

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 18675 of 2019
With
CAN 1/2020 & CAN 2/2025

United Order and Supply Co-Operative Society Ltd.
Versus
The State of West Bengal and Others

For the Petitioner : Mr. Satrajit Sinha Roy, Adv.

For the Respondent No. 17 : Mr. Sagar Bandyopadhyay, Ld. Sr. Adv.
Ms. Soma Kar Ghosh, Adv.
Ms. Suparna Paul, Adv.
Mr. Arabinda Pathak, Adv.
Ms. Shilpi Ghosh, Adv.

For the State Respondents : Mr. Saikat Chatterjee, Adv.
Ms. Amrita Panja Mallick, Adv.

Heard on : 20.08.2025

Judgment on : 27.08.2025

Ajay Kumar Gupta, J:

1. The writ petitioner approached this Court praying for direction upon the respondent authorities to admit the technical bid of the Petitioner and to reject the technical bids of respondent nos. 15 to 17 in connection with the tender process initiated in NIT No. 3542 dated 27.05.2019 for supply of cooked diet for indoor patients at Bankura Sammilani Medical College & Hospital, Bankura along with other consequential reliefs.

2. The sum and substance of this case is that the petitioner is a society duly registered under the Co-operative Societies Act, 1983 and engaged, *inter alia*, in the business of supplying cooked diet to various Government Hospitals across different districts of the State of West Bengal.

3. Pursuant to NIT No. 3542 dated 27.05.2019, issued by respondent no. 7 invited E-Tender for supply of cooked diet to the indoor patients of Bankura Sammilani Medical

College & Hospital. The petitioner participated in the said tender process by submitting all requisite documents.

4. The technical bid of the petitioner was opened and duly admitted on 19.06.2019. A comparative statement of technical bid was uploaded on the tender web portal bearing the signatures of concerned respondents, wherein it was reflected that all the documents has been submitted by the petitioner, was “Not Approved By The Swasthya Bhavan” without any reason being assigned.

5. According to the petitioner, upon scrutiny of the documents furnished by the other participants/bidders, it transpired that several deficiencies were present in their bids. Nevertheless, the respondent authorities, in an arbitrary, discriminatory and collusive manner, approved such bids, while rejecting that of petitioner. It is alleged that respondent nos. 16 and 17 did not ever posses the requisite credentials to qualify, yet their bids were entertained, whereas the petitioner’s bid was rejected

dehors the terms of tender. In view of clause 18.3 of the tender conditions, the bids of respondent no. 16 to 18 were liable to be rejected.

6. Learned counsel appearing on behalf of the petitioner contended that the petitioner's technical bid was effected without due consideration of the documents and credentials furnished by the petitioner, which were, in fact, better to those of private respondents.

7. It was further submitted that respondent no. 18 has failed to submit the tender application form, the bidders undertaking, the bank solvency certificate and the performance certificate duly authenticated by the Notary Public as mandatory requirement under tender conditions. Despite such deficiency in the documents submitted in the tender, his bid was accepted, which vitiates the entire process. Hence, the bids of the respondent nos. 16 to 18 are liable to be rejected and fresh tender should be issued.

8. Learned counsel submitted the work order issued in favour of the respondent no. 17 beyond the expiry of the maximum period of 120 days as prescribed under E-Tender is illegal. The respondent authority did not comply with the clause 6 of the tender dated 27.05.2019. Therefore, the respondent authority acted arbitrarily and whimsically and rejected the technical bid of the petitioner.

9. Learned counsel finally argued that when the respondent authority violates its own tender process with mala fide intention, arbitrarily or for collateral purpose, in such case, the Court is not powerless to cancel the tender process and directed for issuance of fresh tender.

10. Learned counsel has placed reliance of the three judgments in support of his contention that the writ court can invoke power of judicial review even in the matter of Government Contracts and commercial tender, when it involves mala fide or intended to favour someone and it affects the public interest, as under: -

- i.** *Jagdish Mandal Vs. State of Orissa and Ors.*¹ Particularly paragraph nos. 21 and 22 thereof;
- ii.** *M/s Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*² particularly paragraph nos. 31, 34 and 35 thereof;
- iii.** *Sterling Computers Limited Vs. M/s M & N Publications Limited & Ors. WITH United Database (India) Pvt. Ltd. Vs. M/s M & N Publications Limited & Ors. AND United India Periodicals Pvt. Ltd. Vs. M/s M & N Publications Ltd. And Ors.*³.

