

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 5137 of 2025

The Freyssinet Prestressed Concrete Co. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Jaydip Kar, Sr. Adv. Mr. Ayan Banerjee, Adv. Mr. Sameer Parekh, Adv. Mr. Sumit Goel, Adv. Ms. Debjani Sengupta, Adv. Mr. Jayant Bajaj, Adv. Ms. Ruchi Krishna Chauhan, Adv. Ms. Tulika Sil, Adv. Ms. Paulomi Ghosh, Adv.
For State	:-	Mr. Samrat Sen, AAG. Mr. Pantu Deb Roy, AGP. Mr. S. Guha Biswas, Adv.
Hearing concluded on	:-	19.03.2025
Judgment on	:-	25.03.2025

Amrita Sinha, J.:-

1. Rejection of the petitioners' bid at the technical evaluation stage is impugned in the instant writ petition.
2. In response to a Notice Inviting Bid for repair and rehabilitation of existing distressed bridges of National Highway 60 (New National Highway 14) under package 4, the petitioners submitted its bid. The project was of the Ministry of Road Transport and Highways and the

repairing work is under the aegis of the Government of West Bengal, Public Works Department (Roads Wing).

3. The bid of the petitioners was declared as non responsive at the technical bid stage due to non fulfilment of the following criteria: (a) Some important points deleted (i.e. Sl. 9, 10, 11, 12, 13) from Letter Comprising the Technical BID Statement format (which are applicable to both single and joint venture (JV) bidders), as specified in Appendix-IA of the RFP as per clause 2.1.4, 2.11 and 3.2.6 of the RFP. (b) Certificate for Net Worth methodology adopted for calculating such net worth is not submitted by the bidder as per provisions of Clause 2.2.2.9 (ii) of RFP. (c) Necessary certificates from the statutory auditor for Bid capacity and value of 'B' (existing commitment) pursuant to Appendix -IA, Annexure VI of RFP submitted without Unique Document Identification Number (UDIN). (d) Necessary certificates from the statutory auditor for eligible projects, submitted without Unique Document Identification Number (UDIN) by the bidder pursuant to Appendix -IA, Annexure III of the RFP. (e) Details of ongoing works pursuant to Appendix-IA, Annexure VIII of RFP is not submitted by the bidder. (f) Certificate regarding Compliance as per clause 2.2.1(d) of RFP (Land Border) is not submitted.
4. On the first ground for rejection learned advocate representing the petitioners submits that, the points which were deleted from the technical bid statement format in Appendix-1A are meant for joint ventures. The petitioners submitted their bid in the status of a

company, and as per their understanding, the information in respect of the serial numbers 9-13 were not required to be mentioned, hence, deleted. The petitioners stress that there was no mention in the bid document that those serial numbers were required to be filled up even when the applicant is a company.

5. As regards the second, third and fourth grounds of rejection it has been submitted that the required certificate from the statutory auditor was duly submitted by the petitioners at the time of submission of the bid. All the required information to be mentioned in the certificate was available therein. The UDIN number was also mentioned in the said certificate.
6. As regards the fifth ground of rejection it has been submitted that the details of the ongoing works were also submitted in a tabular format. The starting date of the project, the construction period, value of the contract, the anticipated date of completion and other relevant facts were all disclosed.
7. As regards the sixth ground of rejection it has been submitted that as the petitioner no. 1 is an Indian company and is bidding in a project in India, accordingly, non submission of a certificate disclosing the land border ought not to be a ground for rejecting the bid of the petitioners.
8. It has been submitted that the alleged defects are all curable and minor ones. They are merely the ancillary conditions and the authority

ought not to enforce them so rigidly. The petitioners have wide experience in performing similar works of repairing and, accordingly, the petitioners ought to be given a chance to participate in the financial bid.

9. The petitioners rely on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Poddar Steel Corporation vs. Ganesh Engineering Works & Ors.*** reported in ***(1991) 3 SCC 273 : 1991 SCC Online SC 179.***
10. The petitioners pray for setting aside the order of rejection with a further direction upon the authority to permit the petitioners to participate in the financial bid.
11. Learned advocate representing the State respondents oppose the prayer of the petitioners. It has been submitted that the bid of the petitioners stood rejected as the petitioners failed to furnish all relevant data and documents in accordance with the Notice Inviting Bid. It has been submitted that the data and documents which the petitioners failed to submit were all vital and major ones. Due to non furnishing the required information, the credibility of the petitioners to participate in the bidding process could not be properly ascertained.
12. It has been submitted that in the absence of proper data the authority was not in the position to evaluate the bid of the petitioners. If any leverage or leniency is shown to the petitioners at this stage, the same will be violating the provision of Article 14 of the Constitution of India.

