

21.08.2024

Item No.05

Crt.No.02

b.r/sukhosree.

WPA 20543 of 2024

Ranjit Singha

-vs-

The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee

Mr. Badrul Karim

Mr. Subhrajit Saha

Mr. Sarajit Roy.

..... for the petitioner.

Mr. Suman Sengupta

Ms. Amrita Panja Moulick.

....for the State.

Mr. Debashis Ghosh

Ms. Moumita Dhar.

.... For the Resp. nos. 4 and 5.

On the urgency pleaded on behalf of the petitioners and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in the daily cause list.

Mr. Sabyaschi Chatterjee, learned counsel appears for the petitioner.

Mr. Suman Sengupta, learned State counsel and Ms. Amrita Panja Moulick, learned State advocate appear for the State-respondents.

Mr. Debashis Ghosh, learned counsel, appears for the respondent nos. 4 and 5, the concerned Municipality.

Pursuant to a tender notice issued by the **Dubrajpur Municipality** dated **July 22, 2024, annexure p-2 at page-25** to the writ petition, the petitioner participated in the tender process and submitted its bid. The tender was for appointment of an agent for collection of cess and service tax from the vehicle plying through the jurisdiction of the concerned Municipality. One of the essential terms of the tender notice dated July 22, 2024 was that the bidder at least has to have one year experience for collecting the cess and service tax and must have the necessary certificate in this regard that the bidder has collected at least a sum of Rs.60,00,000/- on this score. The tender process was an e-tender.

Referring to another notice issued by the Municipality dated **July 30, 2024, annexure p-4 at page-44** to the writ petition, Mr. Sabyasachi Chatterjee, learned counsel for the petitioner submits the Municipality suddenly and unilaterally issued a corrigendum and then issued a fresh notice for tender with an essential terms that the bidder to participate in the tender process must have at least one year experience for collection of cess and service tax and the certificate must be showing that in any of the financial year of the preceding five financial years, the bidder must have dealt with 40 per cent i.e. Rs. 60,00,000/-, as would be evident from **Serial No.3** of the terms and conditions of

the tender notice dated **July 22, 2024 at page-45** to the writ petition issued pursuant to the said corrigendum. The petitioner submitted its bid on **August 8, 2024, annexure p-5 at pages 48 and 49** to the writ petition. The tender process is yet to be evaluated. The bid of the petitioner is still lying submitted with the tendering authority for its evaluation.

At this juncture, the petitioner has filed the instant writ petition challenging the action of the Municipal authority who issued the tender notice by inserting the clause by way of the said corrigendum notice dated **July 30, 2024**. Learned counsel for the petitioner referring to the averments made in the writ petition submits that the last invitation for tender was issued in **2017** financial year and since then the successful bidder who was awarded the tender is continuing with rendering their service for last eight years. The last minute change by issuing the said corrigendum notice in the terms and conditions for participation in the tender process suggests foul play and involvement of some personal interest of the respondent no.4 in the tender process. The act of respondent no.4 is contemplated with suspicion and biasness in favour of the former successful bidder. He then submits that the unilateral change in the terms of the original tender notice has changed the rule of the game. The petitioner

has participated in the tender process and submitted its bid on the basis of tender terms published under the said previous notice and then when the said corrigendum was issued it has taken away the valuable right of the petitioner who has already participated in the tender process on the basis of the earlier terms. The change in rule of the game has not only prejudiced the right of the petitioner but also has taken away a valuable right of the petitioner under the tender process.

Learned counsel for the petitioner further submits that when there is a flagrant *mala fide* on the part of the tender authority in conducting the tender process, this Court in exercise of its power under Article 226 of the Constitution of India shall interfere immediately with the tender process.

Learned counsel for the petitioner further submits that the petitioner has obtained credential certificate prior to the issuance of the corrigendum and on the basis thereof submitted its bid.

In support, he has relied upon a judgment of the Hon'ble Supreme Court, ***In the Matter of: Jagdish Mandal -vs- State of Orissa and others reported at (2007) 14 SCC 517.*** He further submits that this Constitutional Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality and *mala fides* and bias. In

support, he has relied upon a decision of the Hon'ble Supreme Court, ***In the matter of: Tata Motors Limited -vs- Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors., reported at 2023 SCC OnLine SC 671.***

Learned counsel Mr. Debashis Ghosh appearing for the respondent nos. 4 and 5 submits that, the corrigendum was issued on **July 30, 2024** and the petitioner has submitted his offer on **August 8, 2024** and affirmed this writ petition on **August 12, 2024**. He submits that, the petitioner has accepted the corrigendum and participated in the tender process. The petitioner cannot approbate and reprobate. Once the petitioner has participated and submitted his offer in the tender process after accepting the corrigendum, the petitioner cannot challenge the said corrigendum any further. He further submitted that, there is no specific allegation of *mala fide* against the tendering authority and no evidence in support thereof has been produced before this Court. He submits that, the tender has been floated for public purpose. Earning of public revenue is involved. Therefore, this Court should not interfere with the tender process as prayed for by the petitioner.

Learned counsel for the State Ms. Amrita Panja Moulick has adopted the submissions made on behalf of the respondent nos. 4 and 5.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the corrigendum was issued on **July 30, 2024** and the petitioner submitted his offer on **August 8, 2024**. The nature of transaction in this tender is totally commercial. The law governs the commercial field presumes that, the petitioner when submitted his offer much subsequent to the said corrigendum was issued, the petitioner has submitted his offer with his eyes open and upon accepting the corrigendum.

The purpose of tender involves public exchequer. On a plain reading of the writ petition it appears to this Court that, except a bald statement using the expression “***mala fide***” no statement has been made by the petitioner to substantiate the same, as it is required to be done in law. The question of *mala fide* when raised, the law is trite that, particulars of such *mala fide* has to be stated with evidence. If a constitutional Court in exercise of its jurisdiction under Article 226 then finds such *mala fide* is *ex facie* apparent only then this constitutional Court shall interfere with the tender process.

In the matter of : Jagdish Mandal (supra) the Hon’ble Supreme Court has observed as under :

“22. *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or*

decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

Or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

- (ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

In the matter of : Tata Motors Limited (supra)

the Hon'ble Supreme Court has observed as under :

“54. As observed by this Court in Jagdish Mandal v. State of Orissa, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

From the statement made in the writ petition, this Court is of the view that, no case of arbitrariness or *mala fide* on the part of the tendering authority has been made out. No evidence in support is there in the writ petition. The transaction being totally commercial in nature, the terms and conditions prepared for holding the tender process by the tendering committee, is presumed in law, to have been prepared by the experts on the field and unless an arbitrariness, *mala fide* or illegality is *ex facie* apparent on the face of such terms and conditions, this constitutional Court shall not interfere with the same. Moreover, accepting the corrigendum the petitioner has submitted his bid. At this stage, the petitioner cannot be allowed to turn

around to challenge the tender terms under the corrigendum. Power of judicial review will not be invoked to protect private interest at the cost of the public interest.

Inasmuch as, the bid of the petitioner is awaited for its evaluation. Until the work order is issued under the tender process in favour of a bidder, no right accrues in favour of a bidder who has already participated in the tender process.

In view of the foregoing reasons and discussions, this Court is of the considered view that, this writ petition is totally devoid of any merit and is liable to be dismissed.

Resultantly, this writ petition, **WPA 20543 of 2024** stands dismissed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)