

AD-24
Ct No.09
10.04.2024
TN

WPA No. 8346 of 2024

Sri Nirupam Chandra Das
Vs.
The State of West Bengal and others

Mr. Anindya Halder,
Mr. Zubir Ahemd

.... for the petitioner

Mr. Biswabrata Basu Mallick, Ld. AGP,
Mr. Sayan Ganguly

.... for the State

- 1.** Affidavit-of-service filed today be kept on record. None appears for the private respondent at the time of call.
- 2.** Learned counsel for the petitioner contends that the petitioner participated in a tender process for supply of personnel for certain works. Clause 12 of the said tender document contained a provision that in case it is found that two or more bidders have quoted the same rate, the lowest bidder will be decided by draw of lots. It is submitted that in the event the L1 bidder chooses to opt out, an option will be given to the rest of the bidders, upon which the decision shall be taken by the authorities.
- 3.** In the present case, however, by a notice dated December 06, 2023, the petitioner as well as the private respondent, both of whom had a tie, were called apparently since both were selected as L1 bidders contrary to Clause 12 of the tender document.

- 4.** Learned counsel for the petitioner submits that the petitioner sent his authorized representative who was denied the opportunity of participation on the flimsy pretext that he did not carry a proper authorization although such allegation is denied by the petitioner. Subsequently the entire work order has been given apparently to the private respondent.
- 5.** Learned counsel for the respondent-authorities places on record a set of instructions given by the respondent-authorities. It is contended, by placing reliance on certain Clauses of a Memorandum dated June 07, 2022 issued by the Finance Department, Government of West Bengal, that the norms for acceptance of tender in such cases was stipulated in the said Memorandum. As per Situation III, Clause B thereof, in the event there is a tie, keeping the L1 rate as ceiling, sealed bids shall be invited from all the L1 bidders and out of those the lowest one may be selected. If none of the L1 bidder is ready to offer further reduced rates, the bidder with higher credential based on parameters, as mentioned in A(ii) thereinabove may be selected among the L1 bidders.
- 6.** It is submitted that Clause 12 of the tender document being contrary to the said Memorandum of the Finance Department, under the aegis of which the respondent-authorities have floated the tender, the procedure as stipulated in the Memorandum and not in Clause 12 was followed by the respondent-authorities.

7. However, such contention of the respondents cannot be accepted as sufficient justification of the action of the respondents. Once a tender is floated and it is specifically stipulated therein as to the modality that will be adopted upon there being a tie among the bidders, the respondents cannot change the goalposts/rules of the game, after the proverbial match has begun.
8. In the present case, all bidders participated knowing fully well the *modus operandi* which will be adopted if there was a tie and after such participation and subsequent to a tie having taken place between the petitioner and the private respondent, it was not for the respondents to resile from their original position and adopt a different mode, *albeit* the said mode being sanctioned by the Finance Department in a Memo.
9. As such, the modality adopted by the respondent-authorities and consequentially the decision-making process in granting the work to the private respondent is vitiated, being in contravention of Clause 12 of the tender document and, as such, should be set aside. The respondents, in fact, turned the provision of the tender document on its head by first attempting to grant the work to both the contenders in the tie, that is, the petitioner and the private respondent, and then on a technical reason, gave the work only to the private respondent.

- 10.** In view of the above discussions, the impugned action of the respondent-authorities in selecting both the petitioner and the private respondent as L1 bidders and subsequently in granting the work order pursuant thereto exclusively to the private respondent are hereby set aside.
- 11.** The respondent-authorities shall now, upon prior notice to both the petitioner and the private respondent, hold a draw of lots in terms of Clause 12 of the tender document to ascertain the L1 bidder and thereafter take appropriate steps for issuance of the work order to the selected L1 bidder.
- 12.** Needless to say, the work order issued to the private respondent pursuant to such unlawful action of the respondent-authorities and all consequential steps stand hereby quashed as well.
- 13.** WPA No. 8346 of 2024 is disposed of accordingly in the light of the above observations.
- 14.** There will be no order as to costs.
- 15.** 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.)