

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No. 26230 of 2023**

**Sudip Chatterjee  
Vs.  
The State of West Bengal & Ors.**

|                      |   |                                                                    |
|----------------------|---|--------------------------------------------------------------------|
| For the petitioner   | : | Mr. Vivekananda Bose,<br>Mr. Ratikanta Pal,<br>Mr. Sounak Banerjee |
| For the State        | : | Mr. Sk. Md. Galib,<br>Mr. Abu Siddique Mallik                      |
| Hearing concluded on | : | 08.12.2023                                                         |
| Judgment on          | : | 18.12.2023                                                         |

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner alleges to be qualified to participate in an e-tender floated by the respondent-Authorities for providing housekeeping and scavenging personnel for three years at the Murshidabad Medical College and Hospital. It is submitted that the petitioner participated in the pre-bid meeting but his name was not recorded. Having failed to obtain necessary clarifications in the said meeting, the petitioner has preferred the instant writ petition. It is argued that the terms and conditions of the tender are contrary to public policy, inherently contradictory, impossible to perform and illegal.
2. It is pointed out that the invitation in the tender was for providing 214 + 1 (Supervisor) = 215 Housekeeping and Scavenging personnel. Thus,

the number of Supervisors out of the 215 personnel sought was one. However, in the same breath it is provided at page 20 of the bid document that Supervisor in each shift should be posted for looking after the cleaning and housekeeping service, who in turn will report to the hospital authority regarding the performance on shift basis as per checklist. It is argued that the two clauses do not go together, since a 24-hour Supervisor's post is not possible for one person to fulfil. At least there have to be three shifts of eight hours, for each of which shift a Supervisor is to be posted, to report to the hospital authority on shift basis as per checklist. Since the tender document contemplates only one Supervisor, the terms are inherently contradictory and impossible to perform.

3. Whereas in Clause 26.4 it is provided that in case of tie, the tenderer will be selected by draw of lots, in Clause 3.6 it is stipulated that in case of more than one L-1 bidder, the provisions of a Memo dated October 29, 2021 would be attracted. However, the said Memo, annexed at page 88 of the writ petition, does not provide for draw of lots.
4. It has been mentioned in Clause 14.1 of the tender document that the bid value will include the minimum approved wages of employees engaged by the agency, other applicable charges and statutory reduction and Government taxes as applicable and cost of equipment. However, it has been stipulated in Clause 9.3 of the same document that the financial bid will be the rate quoted by the bidder which shall be exclusive of all rates, levies and taxes.

5. With regard to the illegality, it is argued that in patient support services under Clause 5 of the tender document, the people supplied by the petitioner would have to work as Ward Boys whose job would *inter alia* include transferring various files and administrative records as guided by the hospital, assisting nurses and doctors in diagnostic and treatment procedures, assisting in collection and handling of pathological specimens, rendering first aid to patients in case of emergency, assist in terminal disinfection and any other duties which may be assigned from time to time by the hospital authorities. It is argued that the conspectus of such works would include within its ambit several activities for which the housekeeping and scavenging personnel are not sufficiently trained or equipped.
6. Learned counsel places reliance on the West Bengal Allied-Medical and Para-Medical Council Act, 2015 (hereinafter referred to as, “the 2015 Act”) where allied medical professional and para-medical professionals have been clearly defined, who would be qualified to assist registered medical practitioners in the work which have been sought to be done by the housekeeping and scavenging personnel as per the tender document. It is argued that the same is, thus, palpably illegal and ought to be set aside.
7. Learned counsel for the respondent-Authorities submits that the petitioner neither participated in the tender process nor attended the pre-bid meeting which is evident from the signatures appearing in the pre-bid meeting minutes. Thus, the petitioner is a fence-sitter and the writ petition should be dismissed *in limine*. Having not participated in

the tender, the petitioner does not have *locus standi* to move the writ petition.

