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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 3417 of 2024

M/s. Mondal Enterprise & Anr.
Vs.
State of West Bengal & Ors.

Mr. Sakya Maity
...for the petitioners

Mr. Sk. Md. Galib,
Mr. Abu Siddique Mallik
...for the State

1. Learned counsel for the petitioner submits that the petitioner's technical bid was unlawfully rejected by the respondent-authorities in connection with a tender floated by the respondents.

2. Learned counsel for the petitioners points out that whereas the pre-qualification credential in terms of the contract was stipulated in the list of works, which was a part of the tender document and annexed at page 27 of the writ petition, the petitioners submitted prior credentials for similar work having been completed satisfactorily by the petitioners, which is evident from the completion certificate annexed at page 25 of the writ petition, read in conjunction with the Notice Inviting Tender of the previous work, annexed at page 21 of the writ petition.

3. It is argued that after the erroneous rejection of the petitioners' technical bid on the ground of mismatch of credentials, the petitioners immediately, that is, on February 05, 2024 itself, when the summary results were uploaded, gave a representation to the respondents, but the respondents did not look into the same. Unhindered, the respondents proceeded with the tender process and awarded work order to the private respondent. It is further pointed out that the petitioners had quoted a far lesser amount than the private respondent and, as such, would have been qualified on the financial count as well.

4. Learned counsel for the respondent-authorities submits that as per the tender itself, the date of opening of the technical bid was February 02, 2024, on which date the bid was duly opened.

5. By placing reliance on Clause 13.1 of the tender document, it is argued that technical proposal was to be opened by the Tender Inviting Authority or his/her authorised representative(s) electronically in the official website using their authorised valid Digital Signature Certificate. The said clause also stipulated that intending contractors/bidders may remain present if they so desire.

6. In Clause 13.2, it is argued, it stipulated that within 24 hours of uploading the TBO summary sheet containing Preliminary Technical

Qualification result, the aggrieved bidder may seek clarification/redressal/review.

7. However, in terms of the “critical dates” of the e-tender as given in the tender document itself, the technical bid opening date was February 02, 2024 but the petitioner gave a representation not within 24 hours as stipulated but on February 05, 2024.

8. That apart, the petitioner waited till February 08, 2024, after the entire process of opening of the financial bid was over, to prefer the present writ petition.

9. In the meantime, in view of the emergent nature of the work, which was to be completed within ten days, the respondents have issued the work order and work has been completed by the private respondent. It is, thus, argued that the present challenge is not maintainable and ought to be dismissed.

10. Upon a prima facie perusal of the documents annexed to the writ petition, it transpires that the petitioner has produced sufficient documents to prove that the petitioner met the pre-qualification criteria. Moreover, the petitioner also preferred a representation, thereby incorporating a challenge to the petitioner’s bid rejection on February 05, 2024, which, as per the Tender Summery Report, annexed at page 51 of the writ petition, was the date when the uploading of the results was done.

Thus, the petitioner came within the 24-hour window as contemplated in Clause 13.2 of the tender document. It was the duty of the respondents to address the grievance raised by the petitioner in the representation dated February 05, 2024, which was not done by the Tender Inviting Authorities.

11. Thus, the petitioner has made out a strong prima facie case in support of his contentions.

12. However, at this belated stage, it would be a futile exercise to direct affidavits, since the work-in-question has already been awarded and also completed, in view of the implicit emergency of the work, by the private respondent.

13. Thus, the remedy of cancelling the tender process and issuing the tender to the petitioner cannot now be resorted to in view of the tender having already spent its force by the work having been awarded and executed by the awarded contractor.

14. The only remedy, if any, of the petitioner lies in damages.

15. Thus, W.P.A. No. 3417 of 2024 is disposed of by granting liberty to the petitioner to approach the competent civil court claiming damages in the light of the above observations.

16. However, it is made clear that the contentions and the counter-allegations of the parties have not

been conclusively determined by this Court and it will be open to the civil court, if approached, to decide all issues independently and in accordance with law.

17. Since no affidavits have been invited in the matter, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

18. There will be no order as to costs.

19. 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.)