

M/L. 12.
April 1, 2024.
MNS.

WPA No. 6871 of 2024

Aspen Realcon Private Limited
Vs.
The West Bengal Housing Development
Corporation (WBHIDCO) and others

Mr. Shyamal Chakraborty,
Mr. Ayan Poddar,
Ms. Khusboo Ruia,
Mr. Soham Dutta

... for the petitioner.

Mr. Jishnu Chowdhury,
Mr. Debanjan Mondal,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Souradeep Banerjee,
Mr. Aviroop Mistra,
Ms. Samriddha Sen

...for the WBHIDCO.

1. The matter is taken up for hearing.
2. The petitioner contends that despite the petitioner having submitted proper documents of machineries in terms of the tender, which is the subject-matter of the present challenge, the petitioner's bid was rejected at the technical stage.
3. It is submitted that by way of reasons, the respondent authorities disclosed that the technical disqualification was due to non-submission of proper documents of machineries.

4. It is argued that the said reason was cryptic and as such, could not be proper justification for shutting out the petitioner. Since the petitioner was not given any opportunity of hearing and/or no elaborate reasons were given, it is contended that the cardinal principles of natural justice are violated by the impugned rejection.
5. Learned counsel for the respondent authorities places reliance on the period of completion of the work contemplated under the tender, that is, 45 days, which evidently qualifies the work contemplated as urgent. The nature of the work was upgradation of a particular service road, which it is also argued to be essential and urgent. It is argued that after the recent amendment of the Specific Relief Act, infrastructure projects should not normally be stalled by orders of injunction by courts of law.
6. Learned counsel places particular reliance on Clause 1 of the tender document, which stipulates that the intending contractors/tenderers must have their own machineries and conclusive proof of ownership of machineries and plant in working condition which shall have to be submitted with the tender documents.

7. Learned counsel points out that in particular, with regard to the 2nd, 3rd and 4th items of machineries mentioned therein, the petitioner failed to satisfy such essential criterion.
8. In order to impress upon the court that the criterion-in-question was essential, learned counsel also places reliance on Clause 6(v) which stipulates that the bidder “shall” fulfill the following eligibility conditions to bid for the tender.
9. Under sub-clause (v) of Clause 6, the prospective bidders should own their required machineries and the conclusive proof of ownership clause is reiterated.
10. It is categorically mentioned in the note underneath the tender clauses that failure of submission of any of the documents mentioned thereinabove would render the tenderer liable to be rejected for both statutory and non statutory cover. One of the said documents, which are essential, was the technical document pertaining to the contractor’s equipment.
11. Learned counsel for the respondent authorities hands over certain documents, which indicate that the second of the said equipment as mentioned in the tender clauses, was taken by the petitioner on

monthly hire basis, which is evident from the lease agreement submitted by the petitioner at the time of submitting its bid. Insofar as the other machineries are concerned, none of them were fit to be used, which is evident from the RC Status, which was described in the documents handed over by the petitioner as follows: "Fitness Expired".

12. Such documents, which are filed by learned counsel for the respondent authorities in court, be kept on record. Copies thereof are handed over to learned counsel for the petitioner here and now in court.

13. In fact, the respondent authorities also gave reason, which is evident from the equipment evaluation details, a copy of which is also handed over in court, which shows that regarding the second equipment, the authorities gave as reason for rejection the ground of the conditions being mismatched. As regards the other two equipment, the fitness had expired.

14. Thus, it is found that plausible explanation has been given by the respondents for their decision to reject the petitioner's bid at the technical stage. It is found from the document dated March 4, 2024 annexed at page 71 of the writ petition that non-submission of proper

documents of machineries was cited as a specific reason for technical rejection of bid.

The respondent authorities, while rejecting or accepting bids, are not required to give elaborate reasons befitting judicial or quasi judicial forums or courts.

15. If such a fetter was imposed on the authorities, no tender for public projects would ever reach culmination.

16. Hence, such elaborate paraphernalia cannot be read into tenders for public projects, which are implicitly urgent in nature. Even the scope of the present tender, as evident from the documents produced, shows that it is urgent in nature and it has been rightly argued by the respondents that such projects are normally not hindered or interdicted by courts of law, unless a high ground to displace the presumption of correctness of the decision of the Tender Inviting Authority is made out by the petitioner by cogent evidence.

17. In the present case, as such, it is evident that the decision of the Tender Issuing Authority was justified and cannot be faulted.

18. The petitioner has failed to impress upon the court that there was such high case of *mala fides*, arbitrariness or unreasonableness in the decision-making process of the Tender

Inviting Authority to justify the rejection of the petitioner's bid being set aside and/or the tender being stalled further.

19. As such, WPA No. 6871 of 2024 is dismissed on contest.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)