8. It is argued that the technical bids were opened on December 4, 2023 and there have been 24 bidders in all. Thus, the impossibility/legality argued by the petitioner did not apply to so many bidders, which itself shows that the arguments of the petitioner are frivolous.
9. It is argued that the work of Supervisors would be monitored by the Ward Master and the Head Nurse. Hence, a single Supervisor would be sufficient to keep in touch with the checklist as contemplated in the tender document. Round the clock presence of the Supervisor may not be necessary.
10. It is argued that there was a scope for clarifications in the pre-bid meeting, which was not availed of by the petitioner. The grounds urged by the petitioner were not even raised in the pre-bid meeting and, thus, cannot be raised at this juncture. Even the purported representation of the petitioner which according to the petitioner was given by the petitioner does not cover the points as argued from the Bar now. The only two points were the issue of Supervisor and past experience, that is, if any bidder has worked with anything less than 215 personnel then the said bidder shall be held ineligible, even if the bidder has vivid experience of working in other Hospitals for considerable periods. Hence, the points now sought to be argued ought not to be entertained.
11. The tender document clearly provides in Clause 9.1 that a bidder requiring any clarification or elucidation on any issue of the TE

documents may take up the same with the Health Facility/Unit in the pre-bid meeting. Clause 9.2 stipulates that the bidder may also take up the same in writing which would be responded to in writing provided the same is received by the Health Facility/Unit not later than eight days prior to the prescribed date of submission of bid. The purported representation of the writ petitioner was written on November 7, 2023 even as per the said document, which was beyond the stipulated time and could not have been entertained in any event. Learned counsel submits that the existing contract expires on December 31, 2023 and, unless work order is issued prior to the said date, the patients of the concerned Hospital would suffer immeasurably.

12. Learned counsel for the respondents cites *N.G. Projects Limited Vs. Vinod Kumar Jain and others*, reported at (2022) 6 SCC 127 for the proposition that a mere disagreement with the decision-making process or decision of the administrative authority is no reason for a constitutional court to interfere. Any contract of public service should not be interfered with lightly, as per the said judgment, and in any case there should not be any interim order derailing the entire process of the services meant for larger public good. Multiple layers of exercise of jurisdiction, it was held, also delay the final adjudication challenging the grant of tender. The writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present

day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues. The approach of the Court should not be to find fault with magnifying glass in its hands, rather it should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. Unless there is total arbitrariness or the tender has been granted in a *mala fide* manner, the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

13. Learned counsel next cites *Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSER) & Others*, reported at 2022 SCC OnLine SC 1334 for the proposition that if the petitioner could not have participated in the tender process, the High Court ought to have dismissed the writ petition on the ground of *locus standi*. Moreover, the terms and conditions of the invitation to tender are within the domain of the tenderer and are not open to judicial scrutiny unless arbitrary, discriminatory or *mala fide*.
14. Learned counsel next relies on *Om Gurusai Construction Company Vs. V.N. Reddy and others*, reported at 2023 SCC OnLine SC 1051 where it was reiterated that the attempts of unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation ought to be resisted.

15. Lastly citing *Jashbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others*, reported at (1976) 1 SCC 671, it is argued that unless the appellant is denied or deprived of legal right and has sustained an injury to any legally protected interest, the jurisdiction under Article 226 would not be exercised in his favour.
16. An important feature in the present case which emanates after hearing counsel is that the petitioner, despite having pleaded to be eligible, did not participate in the tender. Nothing prevented the petitioner from participating in the tender process and having attended the pre-bid meeting, raising the questions as raised herein. The same was, however, not done by the petitioner at the relevant juncture. Even the subsequent representation of the petitioner contained two issues, one of which has not even been pleaded here.
17. Thus, going by the ratio laid down by the Supreme Court in the judgments cited by the petitioner, in particular *Jashbhai Motibhai Desai (supra)* and *Airport Authority of India (supra)*, the petitioner cannot be said to have *locus standi* to prefer the instant challenge. Although in *Airport Authority of India (supra)*, the NGOs concerned could not have participated in the tender but the petitioner pleads to be eligible otherwise, it is anybody's guess as to why the petitioner chose not to so participate, raising the disputes in the pre-bid meeting.
18. Even on the merits of the allegations, the petitioner has not made out a case so high that the tender process itself should be scrapped. Insofar as the provision as to one Supervisor being asked for, nothing

prevents the respondent-Authorities from deputing others from the strength of 214 housekeeping and scavenging personnel to act as Supervisor, if need be. In any event, the respondents can very well make do with one Supervisor, who will be monitored by the Head Nurse and the Ward Master as argued by the respondents.

