

D/L. 6.
January 25, 2024.
MNS.

WPA No. 7292 of 2023

National Security Services
Vs.
The State of West Bengal and others

Mr. Mir Anowar

... for the petitioner.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu

...for the State-respondents.

1. The present challenge has been preferred by a successful bidder in a tender process floated by the respondent authorities for the purpose of deputing five sweeping and cleaning personnel and two cooking personnel at a Children Home for Girls, Nadia.
2. The petitioner, after turning out to be successful, was awarded a work order on July 29, 2022 and the petitioner did work in terms of the said order for about 45 days. However, thereafter, without any prior hearing being given to the petitioner, vide communication dated September 20, 2022, the work of the petitioner was discontinued, despite the initial contract being for a period up to March 31, 2023.

3. Thereafter, the petitioner sought reasons for such discontinuation, in which regard the respondent authorities were allegedly silent. Even subsequently, when the petitioner raised bills in terms of the work order/tender, the respondent authorities, although returning the earnest money of the petitioner, only decided to pay the petitioner in terms of the previously existing rates and not as per the terms of the tender. Such discontinuance and non-payment at the tender rates has been challenged in the present writ petition.
4. Learned counsel appearing for the respondent authorities places reliance on Clauses 15 and 22 of the tender documents.
5. In terms of Clause 15, the accepting authority reserves the right to cancel the e-NIT at any point of time. No representation, as per the said clause, in such connection will be accepted under any circumstances. Earnest money, if deposited, will be refunded as per Rules.
6. Clause 22, on the other hand, states that during scrutiny or at any later stage, if it comes to the notice of the tender inviting authority that the credential or any other documents submitted by the tenderers is incorrect, manufactured or fabricated, the offer

of that tender agreement will be outright rejected without any prejudice and security deposit will be forfeited. The agency may, in such case, have to face the consequences as deemed fit by the Tender Committee.

7. Learned counsel for the respondent authorities also hands over a bunch of documents. Among the said documents, learned counsel relies on a resolution of the Tender Committee for Children Home for Girls, dated September 16, 2022 which mentions, inter alia, that as per complaint of one Sukumar Ghosh, an unsuccessful tenderer who participated in the same tender process, it was found that his complaint was genuine and the selection of the petitioner on the basis of lower rates for service tax, ESI, EPF, Bonus etc. was not correct. Hence, it was resolved that the tender for sweeping, cleaning and cooking shall be cancelled and the work order issued to the petitioner for those services shall also be cancelled.

8. Learned counsel also places reliance on the resolution of another meeting of the Tender Committee dated November 29, 2022, which is also a part of the bunch of documents handed over in Court and is kept on record, which says that the payment for the service of

the petitioner for the period of 45 days may be done in existing rate to the petitioner-agency as the new rate has not been approved.

9. Over and above, learned counsel for the respondent authorities cites the judgement of *ICOMM Tele Limited Vs. Punjab State Water Supply and Sewerage Board and another* reported at (2019) 4 SCC 401. In the said judgment, the principles of interference by courts in tender matters were discussed. The Supreme Court, inter alia, held that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The Government must have a free hand in setting the terms of the tender and must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, *mala fide* or actuated by bias.

10. It is thus submitted that the action of the Tender Inviting Authorities are justified and in consonance with principles of natural justice.

11. There are several distinctions between the cited judgment and the present case.

12. Insofar as the impugned action of discontinuance of the work order of the

petitioner is concerned, the same is palpably arbitrary and unilateral, since the petitioner was never given any hearing at all prior to such discontinuance of an already-issued work order, which was to expire on a subsequent date, on a date earlier than its termination.

13. The reliance of the respondent authorities on Clauses 15 and 22 of the tender documents are misplaced.

14. Insofar as Clause 15 is concerned, the right reserved by the authority was to cancel the e-NIT at any point of time.

15. However, the expression "at any point of time" cannot exceed the tenure of the tender document itself. The tender process had culminated in the present case by issuance of a work order to the petitioner in terms of the tender. After the work order is issued, the same partakes of the character of a contract independent of the tender document between the petitioner and the respondent authority, although the basic premise of the work order would be in consonance with the tender terms.

16. After such culmination of the tenure of the e-tender by issuance of a work order, the tendering authorities cannot resile and seek to

cancel the tender process itself, thereby setting the clock back.

17. Moreover, the tender term that no representation in the connection will be accepted under any circumstances also has to be read down, since it is well-settled that the State and its instrumentalities have to act on a much higher footing and fairer premise than an ordinary employer in every aspect of its dispensation of duties.

18. Insofar as Clause 22 is concerned, it merely provides that during scrutiny at any later stage, obviously during the subsistence of the tender process, if it is found that the bidder has produced certain incorrect/ manufactured/ fabricated documents, it would be available to the tendering authorities to recall such tender and forfeit its security deposit.

19. However, in the present case, the respondents have not even made out a case that the petitioner produced any incorrect/manufactured/ fabricated documents at any point of time.

20. The tender inviting authorities accepted the bid of the petitioner at the quotation given by the petitioner and, as such, are precluded subsequently, particularly after issuance of the work order, from resiling from such position to

say that the prices quoted by the petitioner were below the minimum level. The prices quoted by the petitioner were in terms of the tender and were accepted fully by the tendering authorities by issuance of work order. Hence, the said chapter cannot now be reopened by the tendering authorities.

21. It is found from the discontinuance letter dated September 20, 2022 that the same is extremely cryptic, without disclosing any reason whatsoever for discontinuing the service of the petitioner contrary to the work order issued to the petitioner.

22. No show cause notice was given to the petitioner at any point of time as well.

23. Even after the petitioner repeatedly sought the reasons for such discontinuance, the same were not furnished, but are now being produced before this Court.

24. Such high-handed action on the part of State instrumentalities, that is, the respondent authorities, is strongly deprecated. Not only that, the respondent authorities went so far as to refuse payment even for the work done by the petitioner in terms of the tender conditions and the work order issued.

25. It is patently *de hors* the powers of the tender inviting authority, after the work order was

issued in terms of the tender, to resile from the rates agreed between the parties and insist that the payments would be made at the previously existing rate.

26. Hence, on both such counts, the action of the tendering authorities cannot be accepted.

27. Undoubtedly, in the judgment cited by the respondent authorities, it was held by the Supreme Court that the tendering authorities have to have some play in the joints. However, the Supreme Court never held that such play could be stretched to mean foul play as in the present case.

28. The respondents here have acted arbitrarily and in a high-handed manner, which action is utterly unreasonable and fails the Wednesbury test.

29. Hence, the precise window of interference contemplated by the Supreme Court in the cited judgment is fully satisfied in the present case.

30. In view of the above observations, it has to be held that the impugned actions of the respondent authorities are palpably illegal, arbitrary violative of the principles of natural justice and discriminatory against the petitioner.

31. Accordingly, WPA No. 7292 of 2023 is allowed on contest, thereby setting aside the impugned discontinuance of the work order of the petitioner dated September 20, 2022.

32. The respondent authorities are directed to immediately pay the petitioner in terms of the bills of the petitioner as per the rates agreed in consonance with the tender document and the work order issued to the petitioner for the entire period during which the petitioner had rendered his services, within three weeks from date.

33. Since the tenure of the work order is already over, it will be open to the petitioner to claim damages before a competent civil court for unlawful early termination of the petitioner before completion of the entire period of the work order.

34. There will be no order as to costs.

35. 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.)