11. Per contra, learned counsel appearing on behalf of the State respondent No.7 vehemently opposed the prayer of the learned counsel appearing on behalf of the petitioner and further submitted that the writ petition is not at all maintainable in law. The petitioner's technical bid was rejected by the authority considering his credentials and

¹ (2007) 14 SCC 517;

² (1989) 3 SCC 293;

³ (1993) 1 SCC 445.

documents and other requisite eligibility criteria comparing with other bidders. The financial credentials of all the bidders were forwarded to the State Government for verification as the data pertaining to financial capacity is monitored centrally at Swasthya Bhawan on the basis of information furnished by concerned hospitals and districts. The purpose of issuing tender was for supply of cooked diet for indoor patients at Bankura Sammilani Medical College & Hospital, Bankura. Out of six bidders, finally three were selected after verifying their financial credentials and other essential requirements.

12. Respondent no. 17 was finally selected after a lottery process and emerged as the lowest L1 bidder and finally work order was issued in favour of the respondent no. 17 in the year 2023. The delay was caused due to filing of several writ petitions by different parties like Petitioner and Sonar Bangla Caterer etc. After issuing work order in favour of the respondent no. 17, the writ petition being

WPA 878 of 2020 has been dismissed as infructuous vide order dated 25.06.2025 passed by this court.

13. The writ petitioner has not challenged the said work order issued in favour of the respondent no. 17 in appropriate form as yet. by filing an application in the present writ petition is not maintainable in the eye of law, when the cause of action arose later after final selection. Such prayer cannot be entertained in this Writ Petition.

14. The Petitioner should have challenged the said work order issued in favour of the respondent no. 17 in separate form, hence this writ petition should be dismissed because tender process has already been completed and work order has been issued in favour of the respondent no. 17.

15. The challenge with regard to rejection of the petitioner in the technical bid become infructuous, when final work order was issued in 2023. The respondent No. 7 selected respondent No.17 comparing several documents like their credentials, goodwill, financial capacity and other

eligibility criteria. Rejection order of technical bid was published in the website. Therefore, question of assigning reasons does not arise. It is sole discretionary power of the respondent authorities to consider or reject the technical bid considering their credentials, goodwill, financial capacity and other eligibility criteria and the nature of service and public interest and under such situation, interference by way of judicial review under Article 226 of the Constitution is not desirable.

16. The Hon'ble Supreme Court time and again reiterated that the Courts should exercise a lot of restraint while exercising power of judicial review under contractual or commercial matters, interference should be made only on clear- cut cases or arbitrariness or mala fide or bias or irrationality.

17. Mr. Bandyopadhyay, learned senior counsel appearing on behalf of the respondent no. 17 supported the submissions made by the learned counsel appearing on

behalf of the State respondent and further submitted that respondent no. 17's credentials were/are better than the petitioner herein. Respondent no. 17 has already received work order in the year 2023 and from then, the respondent no. 17 supplying cooked diet for indoor patients at Bankura Sammilani Medical College & Hospital, Bankura without any complaint or any disturbance. Even while admitting the writ petition on initial stage, this Court has not granted any interim order in favour of the petitioner. Therefore, there was no bar to issue work order in favour of the respondent no. 17.

18. Even some delay is caused due to pendency of writ petitions and same is condonable otherwise a fresh tender, if issued, it would be further make delay as the service was very essential to supply cooked diet for indoor patients at Bankura Sammilani Medical College & Hospital, Bankura and the Respondent no.17 has been supplying cooked diet since 2023 almost tender period is about to complete.

19. The fresh cause of action arose when work order was issued in favour of the respondent no. 17 in the year 2023 but even knowing the facts, the petitioner has not challenged the said order. Therefore, the instant writ petition become infructuous and the same should be dismissed.

