

18th April,
2024
(AK)
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W.P.A 8699 of 2024

Joydev Chandra Sinha
Vs.
The State of West Bengal and others

Mr. Siddhartha Banerjee
Ms. Soni Ojha
Mr. Soumyajit Majumder
Ms. Sonia Nandy

...for the petitioner.

Mr. Suman Sengupta
Ms. Amrita Panja Moulick

...for the State.

1. The petitioner participated in a tender but failed at the technical stage.
2. Subsequently there was a re-evaluation of the bids, whereupon the respondent no.8 was selected on the ground that his documents were in order.
3. Subsequently the respondent no.8 came out successful at the financial bid stage as well.
4. Learned counsel for the petitioner argues that if there was a re-evaluation, all the bidders' documents had to be re-evaluated.
5. There had to be a transparency in such process, which was completely absent in the present case.
6. Learned counsel further contends that although the re-evaluation ought to have conferred a further right on all the bidders to have a re-look into their

bids, the said right was denied to the present petitioner.

7. Learned counsel submits that upon such re-evaluation, a further short-fall chart was published, showing the reasons for rejection of the documents of the parties, whereupon the respondent no.8 was held to be successful.
8. Learned counsel argues that the petitioner's documents were also in order at all points of time and as such, the petitioner could not have been rejected at the technical stage as well.
9. Even in the subsequent re-evaluation, the petitioner pleads contravention of Article 14 of the Constitution of India since only the respondent no.8 was selected as a favoured candidate for the purpose of such re-evaluation and a verbatim reproduction of the previous rejections found place after re-evaluation, except for the respondent no.8 coming out successful.
10. Learned counsel for the petitioner places reliance on the relevant clauses of the tender document and argues that the documents furnished by the petitioner, which are annexed to the writ petition, were well in consonance with such clauses and as such, the petitioner could not have been turned down at the technical stage.

11. Learned counsel appearing for the respondent authorities submits at the outset that work order has since been issued to the respondent no.8.
12. That apart, it is argued that there were discrepancies in the documents filed by the petitioner.
13. It is contended that upon complaints having arisen from certain quarters regarding the initial short-fall notice, a fresh evaluation was made, upon which the respondent no. 8's documents were found to be in order and as such, since the respondent no.8 came out successful even subsequently at the financial bid stage, the said respondent was issued the work order.
14. It is argued that the action of the Tender Inviting Authorities were perfectly in order.
15. Upon hearing learned counsel for the parties, certain factors acquire importance.
16. First, the petitioner's bid was initially rejected on October 11, 2023. After a long gap of about four months, on February 2, 2024, the tender selection committee in its meeting decided to re-evaluate the tender process of the said tenders.
17. Only upon such re-evaluation, which did not contemplate any further right of hearing to any of the bidders, the Tender Inviting Authorities came to

the conclusion that the respondent no.8 qualified whereas the others did not.

18. Since the said administrative action was not a judicial or a *quasi-judicial* act, a right of hearing or violation of natural justice and/or right of representation cannot be read into such summary procedure, particularly keeping in view the constraints imposed by the courts in interfering in tender matters.
19. The re-evaluation was entirely the discretion of the Tender Inviting Authorities. It is well-settled that authorities inviting tenders are at liberty to interpret their own terms and conditions and to assess whether the bids submitted by the respective participants come within the purview of the tender clauses and would meet their requirements.
20. Insofar as the petitioner is concerned, he cannot be permitted to claim that a new cause of action arose upon the re-issuance of a fresh short-fall notice after re-evaluation.
21. The petitioner sat tight over a period of four months, without challenging the initial rejection of the petitioner and as such, was a fence-sitter inasmuch as the petitioner awaited the outcome of the re-evaluation and only then chose to challenge the initial rejection as well.

22. Hence, the petitioner cannot be permitted now, having not been selected at the juncture of the initial short-fall notice, to prefer such a challenge after waiting for four months for the re-evaluation.
23. In any event, the re-evaluation did not confer any further or new cause of action on the petitioner but was merely a reiteration of the previous rejection insofar as the petitioner was concerned.
24. It is also settled that a bidder who has failed in the technical bid stage cannot come up before the court with a challenge to the selection made subsequently in respect of another bidder.
25. The respondent no.8 was chosen to have been successful upon re-evaluation which was the entire prerogative of the Tender Inviting Authorities and the petitioner, having waited for four months till such re-evaluation and taking a chance thereafter to challenge the initial rejection as well, cannot now be permitted to coax the court into entering into a detailed assessment of the bid documents, which was the complete prerogative of the Tender Inviting Authorities.
26. The authorities having exercised such discretion by rejecting the petitioner's technical bid long back, the petitioner cannot claim a new cause of action merely because a re-evaluation was subsequently held.

27. The respondent no.8 having come out successful after a re-evaluation held more than four months subsequent to the petitioner's rejection which was never challenged during the interregnum, the petitioner does not have a right and cannot be permitted to prefer the instant challenge.
28. Accordingly, WPA 8699 of 2024 is dismissed on contest without any order as to costs.
29. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)