

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

**Present:**  
**The Hon'ble Justice Debangsu Basak**  
**And**  
**The Hon'ble Justice Md. Shabbar Rashidi**

**M.A.T. 916 of 2024  
With  
CAN 1 of 2024**

**Joydev Chandra Sinha  
Vs.  
The State of West Bengal & Ors.**

**For the Appellant** : Mr. Siddhartha Banerjee  
Ms. Soni Ojha  
Mr. Soumyajit Majumder  
Ms. Sambrita B. Chatterjee

**For the Respondent No. 8** : Mr. Sunil Gupta

**For the State** : Mr. Suman Sengupta  
Ms. Amrita Panja Moulick

**Heard & Judgment on** : **July 24, 2025**

**DEBANGSU BASAK, J.:-**

1. Appeal is directed against the order dated April 18, 2024 passed in W.P.A. 8699 of 2024. Appeal is at the behest of the writ petitioner.

2. By the impugned order, learned Single Judge dismissed the writ petition on the ground of the writ petitioner was a fence-sitter. Learned Single Judge found that the bid of the appellant was rejected on October 11, 2023. Thereafter, the Tender Selection Committee decided to re-evaluate the tender process. After re-evaluation, the respondent no. 8 was found to be successful.
3. Learned Single Judge held that “since the appellant sat tight over a period of four months, without challenging the initial rejection of the petitioner and as such, was a fence-sitter inasmuch as the petitioner awaited the outcome of the re-evaluation and only then chose to challenge the initial rejection as well”.
4. Learned advocate appearing for the appellant submits that, the respondent no. 8 does not possess the requisite qualification to participate in the tender. Identification of the respondent no. 8 was *de hors* the terms and conditions of the tender. He refers to the tender conditions in support of such contention.
5. Learned advocate appearing for the appellant submits that, the appellant cannot be classified as a fence-sitter since the appellant approached the Writ Court on March 20, 2024 prior to the issuance of the Work Order. He submits that, the decision to re-evaluate the tender process gave rise to fresh cause of action. Such decision was taken on February 20, 2024 and the writ petition was filed on March 20, 2024. Therefore, by no stretch of imagination, the writ petitioner can be said to be a fence-sitter.
6. State and the respondent no.8 are represented.

7. In response to a query of the Court, learned advocate appearing for the respondent no. 8 submits that the work order was issued on March 30, 2024 and that the award of contract was made on March 20, 2024 and moved on April 18, 2024. He has submitted that the respondent no. 8 challenged the initial rejection. On re-evaluation the respondent no. 8 was found suitable.
8. Authorities floated a tender process in which both the appellant and the respondent no. 8 participated. Such tender process required two stages evaluation of the tenderers. The first stage was the technical evaluation while the second stage is the financial bid.
9. At the first stage that is the technical evaluation stage, the bid of the appellant was rejected on October 11, 2023. Such decision of the rejection of bid was known to the appellant since October 11, 2023, itself. Appellant did not assail the rejection of its bid at the technical bid evaluation stage.
10. Thereafter, the authorities commenced re-evaluation of the tenders. Re-evaluation was done on February 13, 2024 when the authorities identified the respondent no. 8 as the successful bidder.
11. There are two documents in relation to the decision of revocation and re-evaluation. One is a decision dated February 2, 2024 by which the Tender Selection Committee in its meeting held on such date decided to re-evaluate the tender process. The other is an intimation of the revocation of tender dated February 8, 2024 where all tenderers were informed that the tender was revoked to the technical bid opening stage. All tenderers were also informed that if they wanted any clarification they may seek the same.

12. As noted above, the initial rejection of the technical bid of the appellant on October 11, 2023 remained unassailed by the writ petitioner till its filing of the writ petition on March 20, 2024.
13. Between the period of October 11, 2023 till his challenge on March 20, 2024, the appellant allowed third party rights to be created in respect of the tender process. The participants were re-evaluated at the technical bid stage and the respondent no. 8 was found to be successful therein. Award of contract in favour of the respondent no. 8 was made on March 20, 2024 and the work order was issued on March 30, 2024. The impugned order is dated April 18, 2024.
14. As noted above, learned Single Judge proceeded on the basis that the appellant did not canvass his right at the appropriate time and was, therefore, treated as a fence-sitter awaiting the decision of the re-evaluation to assail the original decision of the rejection dated October 11, 2023.
15. We are in complete agreement with the finding of the learned Single Judge. We are of the view that the appellant took a chance with regard to the re-evaluation process and only after finding that the respondent no. 8 was successful that he decided to challenge the initial order of rejection dated October 11, 2023.
16. Such conduct should not be countenanced particularly in respect of tender process so as to interdict the tender undertaken by the authorities.
17. In such circumstances, we find no merit in the present appeal.

18. **M.A.T. 916 of 2024** and the connected application being **CAN 1 of 2024** are **dismissed** without any order as to costs.

**(Debangsu Basak, J.)**

19. I agree.

**(Md. Shabbar Rashidi J.)**

S.D.