

D/L. 5.
December 12, 2023.
MNS.

WPA No. 27807 of 2023

ADO CONSORTIUM and another
Vs.
STATE OF WEST BENGAL and others

Mr. Phatick Chandra Das,
Ms. Tithi Paul

... for the petitioners.

Mr. Sirsanya Bandopadhyay
Mr. Avishek Guha,
Ms. Akansha Chopra

...for the KMDA.

1. Learned counsel for the petitioners contends that the petitioners were unlawfully shut out from a tender process by rejection of the petitioners' bid.
2. It is argued that although the petitioners submitted their bid duly within the time as stipulated in the tender document along with all documents, subsequently the time for filing the bids was extended by an incompetent authority.
3. Not stopping there, thereafter the petitioners' bid was rejected on technical ground without granting opportunity to the petitioners to rectify the deficiencies.

4. Learned counsel places reliance on a Memorandum dated June 7, 2022 issued by the Government of West Bengal, Finance Department, where it is stipulated, *inter alia*, that the Tender Inviting Authority may give an opportunity to the bidders whose technical bids are found defective due to minor clerical mistakes/rectifiable deficiencies to explain their position within seven working days through e-mail.
5. Thus it is prayed that the impugned rejection of the petitioners' bid be set aside.
6. Learned counsel appearing for the respondent authorities contends that the petitioners participated even after the extension of the last date for submission of bids. Thereafter, the petitioners were given ample opportunity to explain the deficiencies in the petitioners' bid.
7. It is contended that the tender contemplated the formation of a consortium. However, the respondents were not satisfied with the documents submitted by the petitioners, which did not clearly disclose that all the alleged constituents of the consortium were actually part of it.

8. After writing to the petitioners, when the petitioners were evasive in their reply inasmuch as the petitioners insisted that due documents had previously been filed in connection with a different tender, the respondents directly contacted the third constituent of the purported consortium, that is, one M/s. Ozone Research and Applications (I) Pvt. Ltd. However, being not satisfied there, the respondents wrote further to the petitioners.
9. It is submitted that the petitioners then insisted that documents had already been submitted with the respondents in a previous tender and asked the respondents to let the petitioners know in the event such documents had been misplaced with the respondents.
10. It is argued that it is not the *onus* of the Tender Issuing Authority to repeatedly revert back to a bidder regarding the deficiencies of documents.
11. Since the respondents clearly disclosed the deficiencies and gave opportunity to the petitioners, which was not availed of by the petitioners, the question of violation of the Finance Rules do not apply.

12. In any event, it is submitted that subsequently since all the participants had submitted deficient documents, the tender process itself has been called off on December 8, 2023.

13. The petitioner, in any event, if otherwise eligible, can participate in the fresh tender, if and when floated by the respondents.

14. Upon hearing learned counsel for the parties, it is evident that the petitioners continued to participate in the process of tender even after the impugned extension of the last date of submission of bid. As such, the petitioners cannot be heard now to challenge the said component of the tender process.

15. Insofar as the alleged violation of the Finance Rules by not giving opportunity to the petitioners is concerned, the same also cannot be accepted since ample correspondences were exchanged between the parties, which have been annexed to the writ petition, which go on to show that the petitioners were given sufficient opportunity to make good the deficiencies.

16. In any event, since ultimately the tender process itself has been cancelled, the petitioners always have the liberty to

participate in a fresh tender, if and when floated by the respondent authorities for the same work.

17. From the materials which have been placed before this Court, I do not find sufficient ground to interfere with either the petitioners' bid rejection or the cancellation of the tender process.

18. At this juncture, learned counsel for the petitioners seeks leave to prefer a challenge against the cancellation of the tender process by the respondent authorities. However, in view of the above discussions, no sufficient ground has been made out by the petitioners on such count as well. Hence, such leave is also refused to the petitioners.

19. Accordingly, WPA No. 27807 of 2023 is disposed of as infructuous in the light of the above observations.

20. However, nothing in this order shall preclude the petitioners from participating in a fresh tender if floated by the respondents for the self-same work.

21. If found otherwise eligible, nothing in this order will prevent the respondents from granting the work order to the petitioners, if

the petitioners turn out successful in the said tender.

22. There will be no order as to costs.

23. 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.)