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05.02.2024  
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IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P.A. No. 25981 of 2023

Shib Shankar Majumder  
Vs.  
Union of India & Ors.

Mr. Shovan Ghosh,  
Ms. Chirantani Ghosh  
...for the petitioner

Mr. Indrajeet Dasgupta,  
Ms. Susmita Saha Dutta  
...for the respondent nos. 1 to 4

1. The petitioner was a participant in the impugned tender process but turned out unsuccessful. The tender has been challenged on three grounds primarily.
2. The first ground is that, contrary to the conditions of the tender, the bid documents of all the tenderers were not visible on the website at any point of time.
3. Secondly, it is argued that there were only three bidders, whereas the tender conditions demanded that there would be four bid openers.
4. Thirdly, the price quoted by the successful tenderer, which is the private respondent, was abnormally low.

5. Learned counsel for the petitioner submits that in the writ petition, calculations have been furnished by the petitioner to indicate that the minimum GST and other compliances would not be possible and minimum wages could not be given to the employees, if the rate quoted by the successful tenderer was to be accepted.

6. It is pointed out by the respondents in the affidavit-in-opposition that no plausible explanation has been given in that regard. Rather, correspondence between the respondent-authorities and the successful tenderer have been annexed, which indicates that the successful tenderer has evaded the issue and has not disclosed as to how the said tenderer could make both ends meet insofar as all compliances are concerned, keeping in view the abnormally low rate quoted by the said tenderer.

7. Learned counsel for the respondent-authorities controverts the allegations made by the petitioner. Insofar as the requirement of four bid openers is concerned, it is argued that there is a palpable distinction between bidders or participants in the tender process and “bid openers”. The latter expression, as evident, means the persons opening the bid from the end of the respondents. It is submitted that there were to be compulsorily two

bid openers and two alternative bid openers, making the total number to be four, which was complied with in the present case. Hence, although there were three bidders in total, the same has nothing to do with the condition regarding four bid openers.

8. Regarding the allegation of visibility of the documents on the website, it is argued that the petitioner never pointed out the alleged non-visibility at the relevant point of time but is making the point for first time in the present writ petition. Learned counsel places the objection raised by the petitioner by way of a representation, annexed at page 65 (Annexure P-4) of the writ petition, which nowhere contains any allegation regarding visibility. Thus, it is argued that the said point is a non-issue.

9. Thirdly, the respondent-authorities submit that there was no Minimum Bid Value set in the tender. It is pointed out that setting of Minimum Bid Value has its own cons, since there may be situations where several bidders bid at exactly the minimum value. Since there was no such Minimum Bid Value, the respondents could not have changed the basic premise of the tender subsequently, after the bids were submitted, by setting a minimum value on the pretext of compliance of GST and minimum

wages requirement, etc. In any event, the respondents have assured that in the event there is any violation of minimum wage conditions during execution of the work, the respondent-authorities have sufficient leeway to take appropriate steps against the successful tenderer in that regard.

10. Lastly, it is submitted that the work order has already been issued in favour of successful tenderer some time back.

11. Although learned counsel for the petitioner seeks to raise another issue regarding the variability of the address of the successful tenderer, learned counsel for the respondent-authorities submits that the said issue is not relevant and was never raised at any point of time before arguments.

12. Heard learned counsel for the parties.

13. The first contention raised by the petitioner is that the tender contemplated four bid openers, whereas there were only three bidders. The same, as rightly contended by the respondent-authorities, is a non-issue, since the expression “bid openers” itself indicates that it pertains to the number of persons opening the bid and not the number of bidders. Hence, the said point raised by the petitioner cannot be accepted.

14. On the more important issues, the petitioner has raised an allegation that the tender documents

of all the participants were not visible on the website at the relevant point of time.

15. However, here also the respondent-authorities are justified in arguing that the said issue was never objected to or raised by the petitioner at the relevant juncture and has been taken for the first time in the present writ petition.

16. In any event, the petitioner, for such purpose, has relied on a bullet point in an Intent Letter for using NIC e-Procurement Software under Central Public Procurement Portal. It is understandable that the respondent-authorities had used the services of the said portal for the purpose of publication of all relevant information regarding the tender-in-question.

