

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 11.04.2025

DELIVERED ON: 11.04.2025

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 537 of 2025

With

I.A. No. CAN 1 of 2025

With

I.A. No. CAN 2 of 2025

Samim Sk.

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Srijib Chakraborty

Mr. Aditya Mondal

Ms. Rupsa Sreemani

Mr. Debdut Banerjeefor the appellant

Mr. Sk. Md. Galib, Ld. Sr. Govt. Adv.

Mr. Abu Siddique Mallikfor the State

Mr. Pratip Kr. Chatterjee

**Ms. Maitrayee Chatterjeefor the applicant no.2 in
I.A. No. CAN 1 of 2025**

Mr. Srikanta Datta

**Mr. P.K. Royfor the applicant no. 1 in
I.A. No. CAN 1 of 2025**

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re: I.A. No. CAN 1 of 2025

1. This is an application for addition of parties. We have perused the averments made in the application and the affidavit filed in support of the application for addition of parties and we find that sufficient cause has been shown for adding successful bidders as proper and necessary parties in the current proceeding.

2. Accordingly, I.A. No. CAN 1 of 2025 is allowed. Successful bidders be impleaded as parties/respondents in the appeal.

In Re: M.A.T. 537 of 2025

3. This intra-Court appeal by the by the writ petitioner is directed against the order dated April 4, 2025 in W.P.A. 7082 of 2025, which was dismissed by the learned Single Bench. The said writ petition was filed by the appellant praying for issuance of a writ of Mandamus to quash the decision dated March 20, 2025, by which the appellant's technical bid was rejected for the reason "due to improper technical manpower and insufficient machinery documents".
4. The learned Single Bench dismissed the writ petition on the ground that the appellant ought to have invoked the remedy available under clause 22.5 of the conditions of tender, which states that Evaluation of Part-I of bids with respect to Bid Security, qualification information and other information furnished in Part-I of the bid in pursuant to Clause 12.1 of ITB, shall be taken up and completed within five working days of the date of bid opening, and a list will be drawn up of the qualified bidders whose Part-II of bids are eligible for opening.
5. Clause 22.6, which has been referred to by the learned Single Bench states that the result of evaluation of Part-I of the Bids shall be made public on e-procurement systems following which there will be a period of five working days during which any bidder may submit complaint which shall be considered for resolution before opening Part-II of the bid.
6. As could be seen from the dates and events, the notice inviting tender was published on January 6, 2025, the date of technical bid evaluation uploading was fixed on March 21, 2025, the date of financial bid opening

was on March 28, 2025 and the date of uploading financial bid in the e-tender portal was April 2, 2025 and the letter of acceptance was April 3, 2025. Thus, the technical bid of the appellant was evaluated and uploading was made on March 21, 2025, which was a Friday; March 22, 2025 and March 23, 2025 are holidays on account of Saturday and Sunday. The date of financial bid opening was fixed only on March 28, 2025 and it was uploaded in the e-portal on April 2, 2025. Therefore, the appellant had sufficient time to invoke clause 22.6 and respondents would be justified in contending that having not utilised that opportunity, it would tantamount to waiver.

7. Be that as it may, before we proceed to consider the other submissions made by the learned advocate for the appellant, we need to take note of the scope of interference by this Court in tenders, more particularly, in tenders concerning infrastructural projects, such as road construction and development. In this regard we may refer to the decision of the Hon'ble Supreme Court in **N.G. Projects Limited vs. Vinod Kumar Jain & Ors.** reported in **(2022) 6 SCC 127**. In the said case, the tender related to Road Construction Department of Jharkhand. The Hon'ble Supreme Court took note of the decision in **Shilpi Constructions Contractors vs. Union of India** reported in **(2020) 16 SCC 489**, wherein the Hon'ble Supreme Court pointed out that courts must realise their limitations and the havoc which needless interference in commercial matters could cause. It was further pointed out that *"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"*. Relevant paragraphs 19 and 20 have been quoted in the said decision.

