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08.11.2023
Ct. No.08
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 2246 of 2023
with
IA No. CAN 1 of 2023

Shri Atanu Singha
Vs.
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya
Mr. Swapan Kumar Pal
... For the appellant

Mr. Tapan Kumar Mukherjee
Ms. Sangeeta Roy
Mr. Somnath Naskar
... For the State

1. The matter was mentioned in the morning for being taken up out of turn citing the urgency as the appellant/petitioner is challenging an order which relates to a tender process and the appeal will become infructuous if the tender process is completed.

2. The Notice Inviting E-Tender call for clearing and housekeeping/scavenging service at Medinapore Medical College and Hospital, Paschim Medinipur dated 30th September, 2023 (hereinafter referred to as the 'said tender') is challenged on the ground that the Government has imposed such stringent financial credentials in derogation of earlier norms so that ordinary suppliers like the appellant/petitioner are eliminated with the intent to allow some big organisations to obtain the supply as an

organisation of like nature can only fulfil such financial credentials. It is also the case of the appellant/petitioner that in all other hospitals the tenderer should produce credential of similar nature of a completed single work having minimum value of 40% of the estimated amount put to tender during three years prior to the date of issue of the e-tender, while in case of the said tender, 100% of the estimated amount has to be fulfilled. The appellant/petitioner says that the tender conditions are such that it violates the provisions of Article 19(1)(g) of the Constitution of India. The appellant/petitioner, therefor, says that he should be permitted to participate in the tender and till such time the steps and/or further steps to be taken in terms of the said tender should remain stayed.

3. On behalf of the State, it is submitted that the hospital concerned in view of its size and operation on the basis of the numbers of operational beds requires the terms as fixed in the said tender to be complied with. The terms referred to by the appellant/petitioner are in respect of other hospitals which do not fall under the same category. That apart, the fixation of tender conditions is a prerogative of the State under the policy decision. Pursuant to the impugned order, the State has proceeded further with the tender process. The appellant/petitioner also did not appear at the pre-bid meeting to ventilate his grievances.

4. After hearing the parties and considering the materials on record, we find that the matter requires to be scrutinised in details as it relates to distribution of largesse by the State. The State cannot act arbitrarily to give additional benefit to a group of suppliers. At the same time, the power of the State for fixing the conditions cannot also be curtailed unless it is arbitrary. Interference into the tender process, which involves several economic and technical parameters, is seldom made as the conditions are fixed by an expert body after delving upon the requirements. The tender has not proceeded beyond opening of the technical bid which has been opened on 7th November, 2023 at 10.00 a.m.

5. The writ petition has been dismissed by the order impugned. It is, therefore, necessary to strike a balance in the matter in the light of the discussion as aforesaid. It is also to be noted that necessities in respect of a hospital cannot wait eternally.

6. In the aforesaid facts and circumstances, the State may proceed with the tender process but should not award the same before deciding the grievances of the appellant/petitioner by a reasoned order.

7. The Tender Committee concerned with the said tender shall, within seven days, inform the appellant/petitioner in writing a date of hearing which should be after 14th November, 2023 to consider the grievances of the appellant/petitioner and shall, thereafter, communicate

the reasoned order to the appellant/petitioner. After seven days from the passing of the reasoned order, the State can award the contract to the successful bidder.

8. Nothing further remains to be adjudicated in the appeal. The same is treated as on day's list by consent of the parties and, is, accordingly, disposed of.

8. In view of the disposal of the appeal, the connected application, being CAN 1 of 2023, is also disposed of.

9. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

10. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Biswaroop Chowdhury, J.) (Arindam Mukherjee, J.)