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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 26204 of 2023

Rahul Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sagar Bandyopadhyay,
Ms. Soma Kar Ghosh,
Mr. Arabinda Pathak
...for the petitioners

Mr. Suman Sengupta,
Mr. Dwaipayan Basu Mallick,
Ms. Sweta Chakraborty,
Mr. Wasim Akram
...for the State

Mr. Abhratosh Majumder,
Mr. Arjun Roy Mukherjee,
Mr. Joyjeev Medhi
...for the respondent no. 6

1. Learned counsel appearing for the petitioners contends that the petitioners' technical bid was rejected unlawfully beyond the scope of the tender.
2. It is pointed out by learned counsel that the pre-bid meeting was initially fixed on May 15, 2023 and, thereafter, by a corrigendum was postponed to May 18, 2023.
3. It is submitted that the tender document clearly gave a format for a tender participating application, which was to be submitted in the letterhead of the concerned bidder. The petitioners clearly adhered to the said format and submitted the said application

in its letterhead. However, initially the tender condition was that the same had to be addressed to the Superintendent, ESI Hospital, Maniktala, whereas in a pre-bid meeting, in Serial No. 8 of the minutes of such meeting, it was recorded that “in invitation of E tender always apply to MPO Cum Superintendent in place of Superintendent.”

4. Learned counsel contends that there was never any corrigendum to that effect in the tender document. However, the petitioners’ bid, along with certain other participants’ bids as well, were rejected merely on the ground that the Superintendent and not the MPO Cum Superintendent was addressed in terms of the pre-bid meeting decision.

5. Learned counsel challenges the binding effect of pre-bid meeting by arguing that the same did not tantamount to a corrigendum to the tender document.

6. Learned counsel for the State submits that although the petitioners complied with the other points discussed in the pre-bid meeting, the petitioners did not comply with Serial No. 8 but addressed the Superintendent instead of the MPO-cum-Superintendent, which vitiated the petitioners’ bid.

7. Learned senior counsel appearing for the successful bidder, that is, the private respondent, contends by placing reliance on a 'tender details' document dated May 15, 2023 uploaded on the relevant website of the tender issuing authorities that the same indicated that the pre-bid meeting tantamounted to a corrigendum. It is further submitted that not only the petitioners but other participants were also rejected on the same ground.

8. Thus, it is submitted that no fault could be attributed on the part of the private respondent, who has already been issued the work order.

9. Upon a consideration of the original terms and conditions of the tender, it is seen that the tender application was to be addressed to the Superintendent.

10. In Clause 43 of the tender document containing the terms and conditions therefor, it is stipulated that any decision taken in the pre-bid meeting will be valid during the tender process. The tender issuing authorities seek to impress upon the Court that the said clause indicates that the decisions taken in a pre-bid meeting will be essential and binding on the participants and no further corrigendum is required. However, such argument cannot be accepted, since the said sentence merely enumerated that the decisions taken in a pre-bid

meeting would remain valid during the tender process and nothing more or nothing less.

11. Insofar as the tender details uploaded on the website of the tender issuing authorities dated May 15, 2023 is concerned, the argument of the private respondent is not tenable. The petitioners are justified in pointing out that the initial date fixed for the pre-bid meeting was May 15, 2023, which, vide a corrigendum dated May 12, 2023, was postponed to May 18, 2023.

12. The tender details dated May 15, 2023, a copy of which is handed over by the private respondent in court, merely disclosed a PDF file/copy of the said corrigendum of the date of pre-bid meeting, which was issued on May 12, 2023 and did not signify that the pre-bid meeting would itself tantamount to a corrigendum. In any event, the tender details are neither here nor there, not being a part of the tender document or the terms and conditions thereof or of any corrigendum.

13. Insofar as the pre-bid meeting is concerned, Serial No. 8 of the minutes thereof was as follows:

“8. In invitation of E Tender always apply to MPO Cum Superintendent in place of Superintendent.”

14. From the language of the same, it does not appear that the tender application had to be made mandatorily to the “MPO Cum Superintendent”. A

plausible explanation of Serial No. 8 is that in the invitation of e-tender, the expression “Superintendent” would also mean “MPO Cum Superintendent”.

15. Hence, there was sufficient ambiguity in the said clause of the pre-bid meeting to justify the participants going ahead with the original format of the tender application, as given in the tender document, in the absence of any corrigendum thereto. A very plausible meaning of Serial No. 8 of the pre-bid meeting would be that such address to the Superintendent would also apply to MPO-cum-Superintendent.

16. In any event, Serial No. 8 of the pre-bid meeting cannot be considered to be a part of the original tender document. Even if it is assumed that the same could be construed as a part of the tender document, the same, by no stretch of imagination, could be described to be an essential, crucial or mandatory term or condition of the tender.

17. Thus, non-compliance of the same, even if construed in the way as sought to be done by the tender issuing authorities, cannot altogether vitiate a bid on technical ground.

18. In such view of the matter, the rejection of the technical bid of the petitioners and other similarly placed bidders on the ground that serial no. 8 of

the pre-bid meeting minutes was not complied with is palpably bad in law and *de hors* the terms of the tender conditions themselves.

19. Accordingly, W.P.A. No. 26204 of 2023 is allowed, thereby setting aside the rejection of the petitioners' tender as reflected in the tender evaluation sheet, annexed at page 58 (annexure P-6) of the writ petition.

20. The respondent-authorities shall resume the tender process from the stage prior to the technical evaluation sheet and the rejection being published, by deeming that the bid of the petitioners and the other similarly placed bidders were valid despite having been addressed to the Superintendent instead of MPO-cum-Superintendent and, thereafter, to conclude the process at the earliest.

21. All consequential steps taken, including the issuance of the work order in favour of the private respondents, pursuant to the rejection of the petitioners and others bid by the impugned technical evaluation sheet, is also consequentially set aside and quashed.

22. The private respondent shall, without creating any special right or equity in favour the private respondent in that regard, continue with the work awarded to the private respondent till the tender process is finalized in terms of the above direction.

23. It is, however, made clear that such arrangement is ad hoc, keeping in view the submission of the State that the tender relates to supply of cooked diet to the patients of Government hospitals, who would suffer irreparably in the event such process is stalled by virtue of this order.

24. There will be no order as to costs.

25. 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.