

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 26115 of 2023

Dipak Chandra Shome
Vs.
The State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Jayanta Das,
Ms. Soumita Ghosh
.... for the petitioner

Mr. Sk. Md. Galib,
Ms. Tanwishree Mukherjee
....for the State

- 1.** Affidavit-of-service filed in Court today be kept on record.
- 2.** Learned counsel appearing for the petitioner contends that the petitioner participated in a tender process and satisfied all the eligibility criteria. However, without giving any reason, only on the ground that the credentials of the petitioner did not match the tender criteria, the petitioner's bid was rejected.
- 3.** Learned counsel appearing for the petitioner places reliance on the relevant provisions of tender document to impress upon the Court as to the minimum qualification of contractors and eligibility criteria sought in the said tender and also placed two

documents, annexed at pages 91 and 92 of the writ petition, which indicate the past experiences of the petitioner and argues that those came within the four-corners of the bid requirement.

4. Learned counsel appearing for the respondents controverts the allegations and points out that the eligibility criteria in Clause 6 of the tender document contemplated past experience in LDTW (Solar) Drilling and Development.

5. However, it is evident from pages 91 and 92 of the writ petition that the past experience of the petitioner was relating to LDTW (electrical).

6. Secondly, sub-clause (b) of Clause 6 contemplated last five years' experience, whereas the second completion certificate produced by the petitioner pertaining to page 92 of the writ petition shows that the date of completion of the said work was June 29, 2018, whereas the tender document is itself dated September 27, 2023, thereby taking the cut off date to September, 2018, beyond which the second work was done by the petitioner.

7. As regards the third point urged in the writ petition that the condition regarding solar work having been done previously was absurd, since there was no prevalence of such work during the past five years,

learned counsel for the respondents argues that once the petitioner has participated in the tender process and taken a chance, the terms and clauses of the tender itself cannot be challenged.

8. The arguments made by the respondents are tenable in all respects. Insofar as the eligibility criteria are concerned, the same undoubtedly sought previous work experience of Drilling and Development with regard to LDTW (Solar), whereas the petitioner did Drilling and Development work regarding electrical LDTW. Secondly, the work experiences produced by the petitioner do not in their entirety fulfil the condition as stipulated in Clause 6(b) of the tender document, inasmuch as the second work of the petitioner was done prior to the last five years.

9. Thirdly, the respondents are also justified in arguing that once the petitioner has participated in the tender process and having taken a chance, that too after the bid of the petitioner was rejected on technical ground, clauses of tender document itself ought not to be permitted to be challenged by the said participant.

10. In such view of the matter, there is no merit in the writ petition.

11. Hence, W.P.A. No. 26115 of 2023 is dismissed on contest without, however, any order as to costs.

12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)