

30-01-2025
Item No.6
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

WPA No.1397 of 2025
Tejbul Hasan

-vs-

The State of West Bengal & Ors.

Mr. Jaydip Kar, sr. adv.
Mr. Mohan Kumar Sanyal, adv.
Mr. Dwaipayan Sanyal, adv.
Mr. Animesh Pathak, adv. ...for the petitioner

Mr. Rajarshi Basu, adv.
Ms. Kalpita Paul, adv. ...for the State

1. The writ petition relates to Notice Inviting e-Tender (Retender), e-Tender Notice No.03/NIT/2024-25 Memo No.20/ICD/MSD dated January 7, 2025. The same pertains to carrying contractors of food stuff for lifting of rice/fortified rice from FCI Godown/Food & Supplies Department Godown to be carried to different ICDS projects in the godowns in Murshidabad. Today is the closure date for submission of bid proposals online by the bidders and the date for opening the technical bid is February 4, 2025 and the date of opening of the financial bid is February 7, 2025. The petitioner claims to be registered as carrying cum storing contractor of food stuff under different ICDS projects under the district of Murshidabad and interested to participate in the subject tender.
2. The petitioner is aggrieved by the condition nos.7 and 8 of the terms and conditions mentioned in

the notice inviting e-tender.

3. Condition no.7(1) mentions that the intending tenderers should produce credentials of a similar nature of completed work of carrying of food stuff for the last five years if an amount of Rs.80,00,000/- (eighty thousand) only or the tenderers should produce credentials of two similar nature of completed work and the minimum value of each work for carrying food stuff for the last five years is for an amount of Rs. 60,00,000/- (sixty thousand) only for each year under the Government department.
4. Term no. 8 mentions that the registered distributors of Food & Supplies Department are eligible to participate in the tender process even if they do not fulfill the terms and conditions as mentioned in columns 7(i) and 7(ii).
5. The petitioner contends that the two terms do not create a level playing ground. If the registered distributors of the Food & Supplies Department, who do not meet the eligibility criteria in term no. 7 are allowed to participate in the tender process, then there is no requirement of restricting the participation to the bidders who have already achieved the benchmark of supplying the food stuff of the amount mentioned in term no. 7.
6. It has been submitted that term 8 has been incorporated in the tender document only to suit and favour some of the registered distributors of the Food & Supplies Department. The said clause is absolutely tailor made for a handful of bidders. It has been argued that had the relaxation not been restricted only to the registered distributor of food and supply department then, he would have got an opportunity to participate in the

bidding process.

7. In support of the submission that the authority ought not to put in the terms in the tender document only to suit the convenience of a particular person, the petitioner relies on the judgment delivered by the Hon'ble Supreme Court in the case of **Meerut Development Authority v. Association of Management Studies & Anr.** reported in **(2009) 6 SCC 171**.
8. Attention of the Court has been drawn by the petitioner to the credentials of the bidders which repeats the terms as mentioned in clause 7 of the tender document, but does not mention about the term mentioned in clause 8.
9. Learned counsel for the State, on the other hand, relies upon the instructions forwarded by the District Programme Officer (ICDS), Murshidabad which mentions that the registered distributors of Food & Supplies Department are supposed to be capable enough to execute the work of carrying food grain under ICDS, Murshidabad because of the voluminous work in the same category under the Food & Supplies Department. The authority has denied that there has been any violation of the equality terms as mentioned in the tender document. The allegation of making the clause tailor made to suit the convenience of a handful of bidders is denied.
10. Upon hearing the respective submissions made on behalf of both the parties, it appears that prior to invoking the writ jurisdiction of the Court, the petitioner did not approach the authority highlighting his grievances pointing out the discrepancies in the tender document.
11. It is settled law that scope of judicial review in

tender matters is extremely limited. It is for the authority to fix the terms and conditions of the tender.

12. In **Meerut Development Authority** (supra), the apex court clearly held that the limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of a particular person with a view to eliminating all others from participation in the bidding process. The bidders participating in the tender process have no other right, except the right to equality and fair treatment in the matter of evaluation of competitive bids.
13. The subject notice inviting tender mentions two different requirements at two different places. In the terms and conditions, there is a relaxation of the requirement of executing work of carrying the food stuff for a particular period of a specified amount, whereas under the caption non-statutory cover at serial no. 13.3 the relaxation is not mentioned. Had the relaxation been made applicable to the registered distributors of the contractors under ICDS projects then, the petitioner could have participated in the tender process.
14. Hence, the petitioner is granted liberty to file a composite objection before the District Magistrate & Collector, District (ICDS) Cell, Murshidabad the second respondent herein, highlighting all his grievances and the alleged discrepancies in the tender document by tomorrow (01-02-2025).
15. In the event such an objection is filed, the same shall be considered by the District Magistrate/ Additional District Magistrate (ICDS)

Murshidabad, keeping in mind the equality clause and fair treatment to all the bidders and disposed of prior to February 4, 2025.

16. If the authority is of the opinion that the grievance of the petitioner or the discrepancy pointed out by him is correct, then necessary remedial steps shall be taken forthwith.
17. Instruction filed by the State be taken on record.
18. All parties are to act on the server copy of this order duly downloaded from the official website of this Court.
19. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]