

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION**

**HEARD ON: 16.06.2025
DELIVERED ON: 16.06.2025**

**PRESENT:
THE HON'BLE JUSTICE GAURANG KANTH**

W. P. A. 1183 OF 2025

**ASHISH KISHORE ROY
VERSUS
STATE OF WEST BENGAL & ORS.**

Appearance:-

Mr. Partha Ghosh, Adv.
Mr. Arijit Ghosh, Adv.
Ms. Sudipa Ghosh, Adv.

.....**For the Petitioner**

Mr. Joyjit Choudhury, Id. A.A.G.
Mr. Nabankur Pal, Adv.

..... **For the State**

JUDGMENT

Gaurang Kanth, J. :-

1. Affidavit of service is taken on record.
2. The petitioner has preferred the present writ petition seeking quashing of the notice of cancellation issued vide Memo No. 304/ICDS/APD/2025 dated 07.04.2025 as well as the subsequent Notice Inviting Tender (NIT) bearing Reference No. 04/ICDS/APD/2025/7 dated 08.04.2025. The petitioner also prays for restoration of the earlier NIT bearing Reference No. 02/ICDS/APD/2025/7 dated 13.05.2025, which was issued by respondent

authorities for the purpose of storing and transporting foodstuff and other items from all ICDS project godowns to ICDS centres within Alipurduar District.

3. It is the case of the Petitioner that the Respondents initially issued an e-Tender vide NIT bearing Reference No. 02/ICDS/APD/2025/7 dated 13.03.2025 for the aforesaid work. However, the said NIT was unilaterally cancelled by the Respondents without assigning any cogent or valid reason, through Memo No. 304/ICDS/APD/2025 dated 07.04.2025. Thereafter, on 08.04.2025, the Respondents issued a fresh NIT bearing Reference No. 04/ICDS/APD/2025/7 for the same work, but with substantial changes in the tender conditions.

4. The grievance of the Petitioner is that while the earlier NIT prescribed a uniform Earnest Money Deposit (EMD) of Rs. 15,000/-, the fresh NIT introduced a modified and district-wise varying EMD structure. Further, material changes were also made to the eligibility criteria, including requirements pertaining to prior credentials, submission of Bank Solvency Certificates, and other conditions. It is alleged by the Petitioner that such changes were made to tailor the tender conditions in favour of select bidders. The Petitioner contends that the actions of the Respondents lack transparency and violate the principles of fairness, thus vitiating the integrity of the tendering process.

5. The Petitioner, however, participated in the subsequent tender process without prejudice to his right to challenge the cancellation of the earlier NIT and the legality of the subsequent tender.

6. Per contra, learned counsel for the Respondents submits that the earlier NIT was withdrawn with the intention of modifying the tender terms to ensure uniformity with similar tenders floated by the Respondents for comparable works. It is further contended that the Petitioner, having participated in the subsequent tender process, cannot now claim to have suffered any prejudice. The Respondents also contend that the writ petition is premature, as the selection process is still ongoing and no final decision regarding the award of contract has been made.

7. This Court has heard the submissions advanced by the learned counsel for the respective parties and perused the materials available on record.

8. It is a well-settled principle of law that judicial review in matters relating to tender and contract is extremely limited. Courts generally exercise restraint in such cases, recognizing that decisions in these domains involve administrative discretion and technical expertise. However, judicial review is permissible in exceptional circumstances, particularly where the process is vitiated by illegality, mala fides, arbitrariness, irrationality, or procedural impropriety.

9. In the present case, although the petitioner has vaguely alleged that the tender conditions appear to be tailor-made to benefit a particular party, no specific instance or cogent material has been placed on record to substantiate such an allegation. It is also pertinent to note that the tender process is still ongoing and the petitioner himself is unaware of the participants involved in the bidding process. The petitioner has not demonstrated any element of arbitrariness, bias, or mala fide in the

formulation or issuance of the tender conditions. Furthermore, no document has been produced to show that the impugned tender conditions were designed to favour any specific individual.

10. It is trite that the authority inviting the tender is best suited to determine the terms and conditions of the tender, including the eligibility criteria, based on its own functional and technical requirements. It is not within the domain of this Court, while exercising jurisdiction under Article 226 of the Constitution, to either prescribe or alter the tender conditions, unless such conditions are found to be arbitrary, discriminatory, or actuated by mala fides.

11. In this context, the learned counsel for the respondents has rightly relied upon the judgment of the Hon'ble Supreme Court in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.*, reported in AIR 2016 SC 4305, wherein it was observed:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

12. In light of the above authoritative pronouncement and the settled legal position laid down in a catena of decisions by the Hon'ble Supreme Court, this Court reiterates that interference with tender conditions is warranted

only when they are manifestly arbitrary, mala fide, or crafted to unduly favour a particular party.

13. In the instant case, the petitioner has failed to demonstrate any such infirmity in the tender process. In fact, the petitioner has already participated in the tender, and the process is yet to culminate. In the absence of any tangible material to establish arbitrariness or mala fide on the part of the respondents, this Court finds no ground to exercise its extraordinary writ jurisdiction at this premature stage.

14. Accordingly, in view of the foregoing discussion, the present writ petition is devoid of merit and is hereby dismissed.

15. There shall be no order as to costs.

16. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Gaurang Kanth, J.)

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