

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 20870 of 2025

Sarlal Engineering Limited & Anr.
Vs.
Damodar Valley Corporation & Ors.

For the writ petitioners :- Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. R. N. Ghose, Adv.
Ms. Pritha Ghose, Adv.

For DVC :- Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Prasun Mukherjee, Adv.
Mr. Deepak Agarwal, Adv.

Heard on :- 03.09.2025

Judgment on :- 03.09.2025

Amrita Sinha, J.:-

- 1.** Affidavit-of-service filed in Court today is kept with the records.
- 2.** The petitioners intend to participate in a tender process floated by the Damodar Valley Corporation (DVC) in the GEM portal. The tender details were published on 22nd August, 2025. The bid submission end date is 8th September, 2025 and the bid opening date is 9th September, 2025. The tender type is 'limited'.

3. The Request for Quotation (RFQ) published by DVC was for procurement of High Chrome Grinding Media Ball for BBD type Coal Mills at MTPS (1-6).
4. The bid was restricted to only three entities. The RFQ clearly mentions that offer from the notified bidders will only be accepted. The petitioners are aggrieved by the same.
5. It has been submitted that DVC floated the tender with pre-determined mind to enter into contract with only three participants. The said process does not meet the test of transparency and fairness.
6. It has been argued that there is no provision in the RFQ with regard to the eligibility criteria disclosing financial limits of the bidders who may be permitted to bid in the tender process. The entire process is violative of the provisions of Articles 12, 14 and 19 of the Constitution.
7. It has been highlighted that the petitioners possess the requisite qualification to participate in the tender process. The petitioners are already performing work with DVC and National Thermal Power Corporation (NTPC) and the petitioners have the financial eligibility to perform the work.
8. In support of the submission that the tender process ought to be an open one and not only limited to three participants the petitioners rely on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Indian Medicines Pharmaceuticals Corporation Limited –Versus- Kerala Ayurvedic Cooperative Society Limited and Others*** reported in ***(2023) 19 SCC 755***.

- 9.** Prayer has been made to permit the petitioners to participate in the tender process.
- 10.** Learned counsel representing DVC opposes the submission made on behalf of the petitioners. It has been submitted that the tender process has been kept limited and restricted to only three participants due to the policy decision taken by DVC.
- 11.** Reference has been placed on the proposal for Consultancy Services for DVC Usage of NTPC Vendor Enlistment. The same mentions that procurement through vendor enlistment is a critical strategy for organizations aiming to establish a reliable and efficient supply chain. By ensuring that only qualified and vetted suppliers are considered, the approach of the Corporation is to significantly reduce risks relating to quality, compliance, and performance.
- 12.** The DVC has not yet finalized the vendor enlistment process. It has been found that the materials supplied by certain non-reputed vendors are failing frequently, often just after the warranty period. The failures result in unexpected breakdowns of equipment, which in turn are causing potential power generation losses. The lack of reliable suppliers is directly impacting the operational efficiency and reliability of the systems, leading to increased maintenance costs and unplanned downtimes.
- 13.** DVC found that NTPC being one of the leading and reputable entities in power generation, procures materials only from enlisted vendors. They

follow a thorough and established vendor enlistment process, ensuring the procurement of high quality materials.

- 14.** DVC proposed to seek consultancy services from NTPC, so that DVC can benefit from the vendor enlistment list, which is prepared prior to floating tenders. DVC has formally requested consultancy services from NTPC regarding usage of their vendor enlistment process for the internal procurement and services of DVC.
- 15.** DVC communicated their proposal to NTPC and NTPC in return has agreed to provide consultancy services to DVC. The offer is restricted to streamlining DVC's procurement process to ensure that only qualified and reputable vendors are engaged for critical spares and consumables.
- 16.** DVC has been authorized to use the available vendor enlistment hosted on NTPC Portal.
- 17.** It is the specific submission of DVC that from the portal of NTPC names of six vendors were found enlisted for supplying the required material viz. grinding balls for ball and tube type coal pulverisers.
- 18.** After the financial criteria for the tender was submitted, only three out of the six enlisted contractors qualified to supply the material as per RFQ. DVC, for the purpose of getting the best services and quality of the materials, chose all the three members from the said list and disclosed their names in the RFQ.
- 19.** It has been contended that it is the policy decision of DVC to keep the tender type 'limited' and not open to the general public so that the

procurement process remains streamlined by maintaining transparency and the same can be concluded in a time bound manner.

