

07.10.2024
Sl. No.12(DL)
srm

W.P.A. No. 25270 of 2024

Quality Caterer

Versus

Sail ISP Burnpur Hospital & Ors.

Mr. Anindya Lahiri,
Mr. Arkadipta Sengupta,
Mr. Anish Chakraborty,
Ms. Aayushi Mukherjee

...for the Petitioner.

Mr. Chayan Gupta,
Mr. Dwip Raj Basu

...for the Respondents.

Affidavit-of-service is taken on record.

The writ petition has been filed by the unsuccessful bidder, who was unable to upload the documents. The bidder could not participate in the bidding process conducted by the SAIL ISP Burnpur Hospital. The tender was in respect of supplying food.

Mr. Lahiri, learned Advocate appearing for the petitioner submits that although the tendering authority had fixed the deadline for submission of the bids as 15.00 hours of September 25, 2024, the authority had arbitrarily re-fixed the submission deadline as 11.30 CET (Central European Time), without any intimation to the bidders. When the petitioner tried to enter the bid at around 1.45 p.m., the bid could not be

uploaded. Immediately, the petitioner sent an e-mail to the tendering authorities, but the authorities did not take any rectifiable and remedial measure. The petitioner further contends that in case of a similar tender, for the same work, the petitioner had participated, but the said tender was cancelled. The petitioner and other participants were accordingly informed.

Mr. Gupta, learned Advocate for the respondents has submitted before the Court that the petitioner was not the L1 bidder in the earlier tendering process. An enquiry revealed adverse report against the L1 bidder. Hence the said tender was cancelled. Thereafter, the subject notice inviting tender, was floated.

The petitioner was informed that the deadline was 15.00 hours on September 25, 2024. The records reveal a screenshot of the relevant page on the computer screen. The petitioner claims that the time was set as 11.30 CET by the authority. Mr. Gupta, submits that, upon receipt of the petitioner's complaint, an enquiry was made with the authority which provides the technical support for all e-tender processes of SAIL. The said authority informed the tendering authority that, the petitioner's computer had the incorrect setting of 11.30 CET. This was informed to the petitioner.

Mr. Lahiri's contention that the setting was made by the authority, has been proved to be incorrect. A screenshot of the bid page of Prantika Supply Syndicate, shows that the time was fixed as 15.00 hours. Moreover, the time as mentioned in the screenshot by Mr. Lahiri on the right hand bottom indicates 15.13 hours. The fact remains that the petitioner's system was set with a wrong timing. This could have been a mistake or a bona fide error.

The tender documents did not clearly mention the submission time, but the petitioner was informed by a separate email that, the end time was 15.00 hours. The prayer of Mr. Lahiri to allow the petitioner to participate, is declined. In an e-tendering process, once the last date of submission is over, the system will reject such application. The portal shuts down automatically.

Secondly, there may be other tenderers who would suffer injustice, if only the petitioner is allowed to participate at a later date, i.e., after the opening of the technical bid. There is no scope for any physical submission. All these tenders are e-tenders, conducted through the GeM portal.

Whether the time was set in the petitioner's computer as 11:30 CET or the authority had illegally interfered with the

system of the petitioner is a disputed question of fact, which cannot be decided by the writ court.

The law is well settled. If the mistake is on the part of the bidder, the tendering authority cannot be asked to reverse the process, by accepting the bid at a belated stage. The writ court should not issue a writ of mandamus, directing the authority to accept the tender, beyond the end date.

Under such circumstances, the writ petition is disposed of without any orders.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)