

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 13006 of 2024

Grand Supply Service & Anr.
Vs.
The State of West Bengal & Ors.

Mr. L.K. Gupta,
Mr. Abhratosh Mujumder,
Mr. Arjun Roy Mukherjee,
Mr. Joyjeev Medhi
...for the petitioners

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee
...for the State

Mr. Sagar Bandyopadhyay,
Ms. Soma Kar Ghosh,
Mr. Arabinda Pathak
...for the respondent no. 9

1. The petitioners challenge the impugned tender process primarily on the ground that bidders, who did not qualify on other grounds than that the bid was addressed to the Superintendent instead of MPO-cum-Superintendent, were also included as successful bidders at the technical stage, necessitating the draw of lots.

2. Learned Senior Advocate appearing for the petitioners submits the facts of the case in a nutshell. The writ petitioners came out successful at the technical stage in the impugned tender process. Subsequently, a challenge was preferred by one of the private respondents on the ground

that its technical bid was rejected solely on the ground that the bid was addressed to the Superintendent instead of MPO-cum-Superintendent.

3. This Court, in W.P.A. No. 26204 of 2023, set aside such rejection vide order dated November 24, 2023.

4. The present writ petitioners preferred a challenge by way of an appeal. The Division Bench, by its judgment and order dated April 30, 2024, affirmed the order of this Court but in addition observed that the benefit of the judgment can very well be extended to other companies who had participated in the tender and whose bid was technically rejected on the ground that it was not addressed to MPO-cum-Superintendent; those bidder/companies shall also be invited to participate in the further tender process if they so desire, however, if the bid was technically rejected for some other reasons or in addition to the said reason, the benefit of the judgment will not enure in favour of them but only to those other persons whose bid was technically rejected on the only ground that it was not addressed to MPO-cum-Superintendent, who should be allowed to participate in the further tender process.

5. Learned Senior Advocate submits that subsequently, after the re-evaluation of the tender,

at least four entities were detected by the petitioners to have been held successful in the technical bid who were technically ineligible on grounds even other than the bids being addressed to MPO-cum-Superintendent. Naming the said specific bidders, the petitioners wrote representations to the respondent-authorities, pleading that the said respondents' bids also should have been rejected on the principle as enumerated in the Division Bench judgment.

6. However, no heed was paid by the respondent-authorities to the same, prompting the petitioners to file the present writ petition.

7. Learned Senior counsel, with leave of Court, files a supplementary affidavit and places reliance on the documents annexed thereto, from which it is evident that subsequent to the filing of the writ petition, the writ petitioners came to know that apart from the four entities which were pointed out by the petitioners, one Sonar Bangla, another bidder who had initially been rejected not on the sole ground of the bid being addressed to MPO-cum-Superintendent but also on an additional ground, had been also recorded as a successful tenderer at the technical stage.

8. Learned Senior Counsel argues that since the petitioners were the successful tenderer initially, prior to the orders being passed by this Court and

the Division Bench of this Court, as discussed above, there was no cause of action for the petitioners to challenge the declaration of the said four persons and Sonar Bangla as technically ineligible. As such, only after the Division Bench enumerated the specific conditions as specified therein, the cause of action of the petitioners arose, since by virtue of the said order, the said four persons and Sonar Bangla were also included as successful tenderers, thereby affording competition to the petitioners, which inclusion is *de hors* the law since the tender clauses render those five entities ineligible.

9. Learned counsel appearing for the State submits that the technical bid process was carried out from the stage as directed by this Court pursuant to orders of this Court and the Division Bench.

10. Learned counsel appearing for the respondent no. 9 points out that insofar as Sonar Bangla is concerned, the same is not a party to the writ petition. More importantly, the initial rejection of Sonar Bangla was on two grounds. First, that the bid was not addressed to the MPO-cum-Superintendent and second, that reference number was not mentioned as per pre-bid minutes, as Memo No. EH/MN/2373, clause no. 8 in Annexure-B.

