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WPO/1898/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GANGANAPATI VYAPAAR PRIVATE LTD.
VS
SYAMA PRASAD MOOKERJEE PORT, KOLKATA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 22nd December, 2023.

Appearance:
Mr. B. Bhattacharya, Adv.
Mr. E. Bhattacharya, Adv.
. . .for the petitioner.

Mr. Subhankar Nag, Adv.
Mr. Snehashis Sen, Adv.
Mr. Danyal Ahmed, Adv.
. . .for the Port Trust.

The Court: Learned counsel for the petitioner contends that in terms of the tender document in question, in which process the petitioner participated as well, the e-evaluation criteria enumerated that price bids of the Techno-Commercial qualified bidders shall be opened after the e-auction is over.

Clause 8 of the same provides that the bidder having given the highest final bid, after considering price given in the Price Schedule and that obtained through e-auction amongst the bidders, shall be accepted as the successful H1 bidder. The petitioner contends that the petitioner was the H1 (successful) bidder at the e-auction stage. However, the petitioner apprehends that subsequent to the

petitioner being declared as H1 in the e-auction, the Techno-Commercial bids may be opened to alter such status of the petitioner. The basis of the apprehension of the petitioner is that the Techno-Commercial bid was not put up online and therefore lacks transparency.

Learned counsel appearing for the respondent authorities places reliance on the judgment reported at *(2022) 5 SCC 362* for the proposition that the author of the tender document is the best person to interpret the meaning of the clauses of the tender.

Upon hearing learned counsel for the parties, what is evident is that the present writ petition has been filed on the basis of the apprehension of the petitioner. However, at this stage, there is no existing cause of action for the petitioner to have preferred the writ petition, since the tendering authorities have not yet taken a call on the bids submitted by all the bidders.

Only upon a decision having been taken by the respondent authorities on the outcome of the tender shall the right of the petitioner accrue, that too in the event the petitioner comes out unsuccessful on some premise which can be shown by the petitioner to be taken in arbitrary, mala fide or tailor-made manner.

However, at this stage, there is no existing cause of action of the petitioner in the opinion of this Court to prompt the Court to interfere under Article 226 of the Constitution of India.

In such view of the matter, WPO No.1898 of 2023 is dismissed without any order as to costs.

However, it is made clear that nothing in this order shall preclude the petitioner from preferring an appropriate challenge, if otherwise entitled in law, in the event the petitioner has a cause of action on the outcome of the tender.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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