

AD-08
Ct No.09
02.05.2024
TN

WPA No. 8589 of 2024

Radha Distributors
Vs.
The State of West Bengal and others

Mr. Subir Sanyal,
Mr. Ratul Biswas,
Mr. Sohom Sanyal,
Mr. Soumyadipa Kanu

.... for the petitioner

Mr. Anirban Roy, Ld. GP,
Mr. Sk. Md. Galib, Sr. Govt. Adv.,
Mr. Tanoy Chakraborty

.... for the State

Mr. Shailendra Jain,
Mr. F. Ghaffar

.... for the respondent no. 6

1. The petitioner challenges the rejection of the petitioner's financial bid on several counts. It is argued that even at the technical stage, there were irregularities on the part of the respondent-authorities. It is argued that in terms of the amended criteria of the Notice Inviting Tender (NIT), the system of scoring on the number of pharmacists was universal for the District Hospitals, Sub-Divisional Hospitals and the Rural Hospitals for different tenders. By a bunch of tenders, the respondents had sought for composite bids.
2. The petitioner, it is argued, submitted a composite bid.
3. Learned counsel for the petitioner places reliance on certain documents annexed at pages-143, 145 and 147 of the writ petition, which are apparently authored by the Director, IPGMER and SSKM Hospital, from which

it is seen that the technical scores of the petitioner and the other bidders, apart from the private respondent/successful bidder were the same across the tenders, whereas the scores allotted to the private respondent fluctuated. The petitioner had applied for the sub-division of Tehatta, to substantiate which a document is annexed at page-143 of the writ petition. It is seen therefrom that the technical score of the private respondent was shown to be 96 whereas the petitioner's score was 86.

4. Similarly, in a different NIT, that is, PPP/NIT/149/2023 annexed at page-145 of the writ petition, the petitioner's technical score remained constant at 86 whereas the private respondent's score came down to 93. On similar footing, the document at page-147 shows that in respect of the PPP/NIT/147/2023, the technical score of the private respondent went up to 98 whereas the petitioner's score still remained constant at 86.
5. Learned counsel submits that such discrepancy in the scoring system is *de hors* the tender process and is itself suspect.
6. Although both the petitioner and the private respondent succeeded at the technical stage, learned counsel for the petitioner argues that as per the tender clauses, if there was a tie in the financial bid, the decision boils down to the scores obtained by each of the bidders at the technical stage. In the present case, the petitioner

also challenges the financial bid decision of the respondent-authorities.

- 7.** Learned counsel for the petitioner places specific reliance on the annexures at pages-139 and 140 of the writ petition, both of which indicate that the petitioner quoted a percentage of 76 as basic rate, whereas in the uploaded document reflected from the portal of the respondent-authorities, the said percentage has come down to 50 per cent, which is appearing from the annexure at page-21 of the affidavit-in-opposition of the respondents. It is argued that there was false play behind the wings, since the petitioner's original financial bid was manipulated by the respondent-authorities in favour of the private respondent.
- 8.** Learned counsel for the petitioner next argues that the date of submission of the bid by the petitioner and re-submission were also manipulated and a different date shown on the uploaded page in respect of the petitioner's bid.
- 9.** On such count also, the petitioner challenges the decision of the respondent-authorities. It is argued that the entire process is, thus, vitiated and ought to be set aside.
- 10.** Learned counsel for the respondent-authorities argues that the petitioner itself participated in the technical stage and being successful thereat, also participated in the financial bid stage. Only after losing at the final stage of financial bids, taking a chance, the petitioner

has preferred the instant challenge seeking to reopen the technical stage decision. It is submitted that on such ground alone, if not on other grounds, the writ petition should be dismissed.

- 11.** Insofar as the alleged discrepancy in marking is concerned, learned counsel for the respondent-authorities meticulously places the provisions of the tender document and indicates that several tenders were floated for different districts.
- 12.** Each of such tenders, it is argued, covered separate areas comprised of different districts, sub-divisions and rural areas.
- 13.** Although the submission of bids might have been composite, it is argued that there were several parameters for arriving at the technical score. Since it cannot be ascertained from the writ petition as to whether the petitioner and the private respondent had made similar numerical offers on each of the parameters for each of the districts/sub-divisions/rural areas for which they participated, it is argued that parity cannot be expected in the technical scores as well.
- 14.** Learned counsel for the respondent-authorities, while addressing the allegation of the petitioner regarding manipulation of the percentage offered by the petitioner, categorically denies the veracity and validity of the documents annexed at pages-139 and 140 of the writ petition.

- 15.** On such count, learned counsel for the respondent-authorities relies on the document annexed at page-21 of the affidavit-in-opposition. It is submitted that the said document was what was actually submitted, which shows the percentage offered by the petitioner to be 50.
- 16.** Thus, the corresponding document relied on by the petitioner at page-139 of the writ petition is not a valid document.
- 17.** It is further submitted by learned counsel for the respondents that the purported Appendix II annexed at page-140 cannot be a valid document on the face of it for two reasons. First, as per the format of the Appendix II as envisaged in the tender document, which finds place at page-35 of the writ petition, within parenthesis, it was merely to be mentioned “(discount on MRP subject to minimum discount of 30 per cent)”. The actual quotation percentage was not to be disclosed in Appendix II. However, in the document annexed and sought to be passed off as Appendix II in the writ petition, the petitioner has apparently quoted a rate of 76 per cent. Secondly, it is submitted that the said quotation in the Appendix II (Form I) is evidently interpolated and handwritten.
- 18.** By relying on the relevant tender clauses, learned counsel for the respondents submits that even as per the tender terms, the submission of the financial bid mandatorily had to be an online process. Thus, there

could not have been any scope of any handwritten interpolation in the quotation.

