus, the cause of action survives.

12. It is seen from the impugned rejection of the petitioners' bid and acceptance of the bid of the respondent no.4 dated January 06, 2023 that the petitioner no.1, in any event, was turned down at the technical stage, having failed to comply with the provisions other than the one now complained of. Hence, the scope of the present challenge at the behest of the petitioners is extremely limited. The petitioners have to show that the bid of the successful tenderer, that is, respondent no.4 was so violative of the provisions of the tender document that no reasonable man could accept the same.

13. It is, in any event, well-settled that the discretion lies ultimately with the employer/tender issuing authorities to ascertain the interpretation of the clauses of the tender and as to the weight to be attached to each of the clauses thereof.

14. In the present case, even if it is accepted for argument's sake that the tender issuing authorities had accepted the professional tax certificate in the name of the sole proprietor of the respondent no.4-firm, it is not for the writ court to substitute its own prudence in place of that of the tender issuing authorities.

15. In the event the petitioner no.1 was rejected on similar ground, the petitioners would have an arguable case on such count on the ground of parity. However, it not being so, the petitioners cannot take the point that the tender issuing authorities erroneously interpreted the tender clauses.

16. In any event, the writ petition has been taken out as a chance proceeding, on the conjecture that the respondent no.4 did not comply with the tender conditions relating to furnishing professional tax certificate. There is nothing on record to clinch beyond reasonable doubt that the respondent no.4 did not have any professional tax certificate at the relevant point of time or that the respondent no.4 had not satisfied the tender issuing authorities in terms of Clause 21.2 upon giving a subsequent clarification after submitting the bid.

17. Thus, the present challenge has to enter the arena of conjecture and surmise in order to succeed. However, the well-settled legal principle is that the call of the tender issuing authorities is final insofar as the implication of a particular tender clause is concerned.

18. In any event, the tender has since attained fruition, since the work order issued to the respondent no.4 has almost reached its terminus.

19. In such view of the matter, the writ petition does not call for interference under Article 226 of the Constitution of India.

20. Accordingly, WPA No. 3879 of 2023 is dismissed on contest without any order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)