

16.05.2023
Court No. 19
Item 23
CP

W.P.A. No. 5507 of 2023
Pramanik and Roy Construction & Anr.
Vs.
Purba Medinipur Zilla Parishad & Ors.

Mr. Debabrata Saha Roy,
Mr. Subhankar Das,
Mr. Neil Basu
Mr. Sankha Biswas
....for the Petitioners.

Mr. Uttam Kumar Bhattacharya,
...for the Respondent nos. 1 to 6.

The writ petition had been filed challenging the cancellation of the technical bid of the petitioner. The petitioner participated in NIT-27 of 2022-23 dated January 18, 2023. The date for opening of the technical bid was February 6, 2023. After evaluation of the technical bid, the petitioner was intimated that the petitioner had failed to qualify at the technical round. The decision of rejection of the technical bid was uploaded by the Purba Medinipur Zilla Parishad on February 15, 2023.

The petitioner contended that the cancellation of the bid was pre-determined by the authority and in order to disqualify the petitioner, an inspection of the work which was completed on February 17, 2022, was again held by the authority behind the back of the petitioner, on February 9, 2023.

Relying on the completion certificate dated November 3, 2022, the petitioner submitted that the remarks of the District Engineer, Purba Medinipur Zilla Parishad indicated that the performance of the agency was satisfactory and the final bill of Rs.73,78,776.00 was under process.

According to Mr. Saha Roy, learned advocate for the petitioners, the said inspection was held February 9, 2023 which was after opening of the technical bid and only to justify the decision already taken by the authority to intentionally and arbitrarily disqualify the petitioner from the tender process. He further contended that in order to further justify an otherwise illegal decision, the authority held an inspection of the work which was completed a year ago and in respect of which a satisfactory completion certificate had been given by the authority. The certificate was cancelled and/or withdrawn on February 24, 2023, again as a justification to the illegal rejection of the technical bid. The reason for such cancellation/withdrawal was inadvertence of the District Engineer.

The court deemed it fit to go into the records of the case and framed some issues. The respondent was directed to file a report and the records. The petitioner filed exceptions to the report.

Today, the matter has come up for final hearing and Mr. Bhattacharya, learned advocate for the respondent nos. 1 to 6, has produced the original records. The only reason to call for the records was that the court had to be satisfied that the decision to disqualify the petitioner in the technical round was neither arbitrary nor in violation of the notice inviting tender and the procedure adopted by the tender committee was reasonable and justified.

In the report filed by the Purba Medinipur Zilla Parishad it had been stated that several letters had been issued to the petitioner with regard to the poor quality of its performance with regard to NIT – 08 of 2020-21. Such letters were issued both by the Assistant Engineer and the District Engineer of the said zilla parishad. As many as five letters had been relied upon by the zilla parishad in justification of their evaluation of the performance of the petitioner. A mass petition filed by the villagers before the zilla parishad was also referred to.

Today, the records have been produced in support of the fact that the decision of the tender committee was independent and neither the District Engineer nor the Assistant Engineer had influenced such decision based on the subsequent inspection which was held on February 9, 2023. The decision to withdraw the completion certificate by a subsequent

letter dated February 24, 2023 was also not taken into consideration. The entire documents which were before the tender committee have been produced before the court. Copies of the same have also been served upon the learned advocate-on-record for the petitioners. It appears from the 4th and the 5th page of the resolution of the tender committee dated February 13, 2023 that the decision to approve or disapprove the technical bids of the participants had been taken on February 13, 2023 at 1 pm. The entire technical evaluation of all the participants with regard to NIT- 27 of 2022-23 was done by the tender committee and the tender committee unanimously resolved not to accept the technical bid of the petitioner on the ground that the agency did not complete the work relating to Serial No.39 of NIT – 8 of 2020-21, to the satisfaction of the authority and according to the notice inviting tender. Several letters which were issued to the agency both by the Assistant Engineer and the District Engineer, have been looked into by the tender committee while taking such decision.

