

Item No.9  
12.08.2024  
Court. No. 9  
GB

W.P.A. 20357 of 2024

Papiya Dutta  
Vs.  
State of West Bengal & Ors.

*Mr. Bhaskar Prosad Banerjee,  
Mr. P. Baidya*

*...for the Petitioner.*

*Mr. Sirsanya Bandopadhyay,  
Mr. Ritesh Kumar Ganguly*

*...for the State.*

*Mr. Malay Dhar,  
Mr. Sagnik Bhattacharya*

*...for the intervenor.*

1. The petitioner is aggrieved by the retender of certain items of which he claims to be the L1 bidder in a valid tendering process.
2. It is an admitted position and has been specifically submitted by the petitioner before the authority that the GST column could not be filled in, due to some technical problems.
3. The last date for submission of the bid document was April 3, 2024. The petitioner claims to have been found to L-1 bidder in respect of some of the items. The petitioner relies on a document dated May 27, 2024, where the list of qualified bidders and non-qualified bidders had been provided by the authority. According to the petitioner, the said document would amply prove that the authority was satisfied with the bid documents or else the list would not be published.

Subsequently, the petitioner also explained the reason why the amount was quoted inclusive of the GST.

4. Thus, the fact that the petitioner did not quote the amount/rate as per the Notice Inviting Tender is not in doubt. The relevant portion of the bid document which provides the procedure as to how the rate has to be quoted is depicted hereinbelow:-

**“7. Rate:**

The rate should be quoted in INR only including delivery charges, clearing charges, transportation cost, incidental charges etc. but excluding GST and any other applicant taxes etc. which should be quoted separately in the template for Bill of Quantities (BOQ).  
The Lowest Bidder (L1) will be selected on the basis of sum total of unit price as detailed in Section IV.  
Work order will be placed on actual basis.”

5. The authority asked all the qualified bidders to be present for execution process of agreement, acceptance order, etc. It appears that a meeting took place which resulted in issuance of the letter dated June 5, 2024 by the petitioner. The document is quoted below:-

“On opening of Financial bid of e-tender for repairing works of steel and wooden hospital furniture vide no.NIT/59, 22/02/2024 the list of qualified bidders and non-qualified bidders are as follows:

1. For Steel Furniture

| Sl No. | Name of Bidders          | Technically Qualified (Y/N) | Financial Qualified as L1 for furniture items (Y/N) | Qualified Both |
|--------|--------------------------|-----------------------------|-----------------------------------------------------|----------------|
| 1.     | North Suburban Wholesale | Y                           | Y                                                   | Y              |

|    |                                     |   |   |   |
|----|-------------------------------------|---|---|---|
|    | Consumers Co-operative Society Ltd. |   |   |   |
| 2. | Sreya Enterprise                    | Y | Y | Y |
| 3. | Royal Smith                         | Y | Y | Y |
| 4. | ESSCO                               | Y | Y | Y |
| 5. | Mitra Healthcare                    | Y | Y | Y |
| 6. | Kundu Medical Engineering           | Y | N | N |
| 7. | Sonu Enterprise                     | N | - | N |

B. For wooden Furniture

| Sl No. | Name of Bidders                                              | Technically Qualified (Y/N) | Financial Qualified as L1 for furniture items (Y/N) | Qualified Both |
|--------|--------------------------------------------------------------|-----------------------------|-----------------------------------------------------|----------------|
| 1.     | North Suburban Wholesale Consumers Co-operative Society Ltd. | Y                           | Y                                                   | Y              |
| 2.     | Sreya Enterprise                                             | Y                           | Y                                                   | Y              |
| 3.     | Royal Smith                                                  | Y                           | Y                                                   | Y              |
| 4.     | ESSCO                                                        | Y                           | Y                                                   | Y              |
| 5.     | Mitra Healthcare                                             | Y                           | Y                                                   | Y              |
| 6.     | Kundu Medical Engineering                                    | Y                           | N                                                   | N              |

In this respect, a meeting is called by the undersigned on 03/06/2024 at MSVP’s conference room at 2 PM. Hence, all qualified bidders are instructed to be present positively for execution process of agreement and Acceptance order, qualified bidders/representation must bring authenticated authorized paper participation in this meeting  
Thus notice is issued in the interest of public service.”

6. It is contended by the authority that in view of such technical flaw, the authority had no other option but to go for a re-tender.

7. The petitioner's reply after the meeting is quoted below:-

“This is bring to your notice that there was some technical discrepancy, due to which while uploading the mentioned E-tender, the GST column separately was not working. Thus, we had to submit the all-inclusive rate under the rate column itself as those amounts only were directly reflecting under the total column.”

8. Admittedly, the petitioner did not quote the rate as required by the bid document. Non-compliance of the bid document entitles the tendering authority to cancel a tender and go for fresh tender.
9. Under such circumstances, the writ petition is disposed of without interfering with the retender. A writ Court cannot direct the authority to accept the bid of the petitioner and issue the work order when the petitioner did not conform to the NIT. The tendering authority is best equipped to take such decisions. The requirements to be fulfilled by a bidder, is left to the wisdom of the experts, Commercial transactions touching contractual relationships are not open to judicial review except when there is an arbitrariness. In this case, the documents of the petitioner itself shows that the petitioner had admitted that the rate was not quoted properly. The petitioner alleges technical glitches. However, the fact was not brought to the notice of the authorities until the authorities called the participants to appear at the meeting for execution, etc.

10. As the last date for submission of the bid documents in the retender expired on August 9, 2024, the authorities are directed to accept the petitioner's bid physically if the bid is in the off-line mode or open the portal for a period of 24 hours from 10 a.m. tomorrow, if the bidding is in the online mode, so that the petitioner can participate. The technical bid shall not be opened till the expiry of the period as above.
11. The learned advocate for the ESSCO/intervenor submits that ESSCO was the L-1 bidder in respect of one of the items re-tendered. ESSCO has not come with separate writ petition. ESSCO, if at all, has a separate cause of action. ESSCO's contention is not the subject matter of this writ petition. Hence, no relief can be granted to ESSCO in this proceeding.
12. Accordingly, the writ petition is disposed of. All parties to act on the learned Advocate's communication.
13. However, there will be no order as to costs.
14. Parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**