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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 1627 of 2024

Shiba Prosad Banerjee.
Vs.
The State of West Bengal & Ors.

Mr. Saptangsu Basu, Senior Advocate,
Mr. Swarup Paul,
Mr. Surya Maity,
Mr. Gurusaday Dutta,
Mr. Anish Roy
...for the petitioner

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee
...for the State

1. The present writ petition is on a short issue. The petitioner participated in a tender floated by the respondent-authorities. Initially, the petitioner's technical bid was accepted, but subsequently rejected. The said process was repeated twice over.

2. The ground for such rejection given by the respondent-authorities was apparently that the individual PAN Card of the petitioner as one of the partners was furnished but the PAN Card of the partnership firm was not.

3. Learned Senior Counsel for the petitioner contends, by placing reliance on two Supreme Court judgments, respectively *New Horizons Ltd. vs. Union of India,* reported at *1995 (1) SCC 478* and *M/s. Ganpati RV-Talleres Alegria Track Pvt.*

Ltd. vs. Union of India & Anr., reported at *(2009) 1 SCC 589,* that the Supreme Court consistently held that furnishing of eligibility criteria and documents relating thereto of one of the partners of a partnership firm would suffice for compliance of the terms of the tender by the partnership firm itself.

4. It is further contended that the respondent-authorities themselves had admitted the petitioner's technical bid on January 20, 2024 as per the annexure to the supplementary affidavit filed today with leave of Court, but immediately thereafter again rejected the same.

5. It is argued that the premise of the said rejection is bad in law and ought to be set aside.

6. Learned Senior Counsel for the petitioner also, in the passing, points out to a communication dated January 18, 2024, annexed at page 157 of the writ petition, from which it transpires that the entire tender was apparently revoked at one point of time. Such contradictory action on the part of the respondent-authorities is sought to be assailed by the petitioner.

7. Learned counsel for the respondent-authorities places reliance on a Checklist, which is a part of the tender document. Clause 11 of the same insists that Income Tax Clearance Certificate for

the last three financial years have to be produced. More importantly, Clause 14 provides that in case of partnership firms, relevant documents of partnership, Aadhaar Card, PAN Card and Address proof of each of the partners and attestation and signature of NIT documents and tenderer declaration by all the partners of the participating agency/firm is required. Also placing reliance on Item 7 of Clause 4(c) of the Tender Document, which pertains to the qualifying conditions to be an eligible bidder for technical bid, it is pointed out that Aadhaar Card of proprietor/partner(s) is to be furnished.

8. Learned counsel seeks to explain away the e-mail communication dated January 18, 2024 regarding purported revocation of the tender by submitting that at the outset of the communication, reference has been made to the particular bid number of the petitioner, that is, Bid No. 4302414 and, as such, the revocation is restricted to the petitioner's bid and not the entire tender.

9. Lastly, learned counsel for the respondent-authorities cites an unreported coordinate Bench judgment between the same parties dated July 19, 2022 passed in WPA No. 6591 of 2022, where the Court observed that since there was

an admitted discrepancy in the case made out by the petitioner insofar as the PAN Card of one of the partners had been produced, the Court was not inclined to pass any order referring the matter for consideration by the E.S.I. Hospital and dismissed the writ petition.

10. It is relevant to mention that learned Senior Counsel for the petitioner has also referred to another different tender floated by the same authorities as the present where under similar conditions, the individual PAN Card of the petitioner was accepted as that of the partnership firm.

11. Upon hearing learned counsel for the parties, there cannot remain any manner of doubt that the Supreme Court has consistently opined, even deriving inspiration from the law on joint venture prevalent in the United States, that the previous experience and documents pertaining to one of the partners would suffice to comply with the tender terms for similar documents required for the partnership firm itself.

12. Thus, following such principle, in the present case, the premise on which the respondent-authorities rejected the petitioner's bid cannot be accepted.

13. However, learned counsel appearing for the respondent-authorities has made a valiant effort to place reliance on certain clauses of the tender document itself to distinguish between the general principle laid down by the Supreme Court and the present case. Let us consider those.

14. The first provision of the tender document relied on by the respondent-authorities is Item No. 14 of the Checklist. Although Item No. 14 of the Checklist indeed stresses that in case of partnership firm, the documents including PAN Card of all the partners/each of the partners is to be provided, the said Checklist is merely a corollary to the tender document and not a part of the eligibility criteria or an essential term of the notice inviting tender as such. A Checklist, as the name suggests, is a mere guideline for the documents required to be furnished by a bidder and not the be-all and end-all of the criteria required for eligibility in the technical bid.

15. What we have to look into is the qualifying conditions for an eligible bidder for technical bid, which is provided in Clause 4 of the tender documents itself. Item 7 of the sub-clause (c) of the said Clause provides that Aadhaar Card of "partner(s)" is required to be furnished.

16. The specific use of parentheses to qualify the plural of the term “partner” is extremely significant, inasmuch as an obvious choice has been given to the partners either to file documents for all the partners or any one of the partners.

17. Thus, the reliance placed on the Checklist is negated by the clauses of the eligibility criteria in the main body of the tender document itself.

18. Moreover, in the present case, the respondent-authorities have acted like a valve set, turning on and off the admission of the bid of the petitioner not once but twice.

19. Once it is communicated that the petitioner’s bid is accepted, it was again rejected soon thereafter. Again, the respondent-authorities intimated the petitioner that the tender of the petitioner had been admitted by a committee formed by the respondents and, a minute thereafter, at 5.04 P.M. on the same date, it was intimated that such bid had been rejected.

20. In any event, the premise of such rejection has been given at page 150 of the writ petition, which cites the petitioner having not given the Company PAN details for filing Income Tax Returns.

21. However, learned Senior Counsel appearing for the petitioner has rightly pointed out that there is a distinction between the PAN number given for the present petitioner, an individual partner, as appearing at page 98 of the writ petition (AEVPB7221F) and that of the partnership firm which has been given in the PAN Card of the firm annexed at page 77 of the writ petition (AELFS4533D). Hence, PAN Cards of both the petitioner/partner and the firm had been furnished. Thus, the only ground cited by the respondents for rejection of the petitioner's bid cannot hold good.

22. Insofar as the coordinate Bench judgement is concerned, with utmost respect, the question which had fallen for consideration here in the context of the judgments of the Supreme Court cited by the petitioner was never raised before the said Court. The learned Single Judge observed that the writ petition in the said case did not clarify whether the petitioner participated in the tender process as an individual or a part of the partnership firm, whereas in the present case, several documents have been produced by the parties and annexed to the writ petition to indicate that in all documents furnished by the firm, the present

petitioner has clearly indicated that he was acting as a partner and on behalf of the partnership firm.

23. In such view of the matter, on a comprehensive perusal of the documents and hearing the arguments of the parties, there was no valid ground for rejection of the petitioner's bid by the Tender Inviting Authorities.

24. Accordingly, W.P.A. No. 1627 of 2024 is allowed on contest, thereby setting aside the impugned rejection of the petitioner's bid in the concerned tender process.

25. The respondents/Tender Inviting Authorities shall now proceed with the financial bid deeming that the petitioner's bid has been validly accepted at the technical stage and conclude the tender process as expeditiously as possible.

26. There will be no order as to costs.

27. 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.)