

05.03.2025
Item No.6
Ct. No.01
RP/SM

FMA 289 of 2025
SAI SULPHONATES PVT LTD AND ANR.
Vs.
THE WEST BENGAL POWER DEVELOPMENT
CORPORATION LTD. AND ORS.
With
IA No.CAN 1 of 2025

Mr. Suddhasatva Banerjee
Mr. Arindam Chandra
Mr. Atish Ghosh
Ms. Antara Dey

....For the Appellants

Mr. Rajarshi Chatterjee
Mrs. Suman Sahani
Mr. Govind Trethalia

....For Respondents

1. This intra-court appeal by the writ petitioner is directed against the order dated 27th January, 2025 passed in WPA 1417 of 2025. The appellant/writ petitioner participated in a tender process, which was called by the first respondent, namely, the West Bengal Power Development Corporation Limited, for supply of sulphuric acid. It is not in dispute that the appellant/writ petitioner was not found to be technically qualified. The Lowest L1 Bidder, namely, Sudha Chemical Company, which was impleaded as respondent in the writ petition, has been awarded the Letter of Award. The challenge to the impugned award of tender is primarily on two grounds and there is subsidiary ground.

2. The first ground of challenge is that the requirement under Clause 9.2(ii) has not been fulfilled by the successful bidder, namely, Sudha Chemical Company. The second contention is that the bidder does not satisfy the requirement under sub-clause (vii) of Clause 9.2A. Other subsidiary point would be that the action of the Tender Inviting Authority in addressing the supplier by the L1 bidder is beyond the scope of the tender which is not contemplated and such an exercise done by the Tender Inviting Authority is illegal.
3. Before we examine the above contention as put forth by the learned advocate appearing for the appellants we need to take note of the decisions of the Hon'ble Supreme Court which lays down certain principles and parameters as to the scope of interference of the Constitutional Court in a tender process. The decision in **N.G. Projects Limited vs. Vinod Kumar Jain & Ors.** reported in **(2022) 6 SCC 127** held that the writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical

issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hand, rather the Court should examine as to whether the decision making process is after complying with the procedure contemplated by the tender conditions. Further, it was held that if the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the executions of the contract.

4. In **Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others** reported in **2023 SCC Online SC 671** the Hon'ble Supreme Court pointed out that if the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Further, it was pointed out that the power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

5. In **Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited & Anr.** reported in **(2016) 16 SCC 818** the Court considered as to how the tender condition should be interpreted and it was observed that it is possible that the owner or employer of a project may given an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.
6. Bearing the above broad parameters pointed out by the Hon'ble Supreme Court we propose to examine the case of the appellants. The appellant would contend that the successful bidder does not satisfy Clause 9.2A(ii) inasmuch as on the date of evaluation of the bid the authorization given by the manufacturer had lost its validity. The authorization as required to be produced under sub-clause (ii) of Clause 9.2A forms part of the documents to be submitted in Other Important Documents and the said clause commences by stating that following documents in support of qualifying requirement of the bidder are to be uploaded along with the bid. It is not in dispute that on the date when the documents were uploaded the authorization given by the Khaitan Chemical & Fertilizer Ltd. was valid upto 30th October, 2024. Therefore, in our understanding the correct interpretation to be given to sub-clause

(ii) of Clause 9.2A is that at the time of uploading documents the bidder should be a manufacturer or authorized vendor of the manufacturer and he should have a valid authorization of manufacturing of sulphuric acid and other document should be uploaded. This condition has admittedly been fulfilled by the L1 tenderer, namely, Sudha Chemical Company. Therefore, we find no infraction of the said condition. The case of the appellants is that the authorization, which was submitted, was valid only upto a particular date, namely, 30th October, 2024 and there was no valid authorization on the date of evaluation i.e 8.11.2024. If this interpretation is to be accepted it would tantamount to adding words and sentence in the tender condition which we preclude from doing so and we are also in effect prohibited from doing so after the technical evaluation was done and L1 tenderer was found suitable. The first respondent, namely, the West Bengal Power Development Corporation Limited addressed the manufacturer calling upon them to inform as to whether they will support Sudha Chemical Company in case they award the contract for a tenure of 1½ years. Post such communication the manufacturer, namely, Khaitan Chemical and Fertilizer Ltd. responded to the first respondent through email dated 24th December, 2024 assuring

their consistent supplies to the customer by a specific letter of authorization. Therefore, in our view, there is no arbitrariness or illegality on the part of the Tender Inviting Authority to seek such clarification. Such power has been vested with the Tender Inviting Authority in terms of the tender condition, more particularly, condition no.14(f). Therefore, this assurance to supply sulphuric acid by the manufacturer by letter dated 24.12.2024 cannot be treated to be a post decisional validity of authorization since what was required to be submitted by the bidder on the date of submission of the bid is to upload a valid authorization certificate which the successful L1 bidder has complied with. Therefore, we do not find any infraction of the terms and conditions of the bid. This leaves us with the issue whether there is violation of sub-clause (vii) of Clause 9.2A. This condition states that the bidder must have explosive license and clearance from PCB and all allied documents required for supply of acid in transit. The sub-clause used the word 'bidder' and in terms of sub-clause (ii) the bidder can be either of a manufacturer or an authorized vendor of the manufacturer. Therefore to give a life and meaning to sub-clause (vii) the definition of bidder as contained in the sub-clause should be meant to mean a manufacturer and not a vendor of a

manufacturer who cannot be required to be possessed an explosive license. There has been no infraction of the terms and conditions for the writ Court to interfere and rightly the writ Court refused to exercise discretion.

7. There is another allegation made by the appellant that a handwritten work order has been issued by the West Bengal Power Development Corporation Limited in favour of the successful bidder Sudha Chemical Company. This submission is proved to factually incorrect. This is a computer generated Letter of Award which was issued on 26.12.2024, a copy of which has been placed before us for consideration. Thus, we find no grounds to interfere with the order passed by the learned writ court.
8. In the result, the appeal and the connected application fail and are dismissed.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]