

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Moushumi Bhattacharya

WPA 10427 of 2023

**Gita Rani Jana
Vs.
The State of West Bengal & Ors.**

With

WPA 10448 of 2023

**The Jana Enterprise
Vs.
The State of West Bengal & Ors.**

For the petitioner (in WPA 10427 of 2023)	:	Mr. Sagar Bandyopadhyay, Adv. Ms. Soma Kar Ghosh, Adv. Mr. Arabinda Pathak, Adv. Ms. Sayani Bose, Adv.
For the Petitioner (In WPA 10448 of 2023)	:	Mr. Joydeep Kar, Adv. Mr. Swarup Paul, Adv. Mr. Anish Roy, Adv. Mr. Guru Saday Dutta, Adv.
For the State in WPA 10427 of 2023	:	Mr. Debasish Ghosh, Adv. Mr. Prantik Gorai, Adv.
For the State In WPA 10448 of 2023	:	Mr. Santanu Kumar Mitra, Adv. Mr. Subhabrata Das, Adv.
For the respondent no.6 in WPA 10427 of 2023	:	Mr. Saptang Basu, Adv. Mr. Surya Maity, Adv.

For the respondent no.5
In WPA 10448 of 2023 : Mr. Saptangshu Basu, Adv.
Mr. Surya Maity, Adv.

Last Heard on : 01.05.2023

Judgment on : 03.05.2023

Moushumi Bhattacharya, J:

1. The petitioners participated in a e-tender floated by the ESI Hospital, Serampore on 18.08.2022 for supply of cooked diet for the indoor patients of the said Hospital. The petitioners are aggrieved by the declaration and selection of the private respondent No. 5 as the successful bidder and seek a direction on ESI Hospital to cancel the work order issued in favour of the private respondent and for recalling the financial bid evaluation sheet by which the private respondent was declared the successful bidder.

2. Learned counsel appearing for the petitioners, the ESI Hospital as well as the private respondents have made their submissions and placed documents in support of their respective contentions. The contentions are required to be seen against the relevant Tender Conditions which form a part of the submissions of all the parties.

3. Clause 26 of the Tender Conditions relate to Furnishing of Rates and require the bidders to Furnish a consolidated rate against each of the items quoted for supply under the individual categories of diet. The

bidder is required to fill up the diet schedule in the manner as indicated in Clause 26(d).

4. The dispute centers around Clause 33 which requires the rates to be quoted clearly for each of the categories. Clause 33(b) requires a bidder to justify the quoted rate with facts and figures if a bidder offers "abnormally low" rates. The Tender Selection Committee is authorised to decide whether the rate is acceptable or not.

5. The petitioners say that the rates quoted by the private respondents are abnormally low and is inconsistent with a corrigendum published on 09.02.2022 for ESI Hospital, Budge-Budge where it was stated that the price of raw-materials should not be reduced or enhanced in any way. The private respondent seeks to justify the rates quoted and also say that the rates are not abnormally low as stated in Clause 33(b) of the Tender Conditions. The ESI Hospital, Serampore supports the selection of private respondent as a successful bidder. This is the position of the three parties before the Court.

6. The point is whether the private respondent, as a successful bidder, quoted offers which were "abnormally low" as mentioned in Clause 33(b) of the Tender Conditions. The rates placed before the Court indicate that few of the rates quoted by the private respondent are between 25%-30% lower than rates quoted in the general diet plan which was part of the Tender Conditions. On a reasonable assessment, any rate which is 25%-30% lower than the rate quoted in the Tender Conditions would definitely mean a substantial difference and indicate

an abnormally low rate. Clause 33(b) does not clarify what would be an abnormally low rate except that the Tender Selection Committee will be the decision-making authority in that respect.

7. Documents have been produced by the ESI Hospital, Serampore to show that the Tender Selection Committee took a decision on 21.04.2023 containing a finding that the rates quoted by the private respondents were not found to be “abnormally low” as per Clause 33(b) of the tender conditions. Significantly however, the documents disclosed in the supplementary affidavit show that the ESI Hospital called upon the private respondent to furnish the justification for the low rates on 21.04.2023 itself. The private respondent replied to the query on that date itself, i.e., 21.04.2023 giving the justification for the rates offered by the private respondent.

8. Clause 33(b) makes it clear that the bidder would be required to justify his/her quoted rate with facts and figures. The Schedule for the tender indicates that the last date of submission of completed e-tender documents was 6 p.m. of 19.09.2022. Hence, there is no scope for any bidder to furnish documents after the last date of submission for justifying the facts and figures quoted in the offer by the bidder and that too at the bidding of the tendering authority long after the last date of submission of completed documents. The requirement of uploading complete bid documents would become meaningless if bidders are allowed to justify the rates after the last date of submission.

9. The above finding is reinforced by the corrigendum published in Budge-Budge ESI Hospital on 09.02.2022 which prohibits reduction or enhancement of prices for raw-materials. It is evident that the ESI Hospital, Serampore has made a departure from this Hospital in Budge-Budge. There is no basis disclosed for making such departure.

10. Whether the petitioners were present in pre-bid meeting is not relevant since the pre-bid meeting contains the reasoning for selection of the successful bidder. Point No. 3 of the pre-bid meeting raises an ambiguity which must also be clarified by the tendering authority. The ambiguity is with regard to the Schedule which is to be followed by the prospective bidders. Clause 43 of the conditions must also be given clarity in respect of the finality of the selection. The ESI Hospital has not clarified this aspect or led the controversy to rest.

11. WPA 10427 of 2023 and WPA 10448 of 2023 are accordingly disposed of with the direction on the respondent ESI Hospital to revisit the evaluation of the financial bids submitted by the bidders, including the petitioners, and arrive at a fresh decision within a fortnight from date. Needless to say, the fresh evaluation will be made strictly in accordance with the terms of the tender and the documentation relied on by the parties before the Court. It is made clear that since the tender involves supply of cooked diet to the indoor patients of the ESI Hospital, Serampore, the private respondent will continue to work in terms of the work order issued to the private respondent on 25.04.2023 until one week after the ESI Hospital arrives at a fresh decision as

directed by this Judgment. The continuing performance of the private respondents under the work order will be subject to the decision taken by the ESI Hospital.

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

(Moushumi Bhattacharya, J.)