All bidders ought to have been provided a level playing ground. There is no scope for the authority to allow the petitioners to furnish incomplete data and documents after the closing of the bid and after the technical bid is opened. The same will result in discrimination and contrary to the principle of natural justice, equity and fair play.

13. It has been denied that the information in respect of serial numbers 9-13 as referred to in the first ground of rejection are meant for only joint ventures. It has been submitted that the subject information was required to be provided by all the bidders and the same is not restricted only to joint ventures. The petitioners may have misread and misunderstood the terms and conditions of the bid document and may have failed to provide the details sought for. The authority is no way responsible for any such misunderstanding at the end of the petitioners.
14. The terms and conditions of the bid document are very clear and unambiguous. If the petitioners had any confusion in their minds with regard to the bid conditions, the same ought to have been clarified in the pre-bid meeting which was scheduled prior to the last date of submission of the bid. The petitioners cannot fall back upon misreading the bid document and seek liberty from the Court to furnish the lacking documents after opening of the technical bid.
15. It has been submitted that the methodology following which the net worth certificate ought to have been calculated, was not furnished as

per the bid document. UDIN is a very vital piece of information which the petitioners failed to provide in the prescribed manner. Furnishing of UDIN has been made mandatory for all audit and assurance functions like documents and reports certified/ issued by full time practicing chartered accountants from 1st July, 2019. All certificates issued by full time practicing chartered accountants are mandatorily required to contain the UDIN.

16. Certificate from the statutory auditor disclosing the bid capacity of the bidder in accordance with Appendix-1A was not furnished. The capacity of the bidder is an essential factor to be considered by the authority for ascertaining as to whether the bidder possesses the financial condition to execute the subject work. Till the bidder satisfies the authority that it has the ability to proceed and conclude the work in accordance with the work order, the bid of the bidder cannot be accepted.
17. Details of the ongoing work of the petitioners were not properly submitted. Every minute facts and figures of the ongoing work is required to be taken into consideration for adjudging the eligibility of a bidder to participate in the bid. The prescribed format in which the details were to be disclosed was a part of the bid document. The petitioners failed to provide the relevant information as regards the ongoing works.

18. There was a requirement of furnishing a certificate disclosing the land border. It has been submitted that there is a provision where the selected bidder may be allowed to subcontract the work to any other contractor from a country which shares land border with India. For the same, the contractor is required to furnish a certificate disclosing that the sub-contractor is registered with the competent authority. Without the required certificate it was not possible for the authority to ascertain as to whether the bidder would proceed to engage a sub contractor or not.
19. For arriving at a conclusive decision with regard to the capability of the bidder to conclude the work in accordance with the Notice Inviting Bid, all relevant details and documents as per the Notice Inviting Bid are required to be mandatorily furnished. The bid submitted by the petitioners was found to be an incomplete one, devoid of the relevant data and, as such, the same has been rightly rejected at the technical evaluation stage.
20. Learned advocate for the State relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited & Anr.*** reported in ***(2016) 16 SCC 818: 2016 SCC Online SC 940*** and ***Agmatel India Private Limited vs. Resoursys Telecom & Ors.*** reported in ***(2022) 5 SCC 362: 2022 SCC Online SC 113***.
21. The respondents pray for dismissal of the writ petition.

22. I have heard and considered the submissions made on behalf of all the parties and perused the materials on record.
23. The Notice Inviting Bid clearly mentioned certain points of attention for the bidders before submission of bid. It was mentioned in bold letters that all data in respect of technical/ financial capacity of the bidder duly certified by statutory auditor should be made available through UDIN verifications and the statutory auditor should mention the corresponding UDIN in each of its certificate. The same shall be considered in respect of qualification requirements of bidder as per the clauses of the bid document.
24. The bid document also mentioned that any query or request for additional information may be submitted. The time schedule mentioned in the Notice Inviting Bid mentioned a specific date for pre-bid meeting. The bid document had a provision for clarifications. The bidders requiring clarifications were permitted to notify the authority and send in their queries on or before the date mentioned in the schedule of the bidding process. The bidder was required to provide all information that was sought for and the authority was required to evaluate only those bids which were complete in all respects.
25. In the instant case, the bid of the petitioners stood rejected as it did not mention all the relevant information and as all certificates were not furnished in accordance with the bid document. The bid document contained provision for submission of documents online and for

submission of documents physically. The documents which were required to be submitted online and those which were required to be submitted physically were clearly mentioned in the Notice Inviting Bid.