- 19.** As such, it is argued that the said allegation of the petitioner is also based on falsehood.
- 20.** With regard to the timelines of submission, learned counsel for the respondent-authorities relies on the documents annexed to the affidavit-in-opposition and submits that the date shown therein was the actual date of submission of bid by the petitioner. It is argued that in the absence of any rebuttable evidence, the said stand of the respondents ought not to be disbelieved.
- 21.** Upon hearing learned counsel, it is clear that for entering into the question of alleged irregularities at the technical stage, the issue of alleged irregularities at the financial stage is to be looked into first, since unless the petitioner succeeds on such allegations regarding irregularities at the financial stage, there would not be any scope of any tie between the petitioner and the private respondent which would require this court to enter into the technical irregularities alleged.
- 22.** On the face of the documents annexed by the respective parties to their pleadings, it is clear that, as correctly submitted by learned counsel for the respondent-authorities, the bid document clearly enumerated that the submission of financial bid has to be mandatorily online and could not have been a physical process.
- 23.** Thus, one of the primary documents relied on by the petitioner, annexed at page-140, which is sought to be

passed off as Form I of Appendix II submitted by the petitioner, could not have been a genuine document. The same is an inevitable conclusion for two reasons, as argued by the respondent-authorities.

- 24.** First, the handwritten interpolation of the alleged quotation of the petitioner at 76 per cent could not have found place in the actual submission, which mandatorily had to be online.
- 25.** Also, the format of Appendix II, Form I in the tender document itself does not contemplate any actual quotation on the said page by the bidder. Within the parenthesis, it is only denoted that “(discount on MRP is subject to minimum discount of 30 per cent)” which was to be replicated by the bidder in its Appendix II Form I. In the present case, however, deviating from the same, the document annexed at page-140 discloses the quoted percentage itself, which could not have been in compliance with the format given in the tender document.
- 26.** Since the petitioner qualified technically, it is obviously to be assumed that the petitioner complied with the format given in the tender document. Thus, the document annexed at page-140 could not have been the actual document which was furnished by the petitioner at the relevant juncture.
- 27.** Insofar as the document annexed at page-139 is concerned, learned counsel for the petitioner refutes the corresponding document annexed at page-21 of the

affidavit-in-opposition by the respondent-authorities, which shows a quotation of 50 per cent by the petitioner on the argument that the genuineness of the said document cannot be verified and the same could easily be manipulated. By the same logic, the corresponding document annexed at page-139 by the petitioner showing the quotation to be 76 per cent could equally be false and manipulated.

28. It is entirely beyond the scope of the writ court to enter into the veracity of such document. In any event, applying the principles of the law of evidence prevalent in Indian Courts, the genuineness of official acts are to be presumed correct unless rebutted by cogent evidence. The documents annexed at page-139 of the writ petition and at page-21 of the affidavit-in-opposition respectively being on similar footing, I do not find that there is any clear rebuttal of the document produced by the respondent-authorities. Thus, it is presumed that the document produced by the respondents carries a presumption of correctness which has not been rebutted by the petitioner by cogent evidence.

29. Hence, the petitioner's challenge on the ground of alleged irregularities at the financial bid stage is turned down.

30. In view of the above conclusion, the challenge to the technical stage loses relevance, since, as the petitioner's bid lost to that of the private respondent at the financial

stage, there does not arise any question of a tie between the said two parties and, as such, we need not look back to the technical stage.

- 31.** Even otherwise, the respondent-authorities are justified in arguing that the petitioner fully participated in the technical stage and the financial bid stage. Thus, without having raised the objection as raised in the present writ petition regarding the technical bid, either at the pre-bid stage or at any point of time till participation in the financial bid, the petitioner is precluded from taking up the point for the first time in the present writ petition as an afterthought.
- 32.** Even apart from that, it is well-settled that primacy has to be attributed to the interpretation of the tender inviting authorities of its own terms and conditions. In the present case, applying the said principle, the tender inviting authorities clearly interpreted their tender clauses to mean that the scoring system contains several parameters and yardsticks as enumerated in the NIT for different Districts/Sub-Divisions/Rural Areas and across the NITs floated.
- 33.** There is no reason why such interpretation should be disbelieved. From the tender document itself, it is evident that there were several parameters and it may well be that the private respondent scored better than the petitioner on other parameters than the number of pharmacists.

- 34.** That apart, even if two views were possible, the court's views cannot be substituted for that of the tender inviting authorities, which principle is equally well-settled. Even on such premise, the court cannot interfere with the decision of the respondent-authorities at the technical bid stage as well.
- 35.** The remaining argument regarding the discrepancies in the dates of submission becomes irrelevant, since the parties have argued on the merits of the bids themselves.
- 36.** As such, the said issue need not be gone into in further detail.
- 37.** In such view of the matter, the present challenge fails.
- 38.** Accordingly, WPA No. 8589 of 2024 is dismissed on contest without, however, any order as to costs.
- 39.** 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.)