To support of his contentions, he has placed reliance of the following judgments as under:

- i. *Nicco Corporation Ltd. Vs. Cable Corporation of India Limited & Ors. WITH Metro Railway, Calcutta & Anr. Vs. Cable Corporation of India Limited & Ors.*⁴;
- ii. *Jagdish Mandal Vs. State of Orissa and Others WITH Laxman Sharma Vs. State of Orissa & Ors.*⁵;
- iii. *Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited & Anr.*⁶;
- iv. *Silppi Constructions Contractors Vs. Union of India & Another*⁷.

⁴ 2007 SCC OnLine Cal 652 : (2008) 1 CHN 567 : (2008) 61 AIC (Sum 12) 6;

⁵ (2007) 14 SCC 517;

⁶ (2016) 16 SCC 818 : 2016 SCC OnLine SC 940;

⁷ 2019 SCC OnLine SC 1133.

20. This Court has heard the learned advocates appearing for respective parties, upon perusal of the writ petition, application, affidavit-in-opposition and reply thereto, this Court finds the writ petitioner had challenged the rejection of his technical bid and prayer for a direction permitting him to participate in the tender process and/or for issuance of fresh tender. The petitioner challenged with regard to selection in technical bid.

21. Evaluation of a contingent technical bid is upon multiple parameters such as credentials, financial capacity, goodwill and past performances and other allied factors. All these factors required to be considered at the threshold stage of tendered process after comparing with others participants. On such evaluation, the petitioner was found deficient in fulfilling the requisite criteria essential for supply of cooked diet to the indoor patients at Bankura Sammilani Medical College & Hospital, Bankura.

22. Out of six bidders only three bidders were found technically qualified. Thereafter, on 27.09.2019 at 4 PM, a lottery was conducted amongst three lowest bidders whose financial bids were tied in connection with the aforesaid tender.

23. The respondent No.17 and other two selected contractors had better parameters than the writ petitioner. The lottery process of selection was conducted in the presence of the three selected parties. The respondent No.17 was declared as L-1 in the lottery selection process and, accordingly, awarded the contract. A work order was issued in favour of the respondent no.17 in 2003 and the same is continuing till date. Hence, prayer sought for in the writ petition without any valid ground at this present stage, when already work order has been issued in favour of Respondent no.17, cannot be interfered with by the judicial review.

24. The judgment relied upon by the learned counsel for both the sides primarily deal with the contours of judicial review in matters relating to Government contracts and tenders. The legal position is well settled that although the Court can exercise its writ jurisdiction in cases of arbitrariness, mala fides, bids or irrationality, the scope of interference at the stage of technical evaluation is extremely limited. Technical evaluation involves assessment of several factors, which are essentially factual and comparative in nature and Courts, not being experts in field, ordinarily refrain from substituting their own view for that of the tendering authority.

25. The respondent authority is the authority to select best tenderer in field of service provider, particularly supply of services like cooked diet for indoor patients at Bankura Sammilani Medical College & Hospital, Bankura as it involves public interest. When public interest is involved, a Court should refrain from interfering with the tender

process particularly when the petitioner failed to success even at the technical bid stage.

26. The Hon'ble Supreme Court in the case of **Silppi Constructions Contractors Vs. Union of India and Anr.**⁸

held in paragraph no. 19 as under:-

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations

⁸ 2019 SCC OnLine SC 1133.

and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

27. The challenge of issuing final work order in favour of respondent no. 17 at this belated stage is not justified and also not sustainable in law. Filing an application with a prayer to set aside or cancel the work order issued in connection with the tender notice being no.3542 dated 27th May, 2019 in favour of the respondent no.17 after expiry of long period of issuance of work order without any valid or sufficient ground does not call for interreference when the period of supply of cooked diet is verge of completion.

Therefore, it is not a fit case to allow such prayer.

Therefore, the writ petition is liable to be dismissed.

28. Accordingly, **WPA 18675 of 2019** stands **dismissed** without order as to costs.

29. Consequently, **CAN 1/2020** and **CAN 2/2025** and all connected applications, if any, are also, thus, disposed of.

30. Interim order, if any, stands vacated.

31. Parties shall act on the server copies of this Judgment downloaded from the official website of the High Court at Calcutta.

32. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all the necessary and legal formalities.

(Ajay Kumar Gupta, J)