11. Learned counsel places the said document, bearing Memo No. EH/MN/2373, dated May 18, 2023 and submits that clause-8 of the same merely states the point discussed to be “In invitation of E Tender always apply to MPO cum Superintendent in place of Superintendent.”

12. Hence, the said ground is not an additional ground of rejection but merely reiterates the ground of the bid not being addressed to the MPO-cum-Superintendent.

13. Insofar as the respondent no. 9 and the other private respondents are concerned, it is argued that the writ petitioners could very well have pointed out such perceived discrepancies before as the tender process was re-started from the stage prior to the technical evaluation in terms of the order of this court, which was ultimately affirmed by the Division Bench on merits. Having not done so, the present challenge is not maintainable at the behest of the writ petitioners.

14. Upon hearing learned counsel for the parties, there cannot be any manner of doubt that learned counsel for the respondent no. 9 is justified in arguing that the second ground of rejection of Sonar Bangla, apart from the ground that the bid was not addressed to the MPO-cum-Superintendent, referred only to invitation of e-

tender being always to be applied to MPO-cum-Superintendent in place of Superintendent.

15. Thus, a bare perusal of Clause 8 of the Memo referred to in the second ground of rejection of Sonar Bangla makes it amply clear that the said ground is nothing but a reiteration of the first ground, that is, addressing the bid to MPO-cum-Superintendent.

16. Hence, it cannot be said that Sonar Bangla was rejected on some other technical ground than that contemplated by this Court and the Division Bench in the prior round of litigation.

17. Insofar as the private respondents are concerned, the cause of action of the present writ petitioners for filing the present challenge arose not from after the Division Bench judgment but from the date of the order of this Court which was challenged before the Division Bench.

18. The reason for the same is that the Division Bench, in its order, clearly extended the benefit of the judgment to other participants whose bids *were technically rejected* for some other reasons or in addition to the reason being not addressed to the MPO-cum-Superintendent. Hence, the Division Bench only extended the benefit to the bidders whose bids had already been rejected on the sole ground of not being addressed to MPO-cum-Superintendent and excluded only those other

bidders, whose bids had been rejected on some other grounds or additionally with the ground mentioned above, on some other grounds.

19. Thus, the Division Bench order did not contemplate a further challenge to the technical bids, which *could have been* rejected on other grounds but only to the bidders whose technical bids had *already been rejected* on other grounds than being not addressed to MPO-cum-Superintendent.

20. In fact, in paragraph no. 20 of the judgment dated November 24, 2023 passed in W.P.A. 26204 of 2023, this Court had categorically directed that the respondent-authorities shall resume the tender process from the stage prior to the technical evaluation sheet and the rejection being published, by deeming that the bid of the petitioners and similarly placed bidders were valid despite having been addressed to the Superintendent instead of MPO-cum-Superintendent and, thereafter, to conclude the process at the earliest. The Division Bench, while extending the benefit of the order to others placed similarly, affirmed such observations on merit.

21. Thus, the present writ petitioners could very well have raised the issue that the private respondents were declared to be technically eligible despite being otherwise not eligible, at the stage

from which the tender was reopened in pursuance of this Court's order.

22. At the technical process itself, which was reopened by virtue of the order of this Court, such ground ought to have been raised by the writ petitioners.

23. Having not raised so, the writ petitioners waited for the judgment of the Division Bench dated April 30, 2024, that is, till about five months after the order of this Court and only thereafter raised the issue before the respondent-authorities.

24. The Division Bench order, as discussed above, did not furnish any further cause of action or ground of challenge to the petitioners, which was not already there in the Single Judge's order.

25. In such view of the matter, the present challenge, preferred at the eleventh hour, just a day before the lottery is scheduled, cannot be entertained. The petitioners, having participated in the technical evaluation process after the matter was sent back to the authorities, cannot now take the issue as raised in the present writ petition.

26. Hence, on such ground alone, the writ petition ought to be turned down.

27. Accordingly, W.P.A. No. 13006 of 2024 is dismissed on contest on grounds as given above.

28. There will be no order as to costs.

29. 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.)