

Ct. 05
Item No.32
12.05.2023
(Suvendu)

WPA 11519 of 2023

**M/s. Rupa Enterprises
Vs.
The State of West Bengal & Ors.**

Mr. Swarup Paul
Mr. Surya Maity
Mr. Anirban Chakraborty
Mr. Anish Ray
...for the petitioner

Mr. Prantik Ghorai
.....for the State

1. The petitioner has challenged an e-tender floated by the ESI Hospital, Asansol for supply of cooked diet to the said hospital. The petitioner claims to be aggrieved by Clause 4(h) of the Terms and Conditions of the e-tender which requires the participating bidder to have an working unit/ office within 10 k.m. radius of the Hospital at Asansol for which the e-tender is called.

2. Learned counsel appearing for the petitioner submits that this condition is unreasonable given the fact that the ESI Hospital called for an e-tender and that the tender terms are tailor-made to suit the existing contractors who are also from Asansol.

3. Learned counsel appearing for the ESI Hospital/State submits that there is nothing to

prevent the petitioner from participating in the e-tender since the petitioner is at liberty to open an office within 10 k.m. radius of the ESI Hospital, Asansol.

4. The schedule of the e-tender indicates that the last date and time of submission for completed e-tender documents is 1 p.m. on 12th May, 2023 which is today. The matter was moved yesterday (11th May, 2023) but could not be taken up due to the business of the Court and the non-availability of counsel.

5. Clause 2 of the Terms and Conditions of the e-tender indicates that the bidder must be available for communication at the address given in the bid. Clause 25 requires the selected bidder or his authorized representative to collect requisite slips from the authorized officer of the Hospital twice a day. These Clauses indicate that the selected bidder must be available for receiving requisite communications from the Hospital and also be available twice daily for procedural purposes. In the days of virtual communication, it is inconceivable that the prospective /selected bidder will have to have a physical office within 10 k.m. radius from the ESI Hospital to facilitate communication between the bidder and the Hospital.

6. Admittedly, the ESI Hospital floated an e-tender which is in essence an invitation to the world at large through virtual means for participation of a maximum number of bidders. The intention, presumably, is to broaden the participation base so that there is no unfairness in the selection process. Clause 4(h) goes counter to this action. By requiring the prospective bidders to have an office within 10 k.m. radius from the ESI Hospital, Asansol, the ESI Hospital is in effect narrowing down the competition and introducing an unreasonable Clause in the participation process. This should certainly not be the purpose of any tender.

7. There is nothing on record to explain the exigency of Clause 4(h) since the selective bidder need not have an office by way of a physical infrastructure within 10 k.m. radius of the ESI Hospital, Asansol. The work involved is to serve cooked diet to the Hospital and the selected bidder can very well do this without having a physical office in the vicinity marked by 10 k.m. This Court hence finds the restriction introduced in Clause 4(h) of the e-tender to be unreasonable and restrictive and hence arbitrary. The arbitrariness is more manifest since the Terms and Conditions of the e-tenders floated by ESI Hospital, Budge

Budge and Serampore do not have similar conditions restricting the coverage area of the prospective bidders and requiring them to have a physical office in that area.

8. WPA 11519 of 2023 is accordingly disposed of with a direction on the ESI Hospital, Asansol to permit the writ petitioner to participate in the e-tender and consider the bids in a fair manner and to accept the documents within the scheduled time, i.e. 1 p.m. today (12th May, 2023).

9. Urgent photostat certified copy of this order, if applied for be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)