

June 21, 2024
Sl. No.4
Court No.13
s.biswas

WPA 16028 of 2024

Sourav Jha
vs.
State of West Bengal and others

Mr. Vivekananda Bose
Mr. Rahul Kumar Singh
Mr. Ratikanta Pal
Mr. Subhajit Das
Ms. Payal Mishra

... for the petitioner

Mr. Suman Sengupta
Ms. Amrita Panja Moulick

... for the State

1. Affidavit of service filed in court today is taken on record.
2. The writ petitioner is aggrieved by the tender process under NIT dated 1st March, 2024, for construction of cement concrete road from Manju Murmu House towards Jamil Land issued by the Uttar Chanchal-I Panchyat Samity, Malda.
3. The tender process involved submission of separate technical and financial bids. Learned counsel for the petitioner has specifically relied upon Clause 6 of the NIT, which entitles any bidder to submit a complaint within 48 hours of uploading of the technical evaluation of all the bids.
4. The technical evaluation of the bids was uploaded on the website of the Zilla Parishad on 12th June, 2024. The financial bids were uploaded within a span of 17 minutes thereafter.

5. Learned counsel for the petitioner whose technical bid was rejected, has submitted that uploading of financial bids within 17 minutes of opening of the technical bids has rendered nugatory, Clause 6 of the NIT.
6. The petitioner did not get a 48-hour period to object to the technical evaluation of his own bid or object to such evaluation of the other bidders.
7. The petitioner has, within 48 hours however, notified the respondent on 14th June, 2024 of deficiencies in the bids of Yasmin Khatoon and Tara Construction (found L-1).
8. At first glance, it does appear to this court that none of the bidders got opportunity to object to the technical evaluation of their own bid or that of other bidders within 48 hour period, after publication of technical evaluation of bids.
9. On enquiries made by this court, it appears that substance of the petitioner's objection against the technical evaluation of the L-1 bidder i.e. Tara Construction is that power of attorney of the person who submitted the bid from M/s. Tara Construction was not filed. It is also submitted that the petitioner's financial bid is lesser than that of M/s. Tara Construction.
10. It is now well-settled proposition of tender process that infraction of any term and condition of the NIT by the employer would not ipso facto vitiate

the tender process. It must be seen as to whether the term deviated from was one that goes to the very root of the tendering process.

11. Admittedly, the only infraction found insofar as the L-1 bidder is concerned, is absence of a power of attorney. The infraction is not one that would go to the very root or negate the bid itself. The non-filing of a power of attorney is a curable defect.
12. As opposed to the above, the learned counsel for the petitioner has fairly submitted that in the technical evaluation of writ petitioner's bid, a large number of other omissions have also been found by the employer. His technical bid was therefore disqualified.
13. A tender process for construction of a road which is in the nature of infrastructure project. A minor omission on the part of the Tender Evaluation Committee/employer cannot vitiate the entire tender process. Infrastructure projects are vital to the functioning and progress and development of any area in any part of this country and the world.
14. While it is true that the TEC ought to have awaited and given all the tenderers the 48 hour window to raise objection with regard to the bids of other tenderers with regard to the technical evaluation of the bids of other tenderers, in the

facts and circumstances aforesaid, this court is not inclined to interfere with the tendering process, as a whole, for the infraction.

15. In any event the petitioner may not have a serious locus to challenge the subsequent stages of the tendering process, when his technical bid itself has been rejected.
16. Learned counsel for the State submits that since after the uploading of the technical evaluation or even prior thereto, the writ petitioner had expressed to the respondents that he was not interested in participating in the tendering process, which is denied by learned counsel for the petitioner.
17. For the reasons stated above, no interference is called for in respect of the NIT. The writ petition stands disposed of the without any order.
18. There shall be no order as to costs.
19. Since no affidavits have been called in the present writ petition, all allegations contained therein are deemed not to have been admitted by the parties.

(Rajasekhar Mantha, J.)