26. The petitioners contend that the certificates which have been found to be not supplied by the petitioners, be permitted to be submitted physically as the data in respect of the said certificates were already uploaded by the petitioners and are within the knowledge of the authority. All the required information was available in the documents/ certificates already uploaded by the petitioners. Over and above the same if the authority requires additional certificates, the same may be permitted to be supplied by the petitioners.
27. According to petitioners, the certificates which were not supplied are not so vital resulting in rejection of the bid of the petitioners. However, the petitioners seek permission to supply the same, if required. The authority contends that as all documents were not submitted in proper time, the petitioners cannot be granted any further permission to supply the required documents.
28. I am of the opinion that a bidder ought to have submitted its bid after properly going through the Notice Inviting Bid and ought to have supplied all details and documents as required in the Notice Inviting Bid. After the submission of bid stood closed, none can claim right to be permitted to furnish further details. It will highly be improper to permit a bidder to cover the defects after the same has been detected

at the technical evaluation stage. The same will certainly be contrary to the principle of equality to be maintained by the authority at the time of evaluation of bids.

29. A bidder is to be selected after undergoing a process of elimination. There are two stages for selecting a successful bidder. First is the technical evaluation stage and next is the financial bid stage. A person who is unsuccessful at the technical evaluation stage ought not to be permitted to rectify the defects so as to make it eligible to qualify for the financial bid. If the same is permitted, then the entire process of selecting the bidder by two stages will turn out to be a farce. It will be highly unjust to allow a disqualified bidder to make good the wrong only to make it eligible to participate at the next level.
30. As regards the non furnishing of information on account of wrong reading or misunderstanding the clauses of the bid document, I am of the opinion that, a bidder cannot be permitted to take benefit of the same. If a bidder has failed to appreciate the terms and conditions of the Notice Inviting Bid in its proper perspective and has failed to act in accordance with the same, then it is the responsibility of the bidder alone and the bidder has to suffer the consequences for the same.
31. On a plain reading of the relevant clauses of the Notice Inviting Bid, it does not appear that, the details which the petitioners ought to have supplied but have not supplied allegedly because of misunderstanding and have erroneously or inadvertently mentioned as 'deleted', are

restricted to and meant for or applicable to joint ventures only. The information sought for was very general and each and every bidder participating in response to the bid was required to disclose the same. The petitioners misread the terms and conditions and did not furnish the information as required.

32. The petitioners rely on Poddar Steel Corporation (supra) in support of the submission that the information found to be lacking from the petitioners are not the essential ones and the authority ought not to insist upon the same. The required information is already submitted by the petitioners and the same may be used to fill in any gap that may have been found in the information/documents submitted by the petitioners.
33. In Poddar Steel Corporation (supra) the Court was of the opinion that as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little insignificance. The Court held that only the essential conditions of eligibility are to be enforced rigidly and in other cases it must be open to the authority to deviate from and not to insist upon strict literal compliance of the condition in appropriate cases.
34. In the case at hand, on a perusal of the Notice Inviting Bid it does not appear that the documents insisted upon by the authority are

ancillary or subsidiary in any manner. Each piece of document and data are extremely vital for ascertaining the eligibility, credibility and ability of the bidder to perform and conclude the work put to tender. A bidder had enough opportunity to seek clarification and clear the doubts prior to submission of the bid. After the bid is opened and the bidder is found to be ineligible for non furnishing all required data and documents, then no extra favour is required to be shown to the bidder to rectify the defect by furnishing further information/document. The same is against the terms and conditions of the Notice Inviting Bid. It will also be contrary to Article 14.

35. In *Afcons* (supra) the Court clearly laid down that the owner or the employer of the project, having authored the tender document, is the best person to understand and appreciate its requirements and interpret its documents. The Constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation of the tender conditions. The possibility of a different interpretation of the tender document is not a ground for interfering with the tender document.
36. In *Agmatel* (supra) the Court reiterated the aforesaid proposition.
37. In the instant case it does not appear that there has been any mala fide or error in the decision making process by the authority in rejecting the bid of the petitioner. The petitioners may have read the

bid document differently, but the interpretation of the authority has to be taken as final. Here, the Court is inclined to accept the interpretation of the authority. No case has been made out requiring interference by the Court.

38. The writ petition fails and is hereby dismissed.

39. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)