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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 4551 of 2024

Sri Anuttam Sarkar
Vs.
The State of West Bengal & Ors.

Ms. Mousumi Bhowal
... for the petitioner

Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner's technical bid was rejected on grounds which were not clearly disclosed in the rejection order. By placing reliance on page 248 of the writ petition, it is argued that the rejection was on technical ground, the reason being merely the non-fulfillment of the criteria mentioned in the Notice Inviting Tender (NIT).
3. Learned counsel places reliance on several pages of the writ petition to indicate that the petitioner was eligible for the work. It is contended that as per the tender document, the work contemplated under the tender was to provide 214 plus 1 (supervisor), equal to 215 number of house

keeping and scavenging personnel for three years at Murshidabad Medical College and Hospital.

4. Clause 6.1 of the said tender document stipulates that the bidder should have supplied in any three years after 2011 from the date of tender opening, at least 100% of the quoted quantity of the similar goods and/or services meeting major specification parameters, which has/is functioning, preferably, in a Government or corporate MCH/hospital or establishments of similar size in India. It is argued that the petitioner provided credentials for work over the period as contemplated in Clause 6.1, one of which was done for the very institute which has floated the present tender. It is, thus, submitted that the rejection was bad in law and arbitrary.

5. Learned counsel seeks liberty, which is granted, and files a supplementary affidavit indicating that the work order has been given in the meantime to a person who does not qualify for the tender, since the said entity stands on an equal footing as the petitioner.

6. Learned senior counsel for the State submits a written instruction, a copy of which is also handed over to learned counsel for the petitioner.

7. As reason for the rejection, the respondents have cited that the Tender Committee found only

27 months' credentials for similar services after evaluation of the submitted documents of the petitioner/bidder and that the credentials of the petitioner is also not continuous in nature but was intermittent and scattered over various months.

8. A perusal of the documents annexed to the writ petition indicates that the Tender Inviting Authorities were justified in contending that the work done by the petitioner, as per his credentials, was in a staggered manner, spread over intermittent periods.

9. Also, it transpires prima facie that the work done was only for 27 months.

10. Although the expression "continuous" does not find place in Clause 6.1 of the tender document, it is clear that, even as per the said Clause, three years of work had to be done at least 100% of the quoted quantity of the similar services, meeting major specification parameters.

11. The expression "similar" obviously refers to the present work contemplated under the tender. Since the work contemplated is providing 215 house keeping and scavenging personnel for a continuous period of three years, the continuity of the period of the prior work done could be read into Clause 6.1. At least, the same was one of the plausible interpretations which could be attributed

to Clause 6.1. It is well-settled that the Tender Inviting Authorities have the discretion of interpreting their tender terms in their own way, unless the same is palpably arbitrary, mala fide and/or unreasonable.

12. Here is a case where the interpretation lent to the said Clause does not fall within any of the above exceptions.

13. As such, the question as to whether the person to whom the work was ultimately granted could not be looked into in detail, since the petitioner's tender itself was rejected at the technical stage thereby disentitled the petitioner to challenge the credentials of other bidders.

14. In such view of the matter, there is no scope of interference in the writ petition.

15. W.P.A. No. 4551 of 2024 is, accordingly, dismissed on context.

16. The written instruction filed today along with the supplementary affidavit be kept on record.

17. There will be no order as to costs.

18. 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.)