

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

**Present :
The Hon'ble Justice Aniruddha Roy**

WPA 703 OF 2025

Sanvi Construction,
a proprietorship firm represented by
its sole proprietor Subrata Dey

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Sudip Deb
Mr. Joy Chakraborty
Mr. Sandip Dinda
Ms. Ipsita Ghosh.

For the Respondent : Mr. Nilotpal Chatterjee
No. 1/State Mr. Debraj Sahu.

For the Respondent : Mr. Kishor Datta, Ld. AG
Nos. 2 & 3 Mr. Anirban Ray, Ld. GP
Mr. Sanjay Saha
Mr. Piyush Agrawal
Ms. Shrivalli Kajaria
Ms. Debdatta Mukhopadhyay.

Heard on : 13.01.2025

Judgment on : 13.01.2025

Aniruddha Roy, J. :

Affidavit-of-service, filed in Court today, is taken on record.

Mr. Sudip Deb, learned senior counsel being ably assisted by Ms. Ipshita Ghosh, learned counsel appears for the petitioner.

Mr. Kishor Datta, learned Advocate General and Senior Advocate appears for the respondent Nos. 2 and 3 being assisted by Mr. Anirban Ray, learned Government Pleader and Senior Advocate.

Mr. Nilotpal Chatterjee, learned counsel and Mr. Debraj Sahu, learned counsel appear for the respondent No. 1.

Facts :

1. A tender notice dated **December 20, 2024, Annexure – P3 at page 28** to the writ petition was issued by the respondent No. 2 for selection of **Mine Developer and Operator (MDO) of Sand Blocks in West Bengal**. The essential criteria to participate in the said tender process was that, the intending bidder must be a Mine Developer and Operator (MDO). For the purpose of declaring one as a Mine Developer and Operator (MDO) two selection processes were held by the respondent No. 2 in **2021** (for short, first selection process) and in **2023** (for short, the second selection process). The first selection process was concluded in or about **December, 2021** and the second selection process was concluded in or about **August-September, 2024**. The admitted position is that, the petitioner had not participated in either of the said selection process for being qualified as MDO.

2. The petitioner thereafter sought to participate in the said tender process held in terms of the said tender notice dated **December 20, 2024** (for short the subject tender). The petitioner submitted its representation dated **January 7, 2025, Annexure – P5 at page 75** to the writ petition before the respondent no. 2 for considering its candidature under the subject tender process and for being qualified as MDO. Since the authorities failed to consider the representation, the instant writ petition has been filed with the following prayers:

“a. Leave may be granted to move this writ petition dispensing Rule 26A of the Appellate Side Rules.

b. A writ in the nature of Mandamus do issue directing the respondents, its men, agents and servants specifically the respondent no.2 to allow the petitioner to apply in the tenders being Annexure “P-3”.

c. A writ in the nature of Mandamus do issue directing the respondents, its men, agents and servants specifically the respondent no. 2 to forthwith allow the petitioner to be empanelled as MDO after scrutinizing his eligibility criteria.

d. A writ in the nature of Mandamus do issue directing the respondents, its men, agents and servants specifically the respondent no. 2 to show cause as to why the impugned tender process of floating the tenders being Annexure “P-3” will not be set aside and/or quashed with immediate effect.

e. A writ in the nature of Certiorari do issue commanding the respondents to produce all the records of the case including the representations made by the petitioner before this Hon’ble Court so that conscionable Justice may be administered;

f. Rule Nisi in terms of prayer (a) to (e).

g. An ad-interim order directing the respondents to maintain status-quo of the residual stocked sand, till the pendency of the writ petition;

h. Ad-interim order of injunction restraining the respondents, their men, agents assigns and subordinates from taking steps against the tenders being Annexure “P-3”, till the disposal of the application;

i. Such further or other order or orders be passed and/or directions be given as to this Hon’ble Court may deem fit and proper.”

Submissions :

3. Mr. Sudip Deb, learned senior counsel appearing for the petitioner has canvassed two-fold of arguments. **Firstly**, though the notifications for holding the selection process in **2021** and **2023** respectively were published in the official website of the respondent no. 2, in the public domain but the same has escaped the notice of the petitioner, as a result, the petitioner could not participate in either of the said selection process for being qualified as MDO and since the petitioner was not a qualified MDO, the petitioner became debarred to participate in the subject tender process. He submits that, since the selection processes were held in **2021** and **2023** and the same had escaped the notice of the petitioner, the petitioner cannot be barred for being selected as an MDO all time to come and for eternity. **Secondly**, referring to the **West Bengal Sand (Mining and Transportation, Storage and Sale) Rules, 2021** (for short, the said 2021 Rules) learned senior counsel submits

that, the respondent no. 2 had no authority and jurisdiction to issue any notice as Expression of Interest at **page 37** to the writ petition as a nodal agency. In this regard, Mr. Deb has placed much reliance upon **Rule 17** from the said 2021 Rules.

