

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Moushumi Bhattacharya

W.P.A. 10716 of 2023

Five Star Logistics Private Limited
-Vs-
Union of India and others

For the petitioners	:	Mr. Shubhankar Nag, Adv. Mr. Suryaneel Das, Adv.
For the Union of India	:	Mr. Atarup Banerjee, Adv., Ms. Priti Jain, Adv.
For the respondent no.5	:	Mr. Suddhasatva Banerjee, Adv. Mr. Aditya Sarkar, Adv.
For the respondent no.6	:	Mr. Ranjan Bachawat, Adv. Mr. Dwaipayan B. Mullick, Adv. Ms. Amrita Panda, Adv. Mr. Arkaprava Sen, Adv.
Last Heard on	:	10.05.2023
Delivered on	:	11.05.2023

Moushumi Bhattacharya, J.

1. The petitioner participated in a tender floated by the Commercial Department of the South Eastern Railway for Construction and Operation of Gati Shakti Multi-Modal Cargo Terminal (GCT) at Durgachak Station (DZK).
2. The petitioner received a mail dated 24th April, 2023 from the Tendering Authority stating that the petitioner's Techno-Commercial Bid against the tender was found technically unsuitable due to following reasons: "Comments: Disqualified in Packet-A". The petitioner has challenged the tender and seeks quashing and cancellation of the tender.
3. According to learned counsel for the petitioner, the process suffered from several technical glitches and the respondent no.5 is an alterego of the respondent no.7. Counsel submits that the rejection of the petitioner's Techno-Commercial Bid suffers from arbitrariness.
4. Learned counsel appearing for the Railways/Tendering Authority places the relevant terms of the tender including that the Railway Administration reserves the right to reject any or all the tender offers without assigning any reason whatsoever or to accept any tender with a higher offer.
5. Learned counsel appearing for the two private respondents who had also participated in the tender submits that there is no arbitrariness in the procedure and further that the petitioner has not challenged the petitioner's rejection of the Techno-Commercial Bid.

6. To put the facts in context, the petitioner was one of the six bidders who participated in the tender floated by the South Eastern Railway for the purpose as stated above. Two of the other bidders are represented before the court. Although the petitioner is admittedly aggrieved by the mail of 24th April, 2023 whereby the petitioner's Techno-Commercial Bid was rejected, the said rejection has not been challenged in the writ petition. The petitioner simply seeks quashing of the tender process. (2010)1 SCC 756 (Edukanti Kistamma (Dead) Vs. S. Venkatareddy (Dead)) makes it clear that the basic order which has been passed must first be challenged and only then the consequential order will be examined. In the present case, the basic order is the rejection of the petitioner's Techno-Commercial Bid and the consequential order is the arbitrariness in the tender process. Hence, the petitioner has for some inexplicable reason only challenged the consequential order or the final tender process without first countering the rejection.

7. The impugned rejection which was communicated by a mail dated 24th April, 2023 gives the reason for the rejection. The reason is that the petitioner's Techno-Commercial Bid has been found to be disqualified in 'Packet A'. Clause 12 of the Instructions to the Tenderer provides criteria on which the bidders will be evaluated in the first packet: 'Packet A'. The criteria includes fulfilment of certain minimum eligibility conditions as stipulated in paragraph 17 of the terms. Paragraph 17 gives a tabulated statement of the categories of eligible firms and the supporting documents/self-attested copies

which will have to be submitted by the eligible firms. Hence, even without going into whether the petitioner submitted the documents under Clause 17.1, it is clear that Clause 12-Packet A-was an essential and mandatory term of the tender and further that the reason given for the petitioner's rejection was in accordance with the tender terms. It cannot be said that the rejection suffers from non-disclosure of reasons. It is also relevant that there is nothing on record to show any arbitrariness or mala fides in the rejection of the petitioner's Techno-Commercial Bid by the Tendering Authority. In any event, the Supreme Court in AIR 2009 SC 1204 (Siemons Public Communication Pvt. Ltd. and another Vs. Union of India and others) held that in a commercial contract which involves evaluation of tenders, principles of equity and natural justice stay at a distance.

8. Finally, under Clauses 15 and 38 of the Instructions to the Tenderer, the Railways reserves the right of rejecting any or all of the tender offers without assigning any reason. In (2016)14 SCC 172 (State of Jharkhand and others Vs. CWE-Soma Consortium) the Supreme Court considered a similar clause where the authority concerned reserved the right to reject any or all of the tender(s) received without assigning any reason thereof. The Supreme Court was of the view that the State was well within its rights to reject the tender without giving any reasons. Even otherwise, it is clear that the tender is yet to reach finality since there has not been any declaration of the successful bidder as yet.

9. This court fails to see any ground for allowing the writ petition or granting the relief prayed for in view of the above reasons.
10. W.P.A.10716 of 2023 is dismissed without any order as to costs.

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

(Moushumi Bhattacharya, J.)