17. At page 57 of the writ petition, differences between e-Publishing Module and e-Procurement Module have been delineated. At page 55, it is clear that the bullet point relied on by the petitioner is a part of the General Guidelines for e-procurement under the Central Public Procurement Portal.

18. However, although the said NIC facilities were adopted by the respondent-authorities for the purpose of carrying out the tender, the condition-in-question relied on by the petitioner was not one of the essential conditions embedded in the tender document itself. The clause-in-question merely

enumerates that visibility of bid documents would be enabled to participating bidders after technical opening of the bid. However, there is no sanction for non-compliance of the same and/or anything to show that in the event there was no visibility as such after the technical opening of the tender, the tender itself contemplated any adverse impact on the tender process itself.

19. Moreover, it is well-settled that the interpretation of tender documents and its terms by the Tender Inviting Authority is sacrosanct. In the present case, the Tender Inviting Authorities have given an explanation that if all bid documents were put up on public domain, the same might have had adverse impact on professional secrecy and mercantile interests of the participants. Since I do not find any deficiency in the said reasoning and/or any sanction for vitiating the entire tender for non-compliance of such general requirement regarding e-procurement module, the petitioner's contention that the non-compliance of the same vitiates the entire tender process cannot be accepted. In any event, it may be reiterated that the petitioner did not raise in writing the specific issue of non-visibility of documents at any relevant juncture.

20. Thirdly and most importantly, the petitioner has raised the question that the tender value, if

taken at the rate quoted by the successful tenderer, would not have satisfied the GST and other criteria.

21. A careful scrutiny of the tender document and relevant documents indicate that indeed, there was no minimum bid value set for the tender.

22. If the petitioner, after participating in the bid, has an issue regarding non-compliance of GST norms by the successful tenderer, it is always open to the petitioner, as a good Samaritan, to point out the said deficiencies to the respondent-authorities for the latter to take appropriate steps against the successful tenderer, who has been issued the work order. However, it would be premature to anticipate that there would be GST or minimum wage violations by the successful tenderer at this stage. It may very well be that as a business ploy, a particular tenderer quotes an extremely low rate, even at the risk of running a loss for future gains and/or earning marginal profits. Such business practices and the particular trade secrets of a particular entity cannot be examined threadbare while deciding a writ petition in judicial review.

23. Whatever might have been the interest or business policy of the successful tenderer, there is nothing in the tender document to preclude the said tenderer from quoting a low rate.

24. In any event, if the successful tenderer, after commencing the work, violates the GST norms or Minimum Wages Act provisions or other similar norms in any manner, it is always open to the Tender Inviting Authorities/employers, who also have statutory liabilities in that regard, to take steps appropriately for rectification of such violation of norms. The law will take its own course in that regard since the employer and employees are both at risk of violation of legal provisions in the event the GST norms and minimum wage and other similar legal requirements are not complied with. It is not the lookout, however, of an unsuccessful tenderer at this stage to flag such anticipated issues.

25. Insofar as the issue of the varying addresses of the successful tenderer is concerned, the same was never a part of the pleadings and/or the objections raised at any stage by the petitioner. In any event, an entity may very well have several addresses, which does not ipso facto vitiate the identity or credibility of the said entity.

26. It is also well-settled that in order to interfere with a tender process floated by the Tender Inviting Authority according to its own perceptions of the work contemplated, the Court has to be extremely cautious and unless there is palpable arbitrariness,

unreasonableness, mala fides or any condition tailor-made to suit a particular bidder (which has not been established in the present case sufficiently), there is normally no interference by the writ court.

27. In such view of the matter, even if an alternative view was possible to be taken by the Court on the factual premise of the case, it is not appropriate for the writ court to substitute its own views, not being an expert in the field, for that of the Tender Issuing Authority.

28. In the light of the above discussions, there is no scope of interference in the present writ petition.

29. Accordingly, W.P.A. No. 25981 of 2023 is dismissed on contest.

30. There will be no order as to costs.

31. 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.)