

for Cluster-1 Project under Swachch Bharat Mission/Mission Nirmal Bangla in West Bengal (2nd Call).

3. The contract duration was for a period of 36 months from the date of issuance of the work order including 3 months mobilization/machineries installation period.

4. One of the eligibility criteria is that the intending bidders should produce credentials of one single running work of same or similar nature (processing and disposal of legacy waste through bio-mining & bio-remediation or any type of fresh Municipal Solid Waste processing and disposal works or combination of both above) with Central and State Government/PSU/ULB which has been completed to the extent of 75% or more and quantity of which is not less than the desired quantity as mentioned.

5. The petitioners, claiming to be eligible to participate in the tender, submitted its bid. A pre-bid meeting was held where the petitioners duly participated and raised its queries.

6. A legal representation on behalf of the petitioners was made before the tender issuing authority in May 2024 mentioning that the petitioners had sent a request to loosen the eligibility terms. Request was made to bring down the requirement of possessing completion percentage from 75% to 60% so that it may result in wider number of participants to take part in the tender.

7. The request made by the petitioners was not accepted. The tender issuing authority proceeded to select the bids on the basis of the terms and conditions as set out in the tender document. The petitioners were found to be ineligible as they did not meet the required eligibility condition and its bid stood rejected.

8. Challenging the same, the instant writ petition has been filed. It has been submitted that the terms and conditions of the tender document are ambiguous. The same is creating confusion in the mind of the bidders. There is no nexus of fixing the eligibility criteria with the object sought to be achieved. There is no rationale behind fixing the completion percentage at 75% and not at any level below the same. The petitioners allege that the

terms and conditions of the contract have been tailor made to suit their favoured candidate.

9. According to the petitioners, it qualifies on the other two counts as set out in Clause 5.1 and 5.2(i) and (ii) of the tender document but does not qualify under Clause 5.2 (iii).

10. The petitioners claim to have participated in various large projects and assert that they can perform satisfactorily if the contract is awarded in its favour.

11. It has been submitted that the Court ought to interfere and exercise judicial review as the issue falls within the exceptions laid down by the Hon'ble Supreme Court in **Michigan Rubber (India) Limited -vs-State of Karnataka & Ors.** reported in **(2012) 8 SCC, 216 paragraph 23.**

12. It has been submitted that the State authority ought to have acted reasonably, fairly and in public interest.

13. Prayer has been made to set aside the result of the technical evaluation and to reissue the contract considering the technical bid of the petitioners and to award the contract on the basis of fair evaluation of the price bids.

14. A supplementary affidavit has been filed by the petitioners in support of the submission that a candidate who is ineligible has been selected as the successful bidder but work order is yet to be issued.

15. The submission and prayer of the petitioners has been opposed by the learned advocates appearing on behalf of the tender issuing authority, the State respondents and the private respondent.

16. Learned advocate appearing on behalf of the tender issuing authority refers to the averments made by the petitioners in paragraph 8 of the writ petition wherein the petitioners admits that the tender document restricts production of the completion certificate to only 75% and prays for reducing the percentage to 60%.

17. It has been submitted that the terms and conditions have been fixed by the tender issuing authority as per its requirement. The tender in question has been floated in terms of the order passed by the National Green Tribunal for disposal of legacy waste. The authority does not intend

to compromise with the performance level of the bidder and, accordingly, has fixed up a high benchmark.

18. It has been argued that the Court ought not to interfere in the matter and pass any direction upon the tender issuing authority with regard to the eligibility criteria that have been fixed.

19. Learned advocate appearing on behalf of the State respondents submits that the petitioners are ineligible to participate in the tender process as it does not meet the eligibility conditions as laid down in the Notice Inviting Tender.

20. Reference has been made to paragraphs 13 and 17 of the writ petition wherein the petitioners have admitted not completing 75% of the total project as per the time line of the tender.

21. It has been submitted that despite being aware that the petitioners are ineligible to participate in the tender, the petitioners went ahead and deposited the initial earnest money deposit. After being disqualified in the tender process, the instant writ petition has been filed challenging fixation of the eligibility criteria of the same. The same is impermissible.

22. In support of the aforesaid submission, learned advocate for the State respondents relies on the decisions passed by the Hon'ble Supreme Court in the matter of **Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation & Anr.** reported in **(2016) 16 SCC 818**, **JSW Infrastructure Limited & Anr. v. Kakinada Seaports Limited & Ors.** reported in **(2017) 4 SCC 170**, **Agmatel India Private Limited v. Resoursys Telecom & Ors.** reported in **(2022) 5 SCC 362**, judgment of the Hon'ble Delhi High Court in the matter of **Sabre Gbl Inc. v. AIR India Limited & Anr.** reported in **2021 SCC Online Del 5014**, **Consortium of M/s Siemens Aktiengesellschaft & Siemens Limited v. Delhi Metro Rail Corporation Limited & Anr.** reported in **2013 SCC Online Del 1982**.

23. Learned advocate appearing on behalf of the private respondent in support of the submission that the petitioners are ineligible to participate in the tender process and ought not to be permitted to challenge the same after being disqualified has referred to the judgment delivered by this Bench

in the matter of **Rishikesh Chem & Anr. v. State of West Bengal & Ors.** reported in **2023 SCC Online Cal 943**.

24. I have heard and considered the submissions made on behalf of the parties and perused the materials on record.

25. The fact that the petitioners participated in the tender process and have sought for relaxation of the terms and conditions of the tender is admitted. The legal representation made on behalf of the petitioners clearly reflects the intention of the petitioners praying for reduction of the completion percentage as mentioned in the eligibility clause of the Notice Inviting e-Tender.

26. There are several averments in the writ petition which discloses that the petitioners seek for relaxation of certain terms and conditions of the eligibility criteria. The authority is not inclined to relax the requisite terms and conditions as mentioned in the subject Notice Inviting e-Tender.

27. It is well settled that the Court, in judicial review, ought not to interfere with the discretion of the notice inviting authority in fixing up the terms and conditions of a tender document. The authority is the best person to decide the terms and conditions and the requirement for which notice of tender is floated.

28. The subject Notice Inviting e-Tender has been submitted to have been floated in terms of the direction passed by the National Green Tribunal. The authority claims to have fixed a high benchmark so as to select contractors who have enough experience of performing similar work. The said decision of the tender inviting authority does not appear to be arbitrary or mala fide.

29. The petitioners being aware that it does not meet all the eligibility criteria as mentioned in the Notice Inviting e-Tender, has taken a chance to participate in the tender process. Being unsuccessful, the instant writ petition has been filed with the allegation that the terms and conditions as fixed by the notice inviting authority are ambiguous, creating confusion in the minds of the bidders and for the benefit of a handful of bidders.

30. It does not appear from the submission made on behalf of the respondents and particularly the tender inviting authority that the authority had any confusion in its mind at the time of fixing the eligibility criteria. The

authority is an expert body and is particularly aware as what is required from its contractor and has fixed the eligibility criteria accordingly.

31. The writ Court, in judicial review, is not inclined to interfere with the same.

32. In view of the above, no relief can be granted to the petitioners in the instant case.

33. The writ petition fails and is hereby dismissed.

34. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)