- 20.** It has been argued that the process of floating tenders within a limited group of entities is in existence for a long period of time and the same has been approved by the Court.
- 21.** In support of the aforesaid submission, reliance has been placed on the judgment delivered by the Hon'ble Gujrat High Court in the matter of ***Asiatic Labour Corporation -Vs- Union of India & Ors.*** reported in ***1982 SCC Online Guj 47.***
- 22.** Prayer has been made to dismiss the writ petition.
- 23.** Upon hearing the submissions made on behalf of both the parties and on perusal of the materials placed before this Court, it appears that, DVC being the Tender Inviting Authority, has adopted a policy decision to keep the tender process restricted within a selected few. The restriction is particularly aimed to get the best services of the contractors who already have a proven track record and are enlisted in the NTPC portal. The requirement of the RFQ is similar to the requirement of NTPC and the enlisted contractors of NTPC have the experience of providing such type of materials.
- 24.** To ensure that there is transparency and fairness in the process, DVC disclosed the names of three entities found eligible as per the NTPC portal. DVC has not enlisted any entity out of its own accord. DVC merely used the list of enlisted contractors of NTPC. By submitting the requisite criteria, names of three entities were shortlisted.

- 25.** The stand adopted by DVC to restrict participation of bidders does not appear to be unfair or unreasonable. The Tender Inviting Authority will always intend to select the best candidate experienced enough to provide services or supply materials as per its requirement. Floating open tender usually is time consuming and it is always beneficial to engage contractors who have satisfactory past performance.
- 26.** The authority took note of the failures of the non-reputed vendors leading to losses. The authority, to avoid risks and to restrict further losses, has taken a policy decision to obtain services and materials from the trusted players. Such policy decision cannot be faulted. Moreover, the policy decision of DVC is not under challenge in the instant case.
- 27.** The principle laid down by the Court in Kerala Ayurvedic (supra) is a time tested one and there can be no quarrel with regard to the proposition that there is need to maintain fairness and transparency in the grant of public contracts.
- 28.** In the instant case, it does not appear that DVC acted in an unfair manner in restricting participation to a limited few. DVC and NTPC both are government owned organizations. Both deal with power generation and both may have similar requirements. There is nothing wrong for one organization to obtain consultancy services from the other having similar requirements. In fact, the same will be beneficial to both the organizations. DVC has relied upon the information shared from the NTPC portal.

- 29.** In *Asiatic Labour* (supra) the Court approved the limited tender method adopted for awarding contracts as the same satisfied the twin test of maintaining fairness and transparency in the tender process. In the case at hand, DVC floated the tender in the government e-market place which is an open portal but restricted participation of the bidders to only three entities. It is not a case where contract will be awarded without floating any tender at all or the contract will be awarded upon negotiation with only one entity.
- 30.** The petitioner claims to have entered into contracts with both NTPC and DVC, but it appears from the submission made on behalf of the parties that, the financial threshold limit of the petitioner as reflected in the NTPC portal is of a lesser amount than that required by DVC. Had the financial strength of the petitioner been of the higher amount, then the petitioner may have been found to be eligible for participation in the bidding process.
- 31.** It is settled law that it is for the Tender Inviting Authority to fix the terms and conditions of the tender as per its requirement. Here, DVC intends to engage into contract with contractors who have the wherewithal to deliver the items as per RFQ. The Court does not find any infirmity in the same.
- 32.** The relief sought for by the petitioners cannot be allowed in the facts and circumstances of the instant case.
- 33.** The writ petition fails and is hereby dismissed.

- 34.** All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.
- 35.** 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.)