

D/L. 25.  
December 5, 2023.  
MNS.

WPA No. 25985 of 2023

Armex Security Private Limited  
Vs.  
The State of West Bengal and others

Mr. Partha Pratim Roy,  
Mr. Dyutiman Banerjee,  
Mr. Vishal Mallick

... for the petitioner.

Mr. Lalit Mohan Mahata,  
Mr. Jagabandhu Ray

...for the State.

Mr. Mahendra Prasad Gupta,  
Mr. Hemanta Kumar Das

...for the respondent nos. 2 to 4.

Mr. H. Ghosh,  
Mr. D. Banerjee,  
Mr. O. Ghosh

...for the respondent no. 7.

Re: CAN 1 of 2023 (recalling application)

1. In view of the urgency pleaded by the petitioner, CAN 1 of 2023 is allowed, thereby recalling the order dated November 17, 2023, whereby the matter was relegated to the bottom of the list.

2. There will be no order as to costs.

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3. The writ petition is now taken up for hearing.

4. Learned counsel for the petitioner contends that the petitioner participated in a tender floated by the respondent authorities, but was rejected on technical ground.
5. Learned counsel relies on the document annexed at page 34 of the writ petition to argue that the summary of the technical bid was uploaded on October 16, 2023 and was signed by the Executive Director-II on October 13, 2023.
6. Although the scheduled date for such opening was October 3, 2023, the said document belies the contention that it was opened on the said date. At page 36 of the writ petition, a document has been annexed which is purportedly a Bid Opening Summary dated October 16, 2023, where it is reflected that after the purported communication, the authority rejected the petitioner's bid. It is seen that the status of the petitioner's bid is being shown therein as "admitted".
7. It is argued that the petitioner made an objection duly, which was received by the respondents on October 30, 2023, which was well within the period of 48 hours, that is, the necessary outer limit as per the bid document.

8. In such context, learned counsel cites a list of public holidays of the Central Government and the State Government which, read in conjunction, covers the entire period in-between the opening of the bid on October 13, 2023 and the filing of the objection on October 30, 2023, since according to the petitioner the entire period in the interregnum was covered by holidays.
9. Hence, the petitioner filed the objection within 48 working hours, which was the spirit of the tender document.
10. Despite the same, the respondents did not answer the petitioner's objection, for which a writ petition was preferred. In connection with the writ petition, the respondents-authorities' communication dated November 9, 2023 was produced by the respondents, which was construed by the learned single Judge to be a rejection. Liberty was given to the petitioner to challenge the said rejection, pursuant to which the present writ petition has been preferred.
11. It is argued that apart from the respondent authorities having not answered the petitioner's query properly, 200 man power

was an essential criterion for participation in the tender.

12. It is vociferously argued that apart from the petitioner, none of the bidders fulfilled the said eligibility criterion. Despite the same, the respondent no. 7 has been awarded the tender as a successful bidder whereas the petitioner's technical bid has been rejected.

13. Learned counsel appearing for the Tender Issuing Authorities contends that the technical bid was opened on October 3, 2023, as opposed to the allegation now made by the petitioner.

14. It is argued that the petitioner itself in paragraph 5 of the previous writ petition had categorically admitted that the technical bid was opened on October 3, 2023 and seeks to resile from such position.

15. Learned counsel appearing for the Tender Issuing Authorities also seeks to place reliance on the purported minutes of a meeting of the Tender Committee held on October 3, 2023 in support of his contention. Thus, the petitioner having come with an objection well beyond the period stipulated in the tender document, that is, 48 hours, the

respondents rightly refused to take into consideration such objection. In any event, as evident from the communication dated November 9, 2023, the Tender Issuing Authorities reopened the bid document and ascertained that those were in order. It is added that the work order has already been issued in favour of the successful bidder in the meantime.

16. Learned counsel submits that the petitioner was deficient on other eligibility criteria and was rightly rejected.

17. Learned counsel for the respondent no. 7, the successful bidder, corroborates that the said bidder has been awarded the contract properly in terms of the tender.

18. It is contended further that bid of the respondent no. 7 was in order and the respondent no. 7 also has 200 manpower in terms of the tender document.

19. A perusal of the averments of the petitioner in paragraph 5 of the previous writ petition categorically shows that the petitioner admitted that the technical bid was opened on October 3, 2023. The said paragraph was never amended and the writ petition has since

been disposed of by a coordinate Bench granting liberty to the petitioner to challenge the rejection of the objection of the petitioner.

20. Hence, the Tender Issuing Authorities have a point in arguing that the petitioner cannot resile from such admission at this juncture.

21. A perusal of the documents annexed at pages 34 and 36 of the writ petition indicate that the same do not, beyond doubt, clinch the issue that the technical bids were opened either on October 13 or October 16, 2023.

22. The signature of the Executive Director on the Summary of Technical Bid annexed at page 34 does not necessarily mean that the technical bid was actually opened on such date. Such summary merely indicates the position on the date when the technical bid was opened, that is, the petitioner was technically disqualified. The digital signature appearing on the said summary of technical bid dated October 16, 2023 also does not necessarily show that the technical bid was opened on October 16, 2023. On such score, the Tender Issuing Authorities have also produced the minutes of the meeting which need not be looked into in view of the

admission of the petitioner himself, which cannot now be resiled from on the basis of documents which do not unerringly indicate that the bid was opened later than October 3, 2023. Thus, the petitioner having failed to take out any objection within the stipulated 48 hours as per the relevant clause of the tender document, cannot now be permitted to reopen the issue on merits.

23. That apart, the Tender Issuing Authorities have rightly pointed out that even as per the tender document (Clause 22 thereof), any objection regarding pre-qualification of any agency should have been lodged online to the Executive Director-II at the e-mail ID as given therein within seven days from the date of publication of the tender. Such online objection having not been made by the petitioner, the physical objection need not even be considered by the Tender Issuing Authorities.

24. That apart, at this belated juncture, the petitioner cannot be permitted to argue that the other bidders did not qualify the eligibility criteria, having not taken the issue up at the relevant point of time.

25. The objection annexed to the writ petition also does not disclose in clear terms the allegation now sought to be made by the petitioner that the technical bid was opened on October 3, 2023. Although the petitioner has referred to the hour when the technical bid was opened, the date thereof has not been mentioned to be anything else than October 3, 2023. Hence, the petitioner cannot now go beyond its original pleadings and take new points before this court.

26. As to the relief sought in the present writ petition not mentioning specifically the rejection by the authorities dated November 9, 2023, the same is a technical objection and in view of the petitioner having substantially challenged the tender process itself, such objection does not merit much consideration.

27. However, in view of the observations made above, there is no ground for interference with the tender impugned herein; more so, since work order has already been issued in favour of the respondent no. 7 in terms thereof. The clock need not be turned back at the behest of the petitioner which has taken contradictory stands at various points of time, at least

insofar as the opening date of the technical bid is concerned.

28. Thus, WPA No. 25985 of 2023 is, thus, dismissed on contest.

29. There will be no order as to costs.

30. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)