

AD-18 to 21 &
24 to 29
Ct No.09
29.04.2024
TN

WPA No. 9128 of 2024

Maniklal Saha
Vs.
The State of West Bengal and others

With

WPA No. 9130 of 2024

Indrajit Ghosh
Vs.
The State of West Bengal and others

With

WPA No. 9132 of 2024

Biswajit Saha
Vs.
The State of West Bengal and others

With

WPA No. 9142 of 2024

Tripti Saha Chowdhury
Vs.
The State of West Bengal and others

With

WPA No. 9147 of 2024

Gopinath Dey
Vs.
The State of West Bengal and others

With

WPA No. 9151 of 2024

Apollo Pharmacies Limited and another
Vs.
The State of West Bengal and others

With

WPA No. 9157 of 2024

Kanchan Das
Vs.
The State of West Bengal and others

With

WPA No. 9159 of 2024

Emami Frank Ross Limited and another
Vs.
The State of West Bengal and others

With

WPA No. 9167 of 2024

Sadhan Roy
Vs.
The State of West Bengal and others

With

WPA No. 9168 of 2024

Annapurna Medicine Distributors and another
Vs.
The State of West Bengal and others

Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Samik Sarkar,
Mr. Atreya Chakraborty

.... for the petitioners in
WPA 9128 of 2024, WPA 9130 of 2024, WPA 9132 of 2024,
WPA 9142 of 2024, WPA 9147 of 2024, WPA 9151 of 2024,
WPA 9157 of 2024, WPA 9159 of 2024, WPA 9168 of 2024

Mr. Surajit Nath Mitra, ld. Sr. Adv.,
Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Samik Sarkar,
Mr. Atreya Chakraborty

.... for the petitioner in
WPA 9167 of 2024

Mr. Anirban Roy, ld. GP,
Mr. B. B. Mallik, ld. AGP,
Ms. Ashmita Chakraborty

.... for the State in
WPA 9128 of 2024, WPA 9132 of 2024, WPA 9151 of 2024,
WPA 9157 of 2024, WPA 9168 of 2024

Mr. Sk. Md. Galib, Id. Sr. Govt. Adv.,
Mr. Tanoy Chakraborty

....for the State in
WPA 9130 of 2024, WPA 9142 of 2024, WPA 9147 of 2024,
WPA 9159 of 2024, WPA 9167 of 2024

Mr. S. Gain,
Mr. F. Gaffar

.... for the respondent no. 3 in WPA 9142 of 2024,
respondent no. 5 in WPA 9147 of 2024, respondent no. 7
in WPA 9151 of 2024, respondent no. 4 in
WPA 9157 of 2024, respondent no. 3 in WPA 9159 of 2024,
respondent no. 3 in WPA 9167 of 2024

1. Learned senior counsel appearing for the petitioners contends that the impugned tender process is tainted by gross discrimination. Learned senior counsel points out to the tender clauses, in particular, Clause 3.1.11 which stipulates that Financial Bid shall be opened only for the Bidders who obtain 70 and above in technical qualifications as stated thereinabove. Upon opening and *evaluation* of the Financial Bids the bidder shall be ranked as H1, H2 onwards.
2. Again, learned senior counsel points out to Clause 2.24 of the tender document which stipulates, inter alia, that the Bid Evaluation Committee shall determine responsiveness of Financial Bid with respect to rate quoted by the Bidders and shall open the Financial Bid of the Qualified Bidders.
3. Clause 2.24.2 stipulates that a substantially responsive financial bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation or reservation.

A “material deviation or reservation” has also been defined therein.

- 4.** It is argued that the petitioners learnt from the document annexed at page-160 of the writ petition, which is apparently a BOQ Summary Details, which was allegedly published on March 01, 2024, that a list of bid rankings was published.
- 5.** Learned senior counsel argues that the said publication could not have been done without an evaluation of the bids and the documents submitted therewith.
- 6.** Learned senior counsel also points out that petitioners have come to know of a document annexed at page-195 which was issued to one of the H1 bidders seeking cost justification from the said bidder on March 20, 2024.
- 7.** It is argued that such cost justification was not sought from the present petitioner and, as such, also vitiates the process on the ground of discrimination.
- 8.** More importantly, such cost justification, which is a part of the evaluation process itself, could not have been done subsequent to the publication of the BOQ Summary, containing the bid rankings. The evaluation, it is submitted, ought to have been done in presence of all the successful bidders at the technical stage and ought to have preceded the publication of the BOQ Summary Details.
- 9.** Learned counsel appearing for the respondent-State submits that the document annexed at page-160 of WPA 9167 of 2024 and similar documents annexed to

the other writ petitions, which also arise in similar context, were not the final publication of the bid rankings. Although it transpires from the said document that the rankings were reflected, it is contended that the same was only an initial publication and not post-evaluation publication.

- 10.** Learned counsel submits that in terms of Clause 3.1.11 at page-82 of the writ petition, the financial bid shall be opened only for the bidders who obtain 70 and above in technical qualifications, which is reflected in the said document at page-160. However, only upon opening an evaluation of the financial bids, they shall be finally ranked as H1, H2 onwards.
- 11.** It is categorically submitted that in the present case such final rankings were not published at least till the time when the writ petitions were filed.
- 12.** Learned senior counsel for the petitioners submits that in terms of instructions received, last Friday, that is, on April 26, 2024, the financial bids of the petitioners have been rejected.
- 13.** Insofar as the present challenge is concerned, it is the stand of the tender inviting authorities themselves that the BOQ Summary relied on by the petitioners and annexed to the writ petitions was not the final publication of the list of successful financial bidders.
- 14.** Moreover, from the documents annexed at pages-193 and 195, which are respectively a communication by the petitioners to the tender inviting authorities and a

communication by the tender inviting authorities to one of the successful bidders, it is clear that the process of evaluation was still open and had not been concluded at that juncture.

- 15.** Since it is the stand of the tender inviting authorities themselves that the financial bids had not been finally evaluated on the date of publication of the BOQ dated March 01, 2024, the premise of the challenge of the petitioners on such count cannot be accepted.
- 16.** Thus, it is observed that the circumstances of the case and the stand of the tender inviting authorities themselves clearly indicate that the bid evaluation process had not been concluded at the financial bid stage on the date of filing of the writ petitions.
- 17.** However, since the petitioners submit that in the meantime their financial bids have been rejected, leave ought to be granted to the petitioners to independently challenge such financial bids.
- 18.** Accordingly, WPA No. 9128 of 2024, WPA No. 9130 of 2024, WPA No. 9132 of 2024, WPA No. 9142 of 2024, WPA No. 9147 of 2024, WPA No. 9151 of 2024, WPA No. 9157 of 2024, WPA No. 9159 of 2024, WPA No. 9167 of 2024, WPA No. 9168 of 2024 are disposed of with the observation that at the juncture of filing of the said writ petitions, the financial bids evaluation process had not been concluded.

- 19.** Such question, thus, shall remain open to be raised by the petitioners in any future challenge, if preferred against the rejection of the petitioners' financial bids.
- 20.** It is left open to the petitioners to challenge the rejection of their financial bids in independent writ petitions, if so aggrieved.
- 21.** It is made clear that the present dismissals do not in any manner preclude the petitioners from doing so.
- 22.** There will be no order as to costs.
- 23.** 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.)