

D/L 06
19.02.2025
Court No.14
PRADIP

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 30721 of 2024

Sulekha Enterprise & Anr.

Vs.

Employees State Insurance Corporation & Ors.

Mr. Kallol Basu
Mr. Sanjay Saha

...for the Petitioners.

Mr. Rajib Ray
Ms. Oishanee Ghosh

...for the respondent nos. 1 & 2.

Mr. Sarwar Jahan
Mr. Amanul Islam
Mr. Sourav Mukherjee
Mr. Binay Shaw

...for the respondent nos. 3 & 6.

1. The matter relates to a Notice Inviting e-Tender floated by the Employees' State Insurance Corporation being no. 41.W/25/16/10/ARM-TENDER/2024-25. Bids were invited from eligible Central/State/Public Sector Undertaking (PSU)/Autonomous Bodies for entering into Memorandum of Understanding (MoU) for taking up annual repairing and maintenance of Civil and Electrical works and Special Repair works (on need basis) of all the buildings under the control of ESIC RO, Kolkata, West Bengal and Sikkim Region for a period of one year.
2. U.P. Small Industries Corporation Limited participated in the said tender and emerged successful. The successful bidder intends to engage sub contractors for performing the work and has floated tender but limited participation only to the members who are registered with U.P. Small Industries Corporation Limited, Kanpur.

3. The petitioners are aggrieved by the same and have filed the instant writ petition challenging the restriction imposed upon by the U.P. Small Industries Corporation Limited.
4. It appears from the submissions made on behalf of all the parties that, for being eligible to participate in the initial tender, the bidders should be either Central or State or Public Sector Undertakings or Autonomous Bodies. The petitioners do not qualify in any of the above categories. Had the respondent no. 3 not floated further tender for engagement of sub contractors, the cause of action for filing the instant writ petition would not have arisen.
5. It is absolutely between the tender inviting authority and the contractor as to whether to go on for a further sub contract or not for performing the work. It is open for the private respondent no. 3, being the successful contractor, to engage sub contractor in accordance with the tender document for completion of the work put to tender.
6. In the event the private respondent no. 3 does not fulfill the terms and conditions of the contract, it will be open for the tender issuing authority to take steps, in accordance with the contract against the said party.
7. There is no scope to grant relief to the writ petitioner in this writ petition. The writ petition, accordingly, stands dismissed.
8. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Amrita Sinha, J.)