

17-03-2025
Item No.6
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.5244 of 2025

Santosh Bhakat

-vs-

The State of West Bengal & Ors.

with

CAN No.1 of 2025

Mr. Kamalesh Bhattacharya, adv.
Mr. Robiul Islam, adv.
Mr. Raju Mondal, adv.
Mr. Marooq Rahman, adv. ...for the petitioner

Ms. Sabnam De Bardhan, jr. govt. adv.
Ms. Rupsha Chakraborty, adv. ...for the State

Mr. Jaydip Kar, sr. adv.
Mr. Mohan Kumar Sanyal, adv.
Mr Dwaipayan Sanyal, adv. ...for the applicant

1. In the instant writ petition, the petitioner is aggrieved by the act of the tender inviting authority in imposing and inserting new clause in the third call of a tender notice.
2. The first tender notice was invited on September 26, 2024. One of the terms and conditions of the notice inviting e-tender was, **“7(i) The intending Tenderers should produce credentials of a similar nature of completed work of Carrying of food stuff for the last five years for an amount of Rs.80,00,000/- (Rupees Eighty Lakhs) only or (ii) The intending Tenderers should produce credentials of 2(Two) similar nature of completed work and the minimum value of each work of Carrying of food stuff for last five years for an amount of Rs.60,00,000/- (Rupees Sixty Lakhs) only for each of carrying under Government Department”**.

3. There were five bidders in the first call and the bid filed by all five stood rejected at the technical stage.
4. Second notice inviting tender (re-tender) was floated on January 7, 2025. The aforesaid condition was also a part of the terms and conditions of the re-tender notice.
5. A writ petition was filed by the petitioner being WPA No.1395 of 2025 challenging the relaxation which was given to the registered distributors of food & supplies department being clause 8 in the notice inviting e-tender and notice inviting re-tender. This court disposed of the writ petition on January 30, 2025 by granting liberty to the petitioner to file a composite objection before the District Magistrate & Collector, District (ICDS) Cell, Murshidabad to agitate his grievance highlighting the alleged discrepancy in the tender document.
6. It appears that an objection was raised by the petitioner and that the authority considered the same and floated further notice inviting e-tender (re-tender) dated February 24, 2025 wherein the relaxation clause which was incorporated in the earlier two notices inviting e-tenders stood deleted, but surprisingly a new part was inserted in the existing clause 7 of the earlier notice inviting tender (re-tender). The notice inviting re-tender dated February 24, 2025 records the following:-

“8.vii)(a) The intending Tenderers should produce credentials of a similar nature of completed work of Carrying of food stuff for the last five years for an amount of Rs.80,00,000/- (Rupees Eighty Lakhs) only **for each year** or
 (b) The intending Tenderers should produce credentials of 2 (Two) similar nature of completed work and the minimum

value of each work of Carrying of food stuff for last five years for an amount of Rs.60,00,000/- (Rupees Sixty Lakhs) only ***for each year*** with respect carrying under Government Department.”

7. Learned advocate representing the petitioner submits that incorporating the expression “for each year” in the terms and conditions of the tender made the same more stringent and that the same restricts participation to the intending bidders.
8. It has been submitted that the said portion has been inserted only to suit a particular bidder who was jointly awarded the contract along with the petitioner in the earlier tender.
9. The work orders issued in favour of the petitioner for the earlier period are annexed to the writ petition in support of the submissions that even though the authority directed that both the tenderers will execute the work as per 50-50 ratio, the quantum of work allotted to the tenderers were not in equal ratio. The petitioner was all along issued work order with less quantity of work. Had the work order been issued in the 50-50 ratio, then the petitioner would have been able to match the figure that is inserted as eligibility criteria in the notice inviting e-tender dated February 24, 2025. Prayer has been made to set aside the words ‘for each year’ which have been inserted later on.
10. An application – **CAN No.1 of 2025** – for addition of party has been filed by one Biswanath Ghosh. It appears from records that Biswanath and the writ petitioner were jointly issued the tender for the earlier period and there was a decision by the Additional District Magistrate (G) for distribution of the work order in equal proportion in between

Biswanath and the petitioner.