4. Mr. Deb, learned senior counsel further submits that, since the respondent no. 2 had no authority to issue and conduct the selection process, as referred to above in **2021** and **2023** (Expression of Interest), whether the petitioner has been qualified as an MDO or not under those two selection processes are immaterial and the petitioner has a right to participate under the said tender process.
5. Mr. Deb, learned senior counsel further submits that, the entire action of the respondent no. 2 restricting the said subject tender process amongst the MDOs only is violative to the provisions under Article 14 of the Constitution of India. In support, he has relied upon a judgment of the Hon'ble Supreme Court ***In the matter of: Banshidhar Construction Private Limited Vs. Bharat Coking Coal Limited and Others***, reported at **(2024) 10 SCC 273**.
6. In the light of the above, Mr. Deb, learned senior counsel submits that, the writ petition should be allowed as prayed for.
7. Mr. Kishor Datta, learned Advocate General and senior counsel appearing for the respondent nos. 2 and 3 referring to the document at **page 37** to the writ petition submits that, the said Notice Inviting Expression of Interest was issued in **2021** and the process thereunder

was concluded in or about **December, 2021**. An identical Notice Inviting Expression of Interest was also issued subsequently in **2023** and the process there under was concluded in or about **August/September, 2023**. These two processes were held for selecting MDOs so that, the participants therein, if are otherwise qualified, could be declared as MDOs. This was the primary, essential and a mandatory qualification to participate under the subject tender process. Learned Advocate General submits that, in none of these two processes the petitioner had participated. Therefore, the question of being qualified as MDO, by the petitioner did not and does not arise in any manner. Since the petitioner has never been declared and selected as MDO he did not qualify the primary and essential criteria under the subject tender process which is restricted only amongst the MDOs. Thus, the petitioner does not have any right to question the subject tender process in any manner or to ask for any consideration of his case in terms of the said representation dated **January 7, 2025 at page 73** to the writ petition.

8. Learned Advocate General further submits that the petitioner has also not challenged the said process for Notice Inviting Expression of Interest held in **2021** and **2023**. Therefore, he cannot question those selection processes or the jurisdiction and authority of the respondent no. 2 in issuing the said Notice Inviting Expression of Interest or to hold the relevant process thereunder. He further submits that, already about **800** number of candidates have been empanelled as MDOs, who have

participated in the subject tender and the subject tender process is restricted only amongst them.

Decision :

9. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court is of the view that, the subject tender notice has been issued purely for a commercial purpose. The law is well settled that, the tender covenants in a commercial contract/tender has to be construed strictly in its letter and spirit. Equity has a very little role to play there.
10. The admitted facts on record show that, the process held under the Notice Inviting Expression of Interest in **2021** and **2023** stood concluded and the petitioner did not participate thereunder. Since the petitioner had not participated in the selection process for being qualified to be MDO and allowed the process to continue without any challenge, the petitioner today has waived its right thereunder and acquiesced thereto and cannot challenge the said selection process. The moment the relevant Notices Inviting Expression of Interest were published in **2021** and subsequently in **2023** for holding the process twice in the public domain being the official website of the respondent no. 2, it is to be construed that, the people at large in the world and/or in the commercial world have deemed notice and knowledge of the said Notices Inviting Expression of Interest and the processes held thereunder. The petitioner

not having participated therein cannot question the same today in any manner.

11. The subject tender notice dated **December 20, 2024** shows that, to participate under the subject tender process, the primary, essential and mandatory qualification that one has to be an MDO. Admittedly, the petitioner is not an MDO.
12. On a true and proper construction of the terms of the said subject tender notice, this Court is of the view that, unless an intending participant or aspirant under the said tender notice is an MDO, at the threshold, it is debarred from participating under the said commercial tender process. The law is well settled that, this constitutional Court in exercise of its power under judicial review cannot alter or modify the tender terms, which have otherwise been acted upon.
13. Since the petitioner has been disqualified to participate in the subject tender notice as not being an MDO, the petitioner has no right to challenge either the subject tender process or to ask for a consideration to empanel it as an MDO and then to allow it to participate in the subject tender process. The petitioner first has to become equal amongst the equals in strict compliance of the terms of the subject tender notice then only the petitioner can claim a right of equality. Since the petitioner is not an “**equal**”, the question of raising any plea of violation of the provisions under Article 14 of the Constitution of India in the facts and circumstances of the instant case does not arise. Hence, the ratio laid

down by the Ho'ble Supreme Court ***In the matter of: Banshidhar Construction (Supra)*** shall not apply in the facts and circumstances of this case.

14. In view of the above discussions and reasons, this Court is of the firm view that, the petitioner does not have any right to demand any consideration as mentioned in its representation dated ***January 7, 2025, Annexure – P5 at page 73*** to the writ petition and the petitioner does not have any right to maintain this writ petition.
15. Accordingly, this writ petition, ***WPA 703 of 2025*** being devoid of any merit stands ***dismissed***, without any order as to costs.
16. However, in the event, a further Notice Inviting Expression of Interest for empanelment as an MDO is issued, the petitioner shall be at liberty to participate therein if the petitioner fulfils the other criteria to participate.
17. However, it is also made clear that, this order shall not create any right or equity in favour of the petitioner and if the petitioner applies for empanelment to become an MDO in the fresh Notice Inviting Expression of Interest, its case shall be decided strictly in accordance with law.
18. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)