

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 24.04.2024
DELIVERED ON: 30.04.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT NO. 2368 OF 2023

THE STATE OF WEST BENGAL AND OTHERS

VERSUS

RAHUL GHOSH AND OTHERS

WITH

MAT NO. 2417 OF 2023

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IA NO. CAN 1 OF 2024

GRAND SUPPLY SERVICE

VERSUS

RAHUL GHOSH AND OTHERS

Appearance:-

Mr. Suman Sengupta, Sr. Govt. Adv.

Mr. D. Basu Mallick, Adv.

Mr. Sanatan Panja, Adv.

**.....For the Appellant
(in MAT 2368 of 2023)**

Mr. L.K. Gupta, Sr. Adv.
Mr. Abhratosh Majumdar, Adv.
Mr. Arjun Ray Mukherjee, Adv.
Mr. Joyjeev Medhi, Adv.

**.....For the Appellant
(In MAT 2417 of 2023)**

Mr. Jaidip Kar, Sr. Adv.
Mr. Sagar Bandyopadhyay, Adv.
Ms. Soma Kar Ghosh, Adv.
Mr. Arabinda Pathak, Adv.

....For the writ petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. Both the appeals were heard analogously as the challenge in the both the appeals is to the same order passed by the learned Single Bench in WPA No. 26204 of 2023. The writ petition was filed by the respondent 1 to 4 herein who are the partners of the M/s. Ghosh and Roy Company challenging the rejection of their technical bid in an auction conducted by the Government of West Bengal, Office of the Superintendent, ESI Hospital, Manicktala, Kolkata – 700054.
2. The technical bid was rejected for the reason “MPO cum Superintendent is not mentioned as per pre bid minutes as memo no: EH/MN/2373 clause no. 8 in Annexure B”. The learned Single Bench had allowed the writ petition set aside the rejection of the technical bid of the writ petitioners and including the issuance of the work order in favour of the appellant in MAT No. 2417 of 2023. Taking into consideration that the contract is for providing food items to the patients in the hospital, the learned writ court provided for an adhoc arrangement, permitted the appellant in MAT No. 2417 of 2023 to continue

with the supplies till the tender process is finalised in terms of the directions issued by the learned Single Bench. The private respondent in the writ petition as well as the State of West Bengal are aggrieved by the said order.

3. We have heard Mr. Suman Sengupta learned Senior Advocate assisted by Mr. D. Basu Mallick and Mr. Sanatan Panja learned advocates appearing for the appellant in Mat No. 2368 of 2023, Mr. L.K. Gupta learned Senior Advocate assisted by Mr. Abhratosh Majumdar, Mr. Arjun Ray Mukherjee and Mr. Joyjeev Medhi learned advocates appearing for the appellant in Mat No. 2414 of 2023 and Mr. Jaidip Kar, learned Senior Advocate assisted by Mr. Sagar Bandyopadhyay, Ms. Soma Kar Ghosh and Mr. Arabinda Pathak, learned advocates appearing for the writ petitioner.
4. The facts which are relevant are that totally there were 23 bidders who had responded to the tender invited by the authorities concerned. Out of the 23 bidders, the bids of the 9 have been technically rejected for the self same reason on which the technical bid of the writ petitioner was rejected. To be noted that the tender was invited by the Government of West Bengal, Office of Superintendent, ESI Hospital, Manicktala, Kolkata – 700024, Memo dated 11.05.2023. The said invitation of E-tender was signed by MPO Cum Superintendent, ESI Hospital, Manicktala. The period of submissions of E-tender was up to 05.06.2023 up to 4:00 PM.
5. The pre bid meeting was fixed on 16.05.2023. In the said meeting, there appears to have been some discussion and the minutes were recorded in the writing by Memo dated 18.05.2023. Serial No. 8 of the minutes is relevant for the case which states “In invitation of E-tender always apply to

MPO Superintendent, in place of Superintendent". The writ petitioner in response to the E-tender has applied to the Superintendent, ESI Hospital, Manicktala. This according to the tender inviting authority is technically incorrect and therefore the bid was rejected.

6. At the outset, we need to point out that the decision taken by the authority to reject the technical bid of the writ petitioner and others on this ground was highly arbitrary and unreasonable and not in consonance with the terms and conditions of the E-tender.

7. As pointed out earlier, the tender was invited by Memo dated 11.05.2023 by the Government of West Bengal, Office of Superintendent, ESI Hospital, Manicktala, Kolkata. In the tender document, in Clause 43 it has been stated that any decision taken in the pre bid meeting will be valid during the tender process. In Clause 44, it is stated that the applicant should fill up Annexure A and B. Annexure B deals with the Tender Participation Application. Annexure B is addressed to the Superintendent, ESI Hospital, Manicktala, Bagbari Road, Kolkata - 700054. This annexure which forms part of the invitation for E-tender has not been amended and the writ petitioners had adopted the format given in Annexure B and they have filed their applications.

8. Furthermore we are informed that except in Manicktala, the office of the Superintendent of the concerned ESI Hospital is only in Manicktala, it has been mentioned very recently as MPO Cum Superintendent. In any event, this substantial condition of tender document cannot be altered during the pre bid meeting because in the pre bid meeting the persons who

have complied with certain terms alone are called for the meeting and in any event, the Annexure B having not been amended, the rejection of the technical bid for the reasons mentioned was absolutely perverse and wholly unreasonable.

9. The learned Senior Advocate appearing for the appellant in MAT No. 2417 of 2023 referred to the celebrated decision of the Hon'ble Supreme Court in **Tata Cellular Versus Union of India** ¹ and by referring to paragraph 69 of the judgment submitted that the bid has to be submitted to the proper authority and if it is not so it can be rejected. This decision will be wholly inapplicable to the facts of the case as we find that in terms of the documents appended to the invitation of E-tender the document has to be submitted to the Superintendent and there is no amendment of Annexure B to include MPO cum Superintendent. A decision pre bid meeting cannot alter the terms and conditions of the invitation E-tender published by Memo dated 11.05.2023. That apart the minutes of the pre bid meeting held on 18.05.2023 cannot be construed to be a corrigendum to the E-tender notification. Therefore such a plea raised by the appellant has to be outrightly rejected.

10. As mentioned earlier, the scope and ambit of pre bid meeting is entirely different and the reasons stated by the authority for rejecting technical bid of the appellant is wholly unjustified. That apart, it is submitted that only five persons have been shortlisted out of 23 bidders and the remaining have been rejected for the same reason as faced by the writ

¹ (1994) 6 SCC 651

petitioners. Thus, we find the learned Single Bench was fully justified in allowing the writ petition and we find no grounds to interfere with the same.

11. Accordingly the appeals are dismissed and the respondent authority are directed to comply with the directions issued in paragraph 19 and 20 of the judgment within a period of four weeks of the date of the receipt of the server copy of this order. Till the tender process is finalised, the adhoc arrangement enabling the appellant in MAT No. 2417 of 2023 shall continue and abide by the ultimate decision taken after tender process is finalised.

12. As noted above, the benefit of this judgment can very well be extended to the other companies who had participated in the tender and the bid was technical rejected only on this ground that it was not addressed to “MPO cum Superintendent”, those bidders/companies shall also be invited to participate in the further tender process if they so desire, however, if the bid was technically rejected for some other reasons or in addition to this reason, the benefit of this judgment will not enure in favour of them but only to such of those persons whose bid was technically rejected on the only ground that it was not addressed to “MPO cum Superintendent” should be allowed to participate in the further tender process.

(T.S. SIVAGNANAM, CJ.)

I Agree

(HIRANMAY BHATTACHARYYA, J.)