8. In the said decision, the Hon'ble Supreme Court also took note of the decision in the case of **Uflex Ltd. vs. State of T.N.** reported in **(2022) 1 SCC 165**, wherein the scope of judicial review has been discussed elaborately and the limitations of the said judicial review has also been pointed out.
9. Further, the Hon'ble Supreme Court took note of the newly inserted clause (ha) in section 41 of the Specific Relief Act, 1963, which states that *"if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject-matter of such project"*.
10. After taking note of section 41 (ha), the Hon'ble Supreme Court pointed out that since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India.
11. In conclusion, in paragraph 26 of the judgment, a word of caution was mentioned that *"any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good"*.
12. Bearing the above decisions in mind, we proceed to examine the contentions, which were advanced before us by the learned advocate appearing for the appellant.
13. Firstly, it is pointed out that while rejecting the appellant's technical bid, the decision was taken by a committee consisting of 13 persons and the

employer, who issued the tender, was only an invitee, who joined the meeting virtually and this being contrary to the terms and conditions of the tender. This contention has been rightly answered by the learned Government counsel by referring to the memorandum issued by the Government of West Bengal, Panchayats and Rural Development Department dated July 29, 2022, which was issued in compliance with the Memo dated September 14, 2018 issued in supersession of all previous orders of the Departmental Tender Committee-Engineering Works for PMGSY, RIDF and other Engineering and Related Works executed from Head Quarter by the Department and a committee consisting of 8 persons was constituted.

14. The Memo further states that the committee can co-opt any administrative or engineering officer depending upon the need of tender/bid as decided by the Chairman from time to time. Thus, it can be seen that as early as on July 19, 2024 for works concerning PMGSY, a tender committee has to consider the matter.
15. It is not in dispute that the tender inviting authority or the employer was part of the committee. In any event, a committee is a larger body consisting of senior officials, as mandated by the Government in the memorandum dated July 29, 2022 and this cannot be a ground to contend that the entire evaluation process of the technical bid was flawed or defective or arbitrary. Therefore, such contention stands rejected.
16. The next aspect is that the technical bid was rejected on the ground of improper technical manpower and insufficient machinery documents. It is not in dispute that the appellant is an existing contractor in respect of certain three other works in the very same district for which the work is in

progress. According to the department, the requirement for providing adequate equipment has not been fulfilled by the appellant.

17. It is needless to point out that if the appellant participates in a tender and the tender conditions stipulate a list of equipments to be provided, it goes without saying that those equipments should be exclusively used for the said contract and therefore, the respondents would be justified in coming to a conclusion that insufficient machinery document was one of the reasons for rejecting the technical bid.
18. With regard to the manpower, in the writ petition it has been stated that one Tapan Kumar Das is shown to be an employee of the appellant/company. However, the document appended to the tender schedule shows the credentials of one Swapan Kumar Das. The said Swapan Kumar Das has given a certificate dated March 6, 2025 i.e. his provisional pass certificate from a school in the year 2003 is being used by the appellant without his consent, which is an offence and he has stated that he did not involve directly or indirectly with any job or work and he does not know how the certificate was used.
19. This, *prima facie*, shows that the criterion with regard to the technical manpower does not stand satisfied.
20. Clause 4.7 of the tender document states even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have : (i) made misleading or false representations, in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements. According to the evaluation committee, the stand taken by the appellant is found to be improper and therefore, they came to the

conclusion that the technical bid does not qualify for consideration on account of improper technical manpower.

21. As pointed out by the Hon'ble Supreme Court, this Court does not have the requisite expertise to consider as to whether as to nature of technical manpower that is required to be produced by a tenderer. Therefore, the approach of the Court is to see whether there has been a reasonable approach by the authorities and whether the decision making process was just and reasonable. We find no ground to doubt the justness or reasonableness of the process adopted by the authorities.
22. Apart from that, the tender conditions also provide for a pre-bid meeting and the learned Government counsel submitted that the appellant failed to attend the pre-bid meeting.
23. Thus, for all the above reasons, we find that the appellant has not made out any case for interference with the decision taken by the authority to reject the technical bid of the appellant concerning the subject-tender.
24. For the above reasons, the appeal fails and the same is dismissed. Consequently, I.A. No. CAN 2 of 2025 is also dismissed.
25. No costs.
26. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)