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**In the High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 11199 of 2023  
With  
WPA 10017 of 2023**

**Pathak Engineering Corporation & Anr.  
Vs  
The State of West Bengal & Ors.**

Mr. Ranajit Chatterjee  
Mr. Aniruddha Mitra

... For the Petitioners.

Mr. Biswajit Mukherjee  
Mr. Gopal Ch. Das

... for the K.M.C.

Mr. Srijib Chakraborty,  
Mr. Aditya Mondal

... For the respondent no 8.

Mr. Ayan Kumar Boral ... For the respondent no. 7.

Ms. Noelle Banerjee  
Mr. Ritoban Sarkar  
Ms. Shreya Ghosh Dastidar  
Mr. Bibek Murarka

... For the respondent no. 6.

Mr. Jahar Lal De  
Mr. Rudranil De

... For the State.

Both the writ petitions relate to a tender floated by the Kolkata Municipal Corporation on 17<sup>th</sup> March, 2023 for supply of liquid chlorine for the financial year 2023-24.

The eligibility criteria for participation in the tender process and the documents which were required to be uploaded were clearly mentioned in the notice inviting tender.

According to the petitioners, there were three bidders who participated in the tender process. The documents which were required to be uploaded in the portal, were not uploaded as per the requirement. It has been submitted that the documents which were mandatorily required to be uploaded, were not uploaded.

The Corporation as per the usual custom did not seek for the documents which were required later on but proceeded on the basis of the documents uploaded. As all documents were not there, the participants ought not to have been held eligible in the technical bid stage.

Reference has been made to the notification of the Finance Department dated 24<sup>th</sup> April, 2014 mentioning that in case of invitation of tender under two bid system, if the members of tenderers/bidders qualified in the technical bid is less than three, tender should be invited afresh.

The petitioners did not participate in the tender process, as according to the petitioners all the required documents were not available with them. It has been submitted that as there were less than three tenderers, who allegedly qualified in the technical bid stage, accordingly, the said tender process ought not to have proceeded any further and tender should have been invited afresh.

The petitioners also rely upon the clause mentioned in the tender document that the cover (folder) for statutory documents will be opened first and if found in order, cover (folder) for non-statutory documents will be

opened. If there is any deficiency in the statutory documents, the tender will be summarily rejected.

The writ petition being WPA 10017 of 2023 was filed before this Court on 24<sup>th</sup> April, 2023 and WPA 11199 of 2023 was filed on 4<sup>th</sup> May, 2023.

It has been submitted that during the pendency of the first writ petition, the Corporation issued the work order in favour of the L1 tenderer on 2<sup>nd</sup> May, 2023.

It has been submitted that the Corporation acted in undue haste in issuing the work order despite both these writ petitions remaining pending in Court.

According to the petitioners, the undue haste on the part of the Corporation reeks of mala fide and the entire action may be treated as arbitrary. In support of the aforesaid submission, the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court of India in the matter of ***Noida Entrepreneurs Association –vs- Noida & Ors.*** reported in **(2011) 6 SCC 508** paragraphs 27 to 30 wherein the Court relied upon earlier decisions of the Hon'ble Supreme Court where it was held that when a thing is done in a post-haste manner, mala fides would be presumed and anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. The Court may draw and adverse inference from such conduct.

It has been submitted that had the petitioners been aware of the fact that the Corporation would have relaxed the condition of tender, then the petitioners could also have participated in the tender process.

The petitioners pray for setting aside the entire tender process.

Learned advocate appearing for the Universal Mineral Corporation and SSS Enterprises admits that all documents statutorily required to be uploaded were not uploaded.

Learned advocate appearing for Rishikesh Chem, the L1 tenderer submits that all documents were uploaded as required.

Learned advocate appearing for the Kolkata Municipal Corporation has submitted a tabular sheet indicating the documents submitted by the tenderers. It appears that the Corporation already maintains a data base of the documents submitted by the bidders. As documents of successful bidders in respect of other tenders of the Corporation are already available on record, the Corporation relied upon those documents in connection with the tender in question.

It appears from the said chart that all the three tenderers who participated in the tender process i.e., Rishikesh Chem, SSS Enterprises and Universal Mineral Corporation qualified in the technical bid stage.

Being qualified in the technical bid stage, all three bidders participated in the financial bid stage and Universal Mineral Corporation emerged as the L1 bidder.

Learned advocate appearing for the Corporation has produced before this Court, photocopy of the order dated 8<sup>th</sup> May, 2023 passed in WPA (P) 205 of 2023 in the

matter of Nilendra Narayan Ray –vs- The State of West Bengal & Ors. wherein the same e-tender was under challenge.

The Court after hearing the parties was pleased to hold that there is no public interest involved in the matter and if any person who is really aggrieved has any grievance, it will be open for the said person to initiate proceeding in accordance with law.

From the documents that are available on record and after hearing the submissions made on behalf of all the parties, it appears that the Corporation acted in accordance with the tender notice and relied upon the documents available in their record.

The tender process was earlier under challenge at the instance of Rishikesh Chem in the writ petition being WPA 9529 of 2023. The said writ petition was heard at length and dismissed by the Learned Single Judge. The said order was carried in appeal and by judgment dated 1<sup>st</sup> May, 2023 passed in MAT 722 of 2023 with IA No. CAN 1 of 2023, the Hon'ble Division Bench was pleased not to interfere with the order passed by the Learned Single Judge.

After dismissal of the appeal the Corporation issued the work order. It does not appear that the Corporation acted in undue haste in issuing the work order.

The Universal Mineral Corporation emerged as the L1 bidder and work order has already been issued in its favour. There is nothing apparent on record requiring interference by the Court in the tender process.

The writ petition fails and is accordingly, dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**( Amrita Sinha, J.)**