

22nd December,
2023
(AK)
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W.P.A. 25644 of 2023

Bindu Singh
Vs.
The Union of India and others

Mr. Chirantan Sarkar
Mr. Niraj Kumar Singh
...for the petitioner.

Mr. Pinaki Ranjan Chakraborty
Ms. Sanjukta Dutta
...for the respondent nos.1 to 8.

1. Learned counsel for the petitioner challenges the tender-in-question primarily on two grounds.
2. It is submitted that initially the challenge was preferred against the clauses of the tender document. Subsequently the tender process being over and work order having been issued in favour of the private respondent, such allocation of work has also been challenged.
3. The first ground of challenge is that the private respondent had, in his uploaded bid documents, indicated that the previous experience of the private respondent was in the field of civil works construction and supply of materials which, it is submitted, has no nexus whatsoever with supply of drinking

water/sprinkling of water on roads by lorry fitted with water tanker to different organizations or officers /houses or other places, which is the work contemplated in the present tender.

4. It is further argued that for getting exemption in payment of earnest money deposit, MSME units were required to produce their credentials in that regard.

5. By placing reliance on an Office Memorandum dated August 6, 2020 annexed at page-8 of the supplementary affidavit, it is argued that the UAMs which were issued previously had spent their force subsequently.

6. The said Memorandum, in Clause 4(iv), stipulates that it is preferable that the entrepreneur files new registration in the Udyam Registration Portal.

7. The petitioner submits that the private respondent does not qualify such criteria to claim subsidy as an eligible MSME, but obtained the subsidy.

8. Learned counsel for the respondent authorities submits as per telephonic instruction that the private respondent produced all relevant documents. However, if necessary, the respondents are prepared to produce all documents on oath.

9. Regarding the first contention of the petitioner, it is submitted that the technical aspect of a tender is usually not interfered with by courts of law, which has been settled time and again by the Supreme Court and in several judgments of various High Courts.

10. A perusal of the clauses of the tender shows that one of the optional criteria of past experience was civil engineering.

11. Since the private respondent has shown past experience in civil works constructions along with supply of materials, it has to be construed that a minimum experience of civil engineering was available to the private respondent.

12. In any event, in the absence of something palpable to vitiate the tender or grant of work to the private respondent due to patent *mala fides* or arbitrariness and/or that the clauses of the tender were tailor-made to suit the private respondent, there is little or no scope of interference by courts of law in technical interpretations of clauses of tenders.

13. As rightly pointed out by learned counsel for the respondents, it has been held time and again by the Supreme Court in several judgments that courts are loathe to interfere with tenders when the technical

interpretation of a clause or the technical requirement of a job is necessary.

14. Such interpretation falls squarely within the domain of the technical expertise of the employer and is generally not interfered with by courts, who are not domain experts on such aspects of the matter.

15. Thus, the interpretation of the past experience requirement of “civil engineering” as decided on by the tender issuing authorities vis-à-vis the bid of the private respondent, who had experience of civil works construction, cannot be interfered with at the drop of a hat by a court of law.

16. In any event, sprinkling of water on roads is not “rocket science” requiring extreme technical expertise which is not available with a person having past experience of civil works construction.

17. Insofar as the other aspect of the challenge is concerned, it is for the tender issuing authorities to make allegations and take out appropriate proceedings against the private respondent, who was the successful bidder, in the event it is found out that the said respondent obtained a subsidy as MSME unit without having relevant credentials and supporting documents in that regard.

18. However, the petitioner does not have the *locus standi* to open such issue in this writ petition.

19. Moreover, it is well-settled that within the contemplation of Section 114 of the Evidence Act, a presumption of correctness is attached to official and judicial works.

20. In the present case, the respondent authorities in their official capacity have given a benefit to the private respondent which carries with it a presumption of correctness unless rebutted by cogent evidence.

21. Neither has the petitioner produced any such cogent evidence nor is the writ court the appropriate forum or the petitioner has the *locus standi* to open such issues at this juncture.

22. In such view of the matter, there is no scope of interference in the present writ petition.

29. Accordingly, WPA 25644 of 2023 is dismissed on contest without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)