It also appears that the tender committee was apprised of the complaint lodged by the local villagers and the zilla parishad members with regard to the use of sub-standard materials by the petitioner during execution of the work. In respect of a work

connected with Serial No.68 of NIT-21 of 2018-19, a public interest litigation is also pending against the petitioner before the High Court.

Thus, the fact that the tender committee had looked into the performance of the petitioner before rejecting the claim is available from the records. Such decision was taken on February 13, 2023, i.e. prior to the date when such decision was communicated. The inspection dated February 9, 2023 which was held by the Additional District Magistrate (Zilla Parishad) with regard to the performance of the petitioner was not the basis for decision of the tender committee. The tender committee proceeded on the basis that the agency had been repeatedly reminded to complete the work relating to Serial No. 39 of NIT-8 of 2020-21 and local villagers and other members had also complained about the low quality materials which were used by the said agency. The tender committee was also influenced by the fact that a public interest litigation is pending against the said agency. Hence, upon evaluation of such aspects, the tender committee was of the opinion that the agency should not qualify the technical round.

The allegation of the petitioner that the decision of the tender committee was influenced by the subsequent inspection held on February 9, 2023

and the decision to withdraw the completion certificate on February 24, 2023, is not reflected from the decision of the tender committee.

Rule 91(5) of the West Bengal Panchayat (Zilla Parishad and Panchayat Samiti) Accounts and Finance Rules, 2003, mandates that a tender selection committee comprising of 5 to 7 members should evaluate the tender papers including the specifications, materials, services etc. and also the antecedents and past records of the tenderers. Their financial status, experience, standard and quality of earlier job performance must be looked into by the tender selection committee. Hence, the tender selection committee was within its powers to decide on the basis of the numerous letters written to the petitioner and on the basis of the letters received from the public at large including the factum of pendency of the public interest litigation against the agency, and decide to reject the technical bid of the petitioner for unsatisfactory in the past performance.

Even if the completion certificate indicated that the work was satisfactorily completed in February, 2022, the said certificate issued by an Assistant Engineer or a District Engineer, cannot take away the power or the jurisdiction of the tender selection committee to evaluate the technical bid of a tenderer on the basis of past performances. The delay in

completion of the earlier work concerning NIT – 8 of 2020-21, by almost two years is available in the records. The numerous letters that had to be issued to the said agency, till the agency had ultimately completed the work, are also on record.

The nature of performance of the petitioner in the NIT – 8 of 2020-21, the complaints of the villagers, members of the zilla parishad and the pending public interest litigation against the agency were the basis for the decision of the tender committee and the committee decided to reject the technical bid on such grounds.

In ***Raunaq International Ltd. v. I.V.R. Construction Ltd.***, reported in **(1999) 1 SCC 492**, the Hon'ble Apex Court held as follows:-

“16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work — which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee.”

Under such circumstances, the court does not find any illegality in the decision of the zilla parishad.

Moreover, the successful bidder was already issued the work order and the work has been completed.

However, the other issues with regard to withdrawal of the completion certificate in respect of NIT – 8 of 2020-21 after a year from its issuance, the ambiguity and the contradictions in the stand of the District Engineer and other authorities as also the deduction of the bill by almost Rs.40 lakhs, are not gone into in this writ petition. The petitioner is at liberty to challenge the same in an appropriate proceeding.

The executive officer shall make an inquiry as to how the District Engineer could have issued the completion certificate when the said authority himself had issued several letters to the petitioner with regard to the unsatisfactory work. Even if the completion certificate could be issued, the remarks column indicating that the work was satisfactory seems unusual and contrary to the steps that were taken by the zilla parishad, time and again asking the petitioner, to complete the work.

A mere apology and the plea of inadvertence are not accepted by the court and the court is of the view that matters relating to public works involving money of the public exchequer, should be dealt with by strict hands, and the authorities involved in the

process should be accountable for such lapses and negligence.

With the above observations, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)