

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 20522 of 2022

Shiba Prosad Banerjee

vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Saptangshu Basu, Adv. Mr. Swarup Paul, Adv. Mr. Surya Maity, Adv. Mr. Anirban Chakraborty, Adv. Mr. Abhishek Shaw, Adv.
For the State	:	Mr. Amitesh Banerjee, Adv. Mr. Tarak Karan, Adv.
For the respondent no. 4	:	Mr. Anubhav Sinha, Adv. Ms. Sanchita Barman Roy, Adv.
Last Heard on	:	19.01.2023.
Delivered on	:	31.01.2023.

Moushumi Bhattacharya, J.

1. The petitioner has assailed a rejection in an e-Tender for supply of cooked diet for the indoor patients of an ESI Hospital at Belur. The reason for the impugned rejection is :

“Up to date MSME certificate not submitted. So, Not Eligible”

The petitioner seeks quashing of the rejection and a direction on the respondent no. 5 / Directorate of Micro Small and Medium Enterprises to examine the validity of the MSME Certificate submitted by the petitioner for the Tender.

2. The petitioner, through learned counsel, places the MSME Certificate uploaded at the time of the Tender and says that the Certificate was a valid document on the date of the uploading i.e. 12.2.2021.

3. Learned Senior Standing Counsel appearing for the MSME authorities says otherwise; namely that the Certificate uploaded by the petitioner with the other tender documents did not have a validity date and hence the impugned rejection was in order.

4. The private respondent / respondent no. 4, which is the successful tenderer is represented and learned counsel supports the stand taken by the MSME authorities.

5. Since the MSME Certificate uploaded by the petitioner on 12.2.2021 did not have a validity date, the Directorate of MSME was asked to file a Report by an order dated 14.12.2022. The Report will be referred to in the later part of this judgment.

6. The only question which is to be answered in the present proceeding is whether the MSME Certificate uploaded by the petitioner was a valid document as on 12.2.2021. Clause 2 of the Pre-bid Meeting Summary of the Tender Selection Committee of the Hospital states that the latest EMD/MSME Certificate is to be uploaded in the technical bid for the exemption claimed by the bidder. Hence, the MSME Certificate which was to be uploaded by the bidder was required to be a valid certificate as on the date of the Tender / uploading of documents, which was 12.2.2021.

7. The Certificate which was uploaded by the petitioner admittedly did not contain a validity date. The Certificate is an Udyog Aadhaar Registration Certificate which merely contains a link in tiny font at the bottom of the certificate from which it can be gleaned that the Certificate was filed on 11.1.2018 and printed on 11.10.2019. This is also the position taken by the parties before the court. On the other hand, the subsequent Udyog Aadhaar Memorandum- Online Verification document produced by the petitioner as part of the writ petition clearly indicates that the "UAM Certificate is valid till 31.12.2021". The Certificate also indicates that the enterprise is now a sole proprietorship of which the petitioner is the sole proprietor.

8. The petitioner seeks to substantiate the validity of the MSME document uploaded with the tender on 12.2.2021 with this document which has subsequently been annexed to the writ petition filed on 5.9.2022. It is relevant to mention that the petitioner participated in the Tender as a partnership firm. This is also the pleading in paragraph 1 of the writ petition.

9. Hence, there is an admitted inconsistency in the status of the petitioner as on the date of the participating in the Tender and the Certificate uploaded with the Tender documents on 12.2.2021. This is apart from the fact that the Certificate uploaded on 12.2.2021 did not reflect a validity date on the Certificate, namely, till which date the Certificate was valid.

10. The Report filed by the MSME authorities / respondent no. 5 states that the subsequent UAM Certificate which has been brought on record is of a proprietorship firm and not that of a partnership firm. The Report also states that the UAM Certificate of the petitioner has been verified by the Directorate of MSME wherein the last modification was done by the petitioner on 11.10.2019.

11. The above facts lead to the following admitted position; First, the document uploaded by the petitioner on 12.2.2021 did not reflect a validity date. Second, the subsequent document annexed to the writ petition (but not uploaded with the Tender documents) contains a validity date. Third, both the documents reflect a sole proprietorship as opposed to the projected status of the petitioner (Partnership firm) on the date of participating in the Tender and even at the time of filing of the present writ petition. Fourth, the petitioner has

not been able to answer as to why the later document containing the validity date annexed to the writ petition was not uploaded by the petitioner on 12.2.2021. Fifth, since the document uploaded on 12.2.2021 did not have a validity date, the tendering authority / respondent nos. 2 and 3 did not have a valid Certificate before them which could be used for the purpose for which the document was being uploaded.

12. The above persuades this Court to hold that the impugned rejection of the petitioner for the reason of the MSME Certificate not being an updated document cannot be faulted. It is obvious that the tendering authority could not come to a conclusion with regard to the validity of the Certificate in the absence of a statement/date on the document.

13. The argument advanced on behalf of the petitioner that the tendering authority took into account the skills and experience of the sole proprietorship concern and hence cannot require a Certificate of the Partnership is not an answer to the document not containing a validity date. This is corroborated by the fact of the petitioner producing a second document with a valid date albeit of a sole proprietorship concern and not that of a partnership firm. Further, clause 6 of the Deed of Partnership dated 29.1.2021 executed between the petitioner and 3 others clearly states that the business of the partnership firm shall come into effect on the execution of the Deed of Partnership. Hence, the status of the petitioner as on the date of participation i.e. 12.2.2021 was already that of a partnership firm and not that of a sole proprietorship concern.

Mohindhr Singh Gill v. Chief Election Commissioner, New Delhi; (1978) 1 SCC 405 cannot be of assistance to the petitioner since in that decision a Constitution Bench of the Supreme Court held that a statutory functionary must support its order by reasons impugned in the order and cannot supplement the order by fresh reasons by way of an affidavit or otherwise. In the present case, the reason for the impugned rejection of the petitioner is clear and is corroborated by the document itself. Moreover, the court called for the Report of the MSME providing the factual details in relation to the Certificate and therefore the tendering authority did not attempt to improve upon the reason given in the impugned order. In any event, the reason for the rejection remains unchanged even after the Report of the MSME authorities, namely that of the Certificate not being up to date as on the date of the tender.

14. This Court does not find any merit in the writ petition in view of what has been discussed above. WPA 20522 of 2022 is accordingly 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.)