- 19.** No special eligibility or prior training is required for unskilled/semi-skilled housekeeping and scavenging personnel as such, apart from basic aspects of their work. Thus, there is nothing to prevent them from being utilised as Ward Boys. In any event, the expression “housekeeping” is of wide amplitude. The tender document provides that the housekeeping staff shall also assist the hospital nursing staff in day to day patient care such as receiving and dropping patients at the entrance and taking patients to diagnostic laboratory, etc., which require no special skill or prior training.
- 20.** It has to be kept in mind that due to the versatile demands of the modern workplace, be it a medical facility or elsewhere, the employees have to multi-task up to an extent. Thus, an amount of fluidity is required in job assignments and air-tight compartments cannot be expected. After all, the employer has to be given flexibility in how it will utilize its employees best.
- 21.** A hue and cry has been raised by the petitioner on the score that the Ward Boys would be employed in transferring files and administrative records. However, such work does not require any specialisation and can easily be done by housekeeping and scavenging staff as well.

22. The disputed issue primarily pertains to assisting the nurses and doctors in diagnostic and treatment procedures, in collection and handling of pathological specimens, apart from rendering first aid to patients in case of emergency.
23. The expression “assist” is also of a broad connotation. The assistance to be provided by the housekeeping and scavenging staff, of course, would not be at a para-medical or allied medical professional level. However, there are several tit-bits and menial and subsidiary work which goes along with diagnostic and treatment procedures.
24. For example, the mere act of moving the patient on a wheel-chair and/or helping the staff by bringing clean instruments from one place to another also falls within the expression “assists” for the purpose of collection and handling of pathological specimens and assisting nurses or doctors in diagnostic and treatment procedure.
25. Rendering first aid can be of a wide variety, from administering astringents/antiseptics, to higher specialisations. Regarding assistance in terminal disinfection and preparing dead bodies, arranging for their transportation etc., including sterilization of instrument, the housekeeping and scavenging staff have a major role to play. Simply by involving them in such procedure, as links in the gap of para-medical and medical assistance, it cannot be said that the provisions of the concerned law, including the 2015 Act, will *per se* be violated.

26. The said provisions of the tender are not, by themselves, illegal. It depends on the utilization of the staff whether such utilization and activity would transgress the boundaries of law.
27. In any event, it is always open for all concerned, including patients, other staff or the families of patients to call out illegalities, if the staff are engaged in branches of activity which are beyond their training or capacity or violate any law. However, for such reason, the tender cannot be set aside as a whole, since it will tantamount to throwing out the baby with the bath water.
28. The other irregularities alleged, such as the mention of exclusion of taxes and inclusion of taxes in two places, can be read harmoniously and do not form essential terms of the tender. Since there has been no occasion for draw of lots as yet, it cannot be said that the said provision is also vitiated. Moreover, the concerned Memorandum does not directly militate with the provision of draw of lots if there is a tie.
29. Thus, a comprehensive consideration of the arguments of the petitioner shows that there have been no patent arbitrariness or mala fides. No attempt on the part of the tendering authorities to favour any particular bidder has been made out by the petitioner.
30. Moreover, the petitioner, having not participated in the tender or the pre-bid meeting, cannot be permitted to come up for the first time in the writ petition and throw off the public utility services which would directly be affected if the tender process is interdicted. Hence, there is no scope of interference in the present writ petition.

31. Accordingly, WPA No. 26230 of 2023 is dismissed on contest without, however, any order as to costs.
32. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

**( Sabyasachi Bhattacharyya, J. )**

**Later**

At this juncture a stay of the operation of the Order is prayed for. However, since the writ petition has been dismissed, no useful purpose would be served if an order of stay of operation is passed, since the same would not automatically entail that the reliefs are granted in favour of the petitioner.

Accordingly, such prayer is refused.

**( Sabyasachi Bhattacharyya, J. )**