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22.08.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 11405 of 2020
with
IA No. C.A.N. 1 of 2022

Mallabhum Human Resource
Development Trust
Vs.
The State of West Bengal & Ors.

Mr. Indranil Chakravarti,
Mr. Suryasarathi Basu,
Mr. Apurba Roy
...for the petitioner

Mr. Indranil Roy,
Mr. Sunit Kumar Roy
...for the National Medical Commission

Mr. Lutful Haque,
Mr. Golam Karim Chowdhury,
Ms. Taharima Khatun
...for the respondent no. 7

The predicament of the petitioner is rather peculiar.

Most of the arguments advanced by learned counsel for the petitioner are at cross-purposes.

At the outset, the writ petition had challenged the introduction of certain stipulations in a notice inviting Expression of Interest (EOI), for setting up public private partnership arrangement of hospitals and medical colleges with the State of West Bengal. Learned counsel for the petitioner contends that the petitioner participated by submitting EOI in

connection with such a notice, without specifically rejecting which the respondent no. 7 (competitor of the petitioner) had been selected. However, ultimately, the said selection went up to the National Medical Commission (NMC) and was ultimately rejected. The matter culminated in a writ petition before a coordinate Bench of this Court, where the respondent no. 7 had challenged the issuance of a subsequent notice inviting EOI dated September 14, 2021. The coordinate Bench, however, granted the respondent no. 7 liberty to participate in the said notice.

It is contended that by default, upon the rejection of the respondent no. 7 in the previous instance, the writ petitioner ought to have been automatically selected as the successful candidate for entering into a public private partnership with the State.

It is contended that at the inception, while filing the writ petition, there was no specific communication of rejection regarding the petitioner's EOI by the State, for which no such rejection of the petitioner could be challenged in the writ petition.

It is contended that, in fact, the State has not expressly rejected the petitioner's application by furnishing any reason at any point of time.

The cryptic documents disclosed by the State subsequently, as found from the relevant website, merely indicate that the petitioner's application was rejected, without disclosing any reason.

During pendency of the writ petition, it is submitted that the petitioner learnt of a subsequent notice inviting EOI dated September 14, 2021, which had been challenged by the respondent no. 7 before the coordinate Bench as well without impleading the petitioner. The said notice apparently could not have been issued, since there was no supersession of the previous notice, in which the petitioner had participated.

Challenging certain clauses of the subsequent notice dated September 14, 2021, the present writ petition has been filed. In the connected application, the petitioner has challenged the subsequent issuance of notice on September 14, 2021.

Learned counsel appearing for the NMC contends that the respondent no. 7's application was rejected up to the top-most forum. However, it is further pointed out by learned counsel for the NMC that the different notices-in-question inviting EOIs are not mutually exclusive. It is submitted that there may be different notices inviting EOI

simultaneously for setting up such hospitals in the State, as per the extant guidelines.

Learned counsel appearing for the respondent no. 7 submits on query of court that respondent no. 7 participated in the subsequent EOI invited by the State on September 14, 2021 but, ultimately, due to no eligible candidate being found the said exercise also closed.

In the circumstances of the present case, the submission of the NMC appears to be justified insofar as the separate and different notices inviting EOI are not mutually exclusive to each other.

Under the Scheme-in-question, at any point of time EOI can be invited by the State for use of government hospitals for facilitating establishment of private medical college in West Bengal based on National Medical Commission guidelines by allowing use of government hospitals of 300 beds or more in lieu of user charges on temporary basis.

At the present juncture, as it stands, the respondent no. 7's application stands rejected insofar as the previous notice inviting EOI is concerned, which has attained finality. However, since the petitioner's application was never rejected by any reasoned order, the petitioner is still aggrieved by such rejection.

Yet, there is nothing in the guidelines or the notice-in-question to indicate that any reasoned order of rejection is to be communicated to the candidates. Although the State, in the present case, ought to have appeared and used affidavit-in-opposition, the State, for some unknown reasons, chose not to use any affidavit or appear at the final hearing of the matter.

Be that as it may, for whatever reason, the petitioner had been rejected on the previous occasion and the exercise has reached culmination upon the respondent no. 7 being initially selected, but having been turned down till the last forum. The said previous notice of EOI cannot, thus, be reopened now.

Insofar as the subsequent notice inviting EOI dated September 14, 2021 is concerned, the petitioner had not participated in the same, due to pendency of the present litigation.

However, that does not preclude the petitioner from participating in any future notices inviting EOI, including the notice dated September 14, 2021, if the same is still subsisting.

In such case, upon participation, in the event the petitioner is found to be eligible and qualified as per the relevant guidelines, the petitioner shall be given an opportunity to participate in such process

without being prejudiced in any manner by any of the observations made herein and/or its previous rejection in the notice inviting EOI.

In such view of the matter, W.P.A. No. 11405 of 2020, along with IA No. C.A.N. 1 of 2022, are disposed of by granting liberty to the petitioner to participate in any future notice inviting EOI to open a public private partnership pursuant to the Scheme of the Government of India in that regard.

In such case, nothing in the previous rejection of the petitioner and/or the observations made herein shall preclude the petitioner from so participating, if the petitioner is otherwise eligible and qualified to do so.

There will be no order as to costs.

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.)