

AD-08
Ct No.09
03.01.2024
TN

WPA No. 29001 of 2023

Mandeepa Enterprises
Vs.
The State of West Bengal and others

Mr. S.N. Mitra,
Mr. Sandip Kumar De,
Mr. Shayak Mitra,
Mr. Abhijit Sarkar

.... for the petitioner

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee

.... for the State

1. Learned senior counsel appearing for the petitioner argues that the petitioner, while participating in the tender process-in-question, made an *ex facie* mistake in quoting an amount to the tune of Rs. 9,72,999/-, whereas the annual potential collection even as per the tender document was Rs. 21.60 crore and the EMD/bid security was Rs. 25 lakh. It is contended that the said mistake was corrected by sending a communication via e-mail on the very date when the financial bid was opened by indicating that the bid amount quoted by the petitioner was to be deemed for a single day and the total amount, calculated accordingly for the entire period of

1095 days, ought to be read as the actual bid of the petitioner. It is further argued that the total amount of bid for 1095 days, deeming the petitioner's bid to be on a daily basis, would come to around Rs. 106 crore whereas the next highest bidder after the petitioner quoted an amount around Rs. 91 crore. Hence, it is argued that even the State exchequer, which deals with public money, would lose out in the event the petitioner is not permitted to participate in the tender process by considering the petitioner to be the highest bidder on the basis of a mere technical error on the part of the petitioner.

- 2.** Learned senior counsel also points out that in a different tender floated by the respondent-authorities where the present petitioner also participated, there was correspondence between the petitioner and the tender issuing authorities which indicated that the quote was on a daily basis. The said annexure is also relied on by learned senior counsel, being Annexure P-9 at page-80 of the writ petition, which indicates that the correspondence indicated the quote to be on a daily basis. It is argued that, as such, the petitioner ought not to be penalized for the obvious error of the petitioner. It is submitted

that in view of the annual potential collection being Rs. 21.60 crore and the EMD/bid security Rs. 25 lakh, it was obviously absurd for the petitioner to have quoted a bid to the tune of Rs.9,72,999/- for the entire period.

3. Learned counsel for the State submits that even the price schedule in the BOQ which was submitted by the petitioner indicated that the figure to be entered by the bidder would be for 1095 days. There was nothing in the tender document, it is argued, to show that there could be any scope of misunderstanding on the part of any bidder regarding the quotation pertaining to a single day.
4. Learned counsel also places reliance on the provisions of Clause 4(a)(iv)(g) of the tender document to indicate that the tender document clearly stipulated that any change in template of BOQ will not be accepted under any circumstances.
5. Learned counsel for the respondents harps on the transparency of the tender process which would be hampered according to the respondents in the event the petitioner's prayer is allowed.
6. A perusal of the documents handed over and annexed to the writ petition clearly shows that it

would be absurd for the petitioner to have quoted the amount which it did.

7. Whereas the annual potential collection was clearly indicated to be Rs. 21.60 crore and the bid amount Rs. 25 lakh, no bidder in its senses could have quoted Rs. 9,72,999/- as the bid amount for the entire period of 1095 days. However, the fact remains that the mistake of the petitioner, although costly, was after all a mistake and found place in the bid of the petitioner.
8. *Bona fides* cannot be attributed to the petitioner; rather, the petitioner was grossly negligent, since the price schedule indicated in the BOQ, which found place even in the bid of the petitioner itself, clearly showed that the amount of Road User Fee in the figures was to be entered by the bidder for 1095 days. Even after knowing the same and being aware of the various amounts involved by way of annual potential collection and bid security, the petitioner committed the error which it did.
9. After the financial bid was opened, the petitioner wrote to the tender issuing authorities. If such an opportunity is to be given to a particular bidder, the same would upset the entire tender

process and, as rightly argued by the respondents, would make the tender process opaque and arbitrary.

- 10.** The petitioner, with its eyes open, participated in the bid and quoted an erroneous amount. As such, the petitioner ought to suffer for the same and take responsibility therefor. Even if the petitioner's bid, if taken to be for 1095 days, would far exceed the next highest bid, such opportunity cannot be given to the petitioner to rectify its error after the entire bidding process was over and the financial bids of all the bidders were opened. Such chance, if given to the petitioner, would be contrary to every known principle of fairness pertaining to tenders and would amount to a special favour being extended to the petitioner for no particular reason.
- 11.** Thus, there is no scope of interference in the tender process.
- 12.** Accordingly, WPA No. 29001 of 2023 is dismissed on contest without any order as to costs.
- 13.** The documents handed over by learned counsel for the State be kept on record.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)