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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 232 of 2024

Quality Caterer and Anr.
Vs.
Chittaranjan National
Cancer Institute & Ors.

Mr. Kalyan Kumar Bandopadhyay,
Mr. Sirsanya Bandopadhyay,
Mr. Vivekananda Bose,
Mr. Rahul Kumar Singh,
Mr. Subhajit Das
...for the petitioners

Ms. Aparna Banerjee
...for the respondent nos. 1 to 4

1. The petitioners challenge the ad hoc engagement of the private respondent, one M/s. A-One Caterers, for the work of operating patient diet Kitchen and Cafeteria Services at Chittaranjan National Cancer Institute (CNCI), Hazra Campus.
2. Learned senior counsel appearing for the petitioners contends that although the present petitioners as well as the private respondent had together been operating (alternatively) the cooked diet service in the Hazra Campus of the CNCI till December 31, 2023, when the contract came to an end, while choosing an operator for doing similar work for a limited period of three months till a fresh tender was floated, the respondent-authorities chose exclusively the private respondent in

exclusion of the present petitioners without any justified reason.

3. Learned senior counsel places reliance on the principles of Article 14 of the Constitution of India and alleges palpable discrimination and unreasonableness in the State action involved. It is sought to be argued that the reasonableness and lack of discrimination in respect of State action extends not only to tenders but also to *ad hoc* arrangements/contracts.

4. In support of such contention, learned senior counsel cites *Madras Aluminium Company Limited vs. Tamil Nadu Electricity Board & Anr.* reported at (2023) 8 SCC 240, where it was observed, inter alia, that in any transaction of the State, the minimal requirements of public law are to be adhered to. The fact that a dispute falls into the contractual realm, it was held, does not relieve the State of its obligation to comply with the requirements of Article 14 of the Constitution.

5. In such context, learned senior counsel also cites the celebrated judgment of *Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.*, reported at (1979) 3 SCC 489, where the Supreme Court had observed that the Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only

in favour of those having a particular characteristic, such as, gray hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

6. More importantly, it was held by the Supreme Court that the State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. The proposition, it is highlighted by learned senior counsel, would also hold good as per the Supreme Court in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. The insinuation of the argument is that, the same principle also applies to ad hoc arrangements made by the State.

7. In the present case, it is argued, there is no reason or intelligible differentia between the petitioners and the private respondent for the respondents to have chosen the private respondent in exclusion of the petitioners even for a period of three months.

8. Learned senior counsel also seeks to address the apparent mala fides and arbitrariness

inasmuch as two previous tenders, which were floated for similar work, were cancelled by the respondent-authorities after challenges were mounted to the same by the petitioners by way of writ petitions.

9. Learned counsel appearing for the respondent-authorities contends that even from the impugned order dated December 30, 2023 it is evident that the new tender sought to be floated is for operating Diet Kitchen and Cafeteria Services at the CNCI, Hazra Campus. It is argued that nearabout the end of the year 2023, a kitchen was established in the said campus.

10. It is sought to be highlighted by placing reliance on a copy of the contract awarded to the petitioners previously on October 29, 2015, which was extended from time to time, that the said contract covered the work only of supply of diet to indoor patients. It is contended that there was no provision of supplying cooked diet from the kitchen and cafeteria situated within the premises of the campus and, as such, since the private respondent is experienced in such field of supply of cooked diet, doing same work for the New Town Campus of CNCI, the respondents were justified in choosing the private respondent for carrying out the work for the limited period of three months, till a fresh

tender is floated in respect of the Hazra Campus as well.

11. It is sought to be argued further that the private respondent has been working in the New Town Campus of the CNCI for supply of cooked diet at a much lower rate than that of the petitioners for Hazra Campus.

12. By placing reliance on the contents of the impugned order dated December 30, 2023, learned counsel seeks to argue that the extension for three months on an ad hoc basis has been given to the private respondent since it will be beneficial for the organization and for the interest of the patients at the same existing lower rates which were prevailing for the New Town Campus.

13. Learned senior counsel appearing for the petitioners in reply argues that the justifications now sought to be given from the Bar are not found in the impugned order. As such, relying on the principle laid down in *Mahinder Singh Gill's case* (AIR 1978 SC 851), it is argued that subsequent justifications or reasons cannot be provided post facto by the authorities to justify an illegal act which has been already perpetrated.

14. A careful perusal of the impugned order, upon hearing learned counsel for the parties, reveals that it has been clearly indicated that the new proposed

tender is for patient Diet Kitchen and Cafeteria Services at the CNCI, Hazra Campus.

15. It has been stated in the said order that due to unwillingness of the L-1 Firm to take over the services, the previous tender was scrapped and the only option available is to go for re-tender. The CNCI, New Town Campus, is having an existing tender for patient diet and cafeteria system with M/s. A-One Caterers, that is, the private respondent, and both the campuses are under the same administrative control. As such, it has been stated by the respondents that it will be beneficial for the organization to extend the services of existing firm working at CNCI, New Town Campus to continue the service at CNCI, Hazra Campus, for an initial period of three months as an interim provision.

16. A perusal of the documents handed over by the respondents reveals that the previous work being done with regard to the Hazra Campus by the petitioners as well as the private respondent was merely to supply diet to indoor patients.

17. Although no specific reference of the juncture when the new kitchen was established in the Hazra Campus has been mentioned in the impugned order, the impugned order clearly denotes that the

proposed work now sought to be given is for patient diet “Kitchen and Cafeteria Services”.

18. It is evident that since the private respondent has already been supplying cooked diet from the kitchen and cafeteria in CNCI, New Town Campus, a similar work as contemplated by the proposed new tender, which is also the subject matter of the work covered by the impugned ad hoc engagement, has been given to the private respondent.

19. A distinguishing feature of the previous work done by the petitioners as well as the private respondent for Hazra Campus was that the said work till expiry of the last contract had been only to supply diet, without there being any specific reference to supply of cooked diet or operation of any kitchen or cafeteria services.

20. Hence, although subtle, there is indeed a distinction between the work done till now and the service now proposed to be offered to the patients of Hazra Campus at present. The distinguishing feature is the installation of a kitchen and cafeteria, which is now to be operated.

21. Although the petitioners are justified in arguing that the petitioners never got an opportunity to meet the cheaper price at which the private respondent is working for the New Town Campus, the said yardstick, even if ignored, it still remains

that the present work to be done contemplates the operation of a Kitchen and Cafeteria Services, which is already being done by the private respondent in the New Town Campus of the same organization.

22. Hence, it cannot be said that the allocation of the work on ad hoc basis for three months to the private respondent is patently arbitrary, discriminatory or unreasonable as such.

23. It is the discretion of the employer to lay appropriate stress on the tender criteria. In the present case, since the respondents have projected satisfactory criteria in the impugned order itself to distinguish between the petitioners and the private respondent with regard to the limited ad hoc work to be granted, I do not find any scope for interference by issuing a high prerogative writ in the present matter.

24. However, it is obvious that the respondents are duty-bound to float a new tender at the earliest and to ensure that the work is allocated on a permanent basis for a longer period only in terms of the said tender, which should be transparent and adhering to the principles of justice, equity and good conscience.

25. However, in the interregnum, there is no incriminating feature to set aside the allocation of

work on ad hoc basis for three months to the private respondent.

26. In such view of the matter, W.P.A. No. 232 of 2024 is dismissed without, however, any order as to costs.

27. However, it is made clear that nothing in this order shall come in the way of the respondents in the matter of issuing a fresh tender within three months and ensuring that the work is allocated long-term in terms of the said tender and the said tender alone.

28. 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.)