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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9106 of 2024

Wrig Nanosystems Pvt. Ltd.
Vs.
State of West Bengal & Ors.

Ms. Sonal Shah,
Mr. Kushagra Shah
...for the petitioner

Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly
...for the State

Mr. Soumya Majumder,
Ms. Sumita Shaw,
Mr. Amitava Mitra,
Ms. Antara Choudhury
...for the respondent no. 4

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner challenges a tender process, particularly on the ground that the private respondent no. 4, who was selected as the successful bidder, did not comply with the qualifications required to be met as per the tender. It is contended that the tender was for medical instruments of some sophistication and, as such, non-meeting of the standards by the respondent no. 4 was detrimental to the public interest.

3. Learned counsel submits that the petitioner had made several representations to the Tender Inviting Authorities regarding the lack of appropriate technical qualification of the private respondent no. 4, which were not replied to by the respondent-authorities. It is also pointed out that in the performance test of the petitioner's authorised distributor and the respondent no. 4, it was found that the instrument of the petitioner was "OK", but legal opinion was sought, on which no light was shed subsequently by the authorities despite repeated queries by the petitioner, thereby vitiating transparency of the tender process.

4. Learned counsel appearing for the private respondent no. 4 takes an objection to the maintainability of the writ petition on several grounds. First, it is contended that the tender document itself contemplates three categories of entities who can bid. The first category is a manufacturing company, the second is manufacturer's subsidiary in India and the third is manufacturer's authorised distributor/business partner. It is contended that all the three entities are distinct and separate, for which they were mentioned separately in Clause 7 of the tender document. The petitioner, as a manufacturer, cannot claim to have locus standi to file the writ

petition, since the petitioner itself did not participate in the bidding process at all. It is argued that even if the authorised distributor of the petitioner participated as a bidder, the said entity acted in its independent capacity under sub-clause (c) of Clause 7 of the tender document and, as such, the petitioner cannot have any locus standi to prefer the writ petition.

5. It is further submitted that respondent no. 4 itself also did not participate in the tender process. It is argued that it might very well have been that the authorised distributor of the respondent no. 4 had participated in the tender but that does not make the respondent no. 4 a necessary or proper party to the present writ petition. Even on merits, learned counsel for the respondents controverts the allegations made in the writ petition.

6. Certain features of the present matter are clear from the averments in the writ petition as well as the arguments.

7. First, the financial bid was opened on March 26, 2024, whereas the present writ petition has been filed thereafter, challenging the competence of the private respondent no. 4's distributor at the technical stage. One of the grounds taken in the writ petition is that the distributor of the private respondent no. 4 did not qualify on technical count.

However, since the petitioner took a chance by waiting for the financial bid to be opened and having lost therein and has preferred the present writ petition only thereafter, the writ petition ought not to be entertained on such score alone.

8. Secondly, it is well-settled that the discretion and primacy of opinion lies entirely with the Tender Inviting Authorities as to whether the bidders have satisfied the technical criteria, as stipulated in the tender document. I do not find any palpable violation of such norm and/or any patent mala fides on the part of the respondent-authorities or bias in choosing both the petitioner's distributor as well as the private respondent no. 4 as technically qualified bidders.

9. Insofar as the argument as to the legal opinion being sought by the Tender Inviting Authorities upon the technical demonstration of the petitioner's authorized distributor, the said incident is a total non-issue insofar as the present matter is concerned, since despite such reference to legal opinion, the petitioner's distributor was subsequently succeeded at the technical stage, which is evident from the Technical Bid Evaluation Summary dated March 05, 2024, annexed at page 97 of the writ petition. Thus, the petitioner's authorised distributor having qualified, the

petitioner cannot have any grievance on such count.

10. Insofar as the objection taken by the respondent no. 4 is concerned, there is also much substance in the same.

11. On a literal interpretation of Clause 7 of the tender document, three categories of participants were contemplated therein – manufacturing company, manufacturer's subsidiary in India and manufacturer's authorised distributor/business partner. If the interpretation of the petitioner that a manufacturing company can also participate through its authorised distributor, the latter acting as an agent, is to be accepted, the said interpretation defeats the very purpose of three categories having been distinctly and differently mentioned in Clause 7 of the tender document. The very fact that manufacturer's authorised distributor/business partner has been mentioned as a different and separate category from a manufacturing company clearly indicates that a manufacturing company has to participate in the bid in its own capacity and not through its authorised distributor, the latter being also an independent entity in its own right insofar as the submissions of bids are concerned. Hence, the petitioner (which itself did not participate in the

tender) also does not have locus standi, being an independent juristic entity different from its authorised distributor, which participated in the bidding process, from preferring the present writ petition. Also, the same logic applies to private respondent no. 4, which did not itself participate in the tender process, which is evident from the documents annexed to the writ petition as well.

12. It might very well be that the respondent no. 4's distributor had participated, but the same does not make any difference, since the said entity, under the contemplation of Clause 7 of the tender document, is entirely distinct and different from the respondent no. 4. Thus the writ petition is not only bad for misjoinder of respondent no. 4, it is also not maintainable for non-impleadment of the successful bidder.

13. Hence, the writ petition fails on all counts.

14. Thus, W.P.A. No. 9106 of 2024 is dismissed on contest.

15. There will be no order as to costs.

16. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)