

Court No. 7
29.12.2023
(Item No. 1)
Vacation
Bench
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 2965 of 2023

Sri Nirupam Chandra Das
VS
The State of West Bengal & Ors.

Mr. Anindya Halder
Sk. Zubair Ahmed
..... for the petitioner
Mr. Jayanta Samanta
Md. Mansoor Alam
.... For the State

Affidavit of service filed in Court today is taken on record.

The private respondent No. 4 being the other lowest bidder (for short, L-I Bidder) though has been served with notice but not represented when this writ petition was taken up for consideration.

The tender process pertains to providing for outsourcing of ambulance drivers and collection for blood by the Health department in respect of District – Darjeeling.

The communication dated **November 22, 2023, Annexure P-3** at **page 47** to the writ petition issued by the respondent No. 3 addressing the petitioner shows that the petitioner, inter alia, was a combined L-1 bidder along with another being the private respondent herein. In the said communication referring to a Finance Department memo being **Memo No. 2320-F(Y) dated June 7, 2022** it was contended by the respondent No. 3 that, in case of Tie Bid

situation both the L-1 bidders were offered for **Sealed Table Bid to further reduce offer rate** and the final selection of L-1 bidders would be followed by Table Bid. Accordingly, the bidders were requested to attend in person to submit their sealed bid with fresh offer rate against the tender on **November 28, 2023** at the place and time mentioned in the said communication. Immediately by its communication dated **November 28, 2023, Annexure P-4** at **page 48** to the writ petition the petitioner communicated its disagreement for reduction of their bid. The communication issued by the respondent No. 3 dated **November 29, 2023, Annexure P-5** at **page 49** to the writ petition shows that, both agencies had fulfilled all the terms and conditions of financial bid and offered the same price. However, as per the said Finance department memo dated **June 7, 2022** the tender selection committee was obliged to call a Table Bid and accordingly the Table Bid was held on **November 28, 2023**. In course of such Table Bid it was found that, the petitioner was not willing to reduce its rate quoted already. The respondent No. 3 further observed and communicated that, there was no alternative but to make a lottery to select the agency. It was also recorded in the said communication that the other agencies being the private respondent herein was not willing to participate in the lottery condition,

moreover, the agency had offered to reduce the rate which was accepted by the selection committee.

Mr. Anindya Halder, learned counsel appearing for the petitioner submits that, though this communication was dated **November 29, 2023** but the same was communicated to the petitioner actually at a later date. Referring to a communication dated **December 20, 2023, Annexure P-6** at **page 51** to the writ petition learned counsel for the petitioner submits that, the petitioner has raised its protest in writing.

Learned counsel for the petitioner then drew attention of this Court to **Clause 25** from the tender document under the nomenclature **Award Criteria** at **page 40** to the writ petition. The said clause runs as follows:

“ 25. Award Criteria

*25.1 Subject to GIB clause 24 above, the contract will be awarded to the lowest evaluated responsive bidder. The list of successful bidder(s) shall be uploaded online. **In case of tie, only one bidder should be seated by lottery.**”*

On the basis of the said clause being clause 25.1 which is a tender terms he submits that, in case of tie as in the facts of this case only one bidder should be selected by lottery and there was no question or scope for submission of any further sealed **“Table Bid”** by reduction of the price quoted originally by the L-1 bidders. He submits that, the decision of

the State authority for going for a Table Bid by varying the price quotation is totally contrary to the terms, illegal and arbitrary which cannot sustain in law. The State authority being the tenderer would not and cannot depart from the tender terms.

Mr. Jayanta Samanta, learned State counsel appearing for respondent Nos. 1 to 3 submits that, the said memo issued by the Finance department dated **June 7, 2022** must be followed and the State authority while conducting the tender is obliged to follow the provisions made therein which prescribes for such Table Bidding in case of a Tie between the two L-1 Bidders. Referring to **clause 24** from the tender document at **page 40** learned State counsel submits that, the purchaser being the tenderer herein had reserved its right to cancel any bid at any time and at any situation without even assigning the reason. Hence, the State authority being the tenderer in the instant case is not bound to accept the original bid submitted by the petitioner or any L-1 Bidder and had correctly proceeded for holding the Table Bid.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, the law is well settled that rule of the game in a tender process cannot be changed or altered unless the parties agreed to that effect. **Clause 25** of the tender terms specifically provides for **in case of tie, only one bidder should**

be selected by lottery. Admittedly the petitioner and the private respondent were both selected as L-1 bidders. Therefore, following **clause 25** of the tender terms a fair lottery as prescribed therein ought to have been held. On the contrary, the State authority had gone for a Table Bid and asked the L-1 bidders to reduce their tender price originally quoted.

This Court is of the considered view that, such steps taken by the State authority to hold a Table Bid and asking the L-1 bidders to reduce their price ought not to have been done which is in violation of **clause 25** of the tender terms. In as much as, nowhere in the said tender document the Finance department memo dated **June 7, 2022** was quoted or referred to with the caveat that this particular tender process shall be subject to the provisions laid down in the said Finance department memo dated **June 7, 2022**. Hence, the decision of the State authority for holding the said Table Bid on the basis of the said Finance Department memo dated **June 7, 2022** was totally arbitrary, inappropriate and cannot sustain in law.

Mr. Jayanta Samanta, learned State counsel has submits that, tender process has not yet been finalized in favour of either of the L-1 bidders. Considering such submissions made on behalf of the State and considering the fact that, the imminent emergency of the Health department to take care of the public health being involved in the tender process,

this Court thinks that, steps has to be taken by the State authority on an extreme urgent basis.

In view of the foregoing discussions and reasons of the decisions of the State authority arising out of this tender process for holding the Table Bid following the said Finance department memo dated **June 7, 2022** stands **set aside** and **quashed**.

The respondent No. 3 shall hold the lottery upon **two days** prior notice to both the L-1 bidders, namely, the petitioner and the private respondent herein in the manner and mode as prescribed under the tender terms following it strictly and then shall publish the result and proceed to finalize and issue the work order in favour of the successful L-1 bidder positively within a period of **next seven working days** from the date of declaration of the result of the lottery strictly in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition being **W.P.A. 2965 of 2023** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

The petitioner shall also serve a copy of this order upon the private respondent forthwith and shall

produce the same before the relevant State authority at the time of holding the lottery.

(Aniruddha Roy, J.)