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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 26340 of 2023

Nirupam Chandra Das
Vs.
The State of West Bengal & Ors.

Mr. Anindya Halder,
Mr. Zubair Ahmed
...for the petitioner

Mr. Anirban Roy,
Mr. Tanoy Chakraborty,
Ms. Ashmita Chakraborty
...for the State

Mr. Amitabrata Roy,
Mr. Arkadipta Sengupta
...for the respondent no. 5

1. Learned counsel for the petitioner challenges the action of the Tender Issuing Authorities/respondents primarily on two grounds. The petitioner participated in a tender for supply of manpower. The petitioner succeeded as L-1 bidder and was issued work order on October 17, 2023. On the very next date, the petitioner made a request for extension of the time for depositing the security deposit which, according to the original NIT, was to be deposited within fifteen days from the date of issuance of work order.
2. After sitting tight over the request for some days, on November 03, 2022, the respondents

granted seven days' time to the petitioner to deposit the amount. Within such seven days, to be precise on November 07, 2023, the petitioner took up an objection in writing with the respondents indicating that the respondents were thrusting the existing personnel at the site on the petitioner despite such existing personnel being rude and most of them being above the age of 60 years, thus, incompetent for the job.

3. It is contended that despite the same, the respondent-authorities cancelled the work order of the petitioner and are issuing a work order in favour of the L-2 bidder.

4. Learned counsel appearing for the respondent authority disputes the contention that the respondents are forcing the existing personnel on the petitioner. The petitioner having failed to deposit the security deposit within time, it is submitted that the petitioner's work order was rightly cancelled.

5. There are two components to the present challenge. Regarding the first, it is evident that the payment of security deposit had no link with the objection raised by the respondents regarding alleged imposition of existing manpower on the petitioner.

6. Thus, merely on the score of non-deposit of security deposit, if not for any other reason, the respondents were justified in issuing the work order in favour of the L-2 bidder after cancelling the work order of the petitioner.

7. However, the second component still remains. The petitioner has raised an arguable issue as to whether it was possible for the petitioner at all to comply with the tender terms due to the action of the respondents themselves, in view of the respondents having sought allegedly to force the existing manpower on the petitioner *de hors* the terms of the NIT (Notice Inviting Tender).

8. Although the respondents have raised a question as to the factual veracity of such allegation, it transpires from the concerned memorandum, annexed to the writ petition, that the exemption sought by the petitioner was within the contemplation of a supply contract. Be that as it may, in view of the petitioner having sought for an exemption and having been refused by the respondents, it was the incumbent duty of the petitioner to deposit the security deposit for getting the work order.

9. Thus, the relief of having the order/setting aside the cancellation of the work order cannot be obtained by the petitioner due to the sole reason of

the petitioner having failed to deposit the security amount (which had no nexus with the other objection subsequently raised by the petitioner) within the extended seven days even after obtaining the exemption.

10. However, insofar as the other component of the challenge is concerned, it is arguable whether the petitioner is entitled to damages from the respondents since the petitioner allegedly could not participate in the work given to the petitioner due to the alleged action on the part of the respondent-authorities in forcing the petitioner to take the existing personnel.

11. Thus, in the light of the above observation, W.P.A. No. 26340 of 2023 is dismissed. However, nothing in this order shall preclude the petitioner from making a claim of damages before the competent civil court having jurisdiction on the second issue as enumerated above as to whether the petitioner found it impossible to participate in the contract due to the negligence/action of the respondents *de hors* the NIT.

12. If such a suit for damages is filed by the petitioner, the competent civil court shall decide the issue in accordance with law independently without being influenced on merits by the observations made herein on the issue of damages.

13. Since the petitioner's challenge to the cancellation of the work order has been refused and the work order has already been issued to the L-2 bidder, the respondents shall refund the earnest money deposited by the petitioner within a fortnight from date.

14. There will be no order as to costs.

15. 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.