11. According to Biswanath, he is a necessary party in the instant writ petition as any order passed herein may affect his right to participate in response to the notice inviting e-tender dated February 24, 2025.
12. Learned senior counsel for the applicant who appeared for the writ petitioner in the earlier writ petition filed by the present petitioner makes it clear that the earlier writ petition was filed challenging the relaxation that was allowed by the authority in the notice inviting e-tender (re-tender) dated January 7, 2025. Both the applicant, Biswanath, and the petitioner, Santosh, were the only bidders in the said process.
13. Learned counsel for the State relies upon the instructions forwarded by the District Programme Officer (ICDS), Murshidabad signed on March 10, 2025 wherein it is mentioned that the petitioner challenged the first tender notice dated September 26, 2024 and the said tender notice was cancelled by the tender committee as only two tenderers participated in the particular tender. A fresh tender notice was issued with the clause that the registered distributors of food & supplies department may participate in the said tender process without fulfilling the necessary conditions mentioned in the tender notice. The writ petitioner challenged such tender notice and the petitioner made an objection before the authority by virtue of the leave granted by the court. The authority deleted the relaxation clause relating to participation of registered distributors of the food & supplies department. After deletion

of the said clause, the tender committee issued fresh tender notice dated February 24, 2025 and the petitioner has challenged the same by calling it to be the third call.

14. The instructions mention that according to the finance rules, third call is not permitted as the third call tender notice is liable to be cancelled or modified. According to the authority, the tender notice dated February 24, 2025 is not the third call but it is the continuation of the second tender notice.
15. Upon hearing all the parties and on perusal of the materials on record, it appears the first tender notice was issued on September 26, 2024, the second one was issued on January 7, 2025 and the third tender notice is dated February 24, 2025 is impugned herein. The first NleT is numbered as 02/NT/24-25, the second NleT is numbered as 03/NIT/2024-25 and the last and third impugned one is numbered as 04/NIT/2024-25.
16. The stand of the authority that the impugned NleT dated February 24, 2025 is the continuation of the second tender notice does not appear to be proper. Assuming that the notice inviting e-tender dated February 24, 2025 is the continuation of the earlier one dated January 7, 2025, the authority could not have inserted new terms and conditions which were not there in the earlier one. The moment the authority adds the expression 'for each year' in clause 7(vii)(a) which was not there in the earlier NleT, the fresh tender notice partakes the character of a new tender and the same ought not to be treated as continuation of the earlier one. Moreover, the impugned tender

notice does not specify that the same is a continuation of the earlier NIeT.

17. It appears that there were five bidders in the first tender call and the bid of all five stood rejected at the technical stage. The second tender could not be proceeded with, as there were only two bidders – the writ petitioner and the applicant; and the third tender notice has incorporated a further stringent clause restricting participation.
18. The Memorandum being No.9754-F(Y) dated 3rd December 2012 by the Finance Department, Audit Branch, Government of West Bengal lays down the procedure for re-tender which mentions that if the response to tender including e-tender is less than three, then the tender should be invited afresh. Such re-tender notice shall be published in the widely daily circulated newspapers and also through the e-tender portal prior to inviting re-tender or fresh tender. The eligibility criteria and other terms and conditions as mentioned in the first notice inviting tender shall have to be reviewed by the tender inviting authority to ascertain as to whether the terms and conditions are too much restrictive, say, specifications and qualifications were fixed at higher standard than required.
19. Even if after taking appropriate steps the response to re-tender is less than three, the tender may be accepted without reference to the Finance Department, provided the rates do not exceed the estimated or scheduled rates beyond 5% in case of works estimate and reasonable prevailing market price for goods and service in other cases. Otherwise, such cases should be referred to the Finance Department for decision.

20. The facts of the instant writ petition suggest that the authority is not being able to attract proper bidders in response to the notice inviting e-tender. The addition and insertion of words 'for each year' in clause 7(vii)(a) of the NleT (re-tender) dated February 24, 2025 cannot be made applicable, if the same is to be treated as a continuation of the earlier notice.
21. The tender inviting authority ought to act strictly in terms of the aforesaid memorandum dated December 3, 2012.
22. The writ petition stands disposed of.
23. As the order passed hereinabove will not prejudice the applicant in CAN No.1 of 2025 in any manner whatsoever, accordingly, the application stands dismissed.
24. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
25. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

