

17.02.2026
Court No.25
D/L No.16
S. Gayen

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 3723 of 2026

**Tirupati Agro Seed Distributors Pvt. Ltd. &
Anr.
Versus
The State of West Bengal & Ors.**

Mr. Amales Ray, Sr. Adv.
Ms. Mousumi Bhowal

...for the Petitioners

Mr. Swapan Kr. Datta, Ld. GP
Mr. Rajat Dutta
Mr. Dipankar Dasgupta

...for the State

1. The petitioner has filed the present writ application challenging the condition No.10 of the terms and condition of the tender which read as follows:-

“Local office requirement: Availability of office in the State as well as District of consignee or Dakshin Dinajpur or Uttar Dinajpur during last 3 years as per GST Registration. Documentary evidence required for this Bid.”

2. Learned counsel appearing for the petitioner submits that the Director of ICDS, Government of West Bengal has issued a letter to all the District Magistrates of the State of West Bengal for procurement of Pre-School Education (PSE) Kits for Anganwadi Centres. As per the request made by the Director of ICDS, Government of West Bengal, the Project Officer, Malda has issued

the tender notice dated 21st January, 2026 for supply of Pre-School Education Kits for Angansadi Centre, Malda.

3. Learned counsel for the petitioner submits that the petitioner's firm is having GST Registration Certificate being Registration No. 19AACCT2071R1ZS. There will be no different GST Registration in different districts. Though the petitioner is duly qualified to participate in the same tender but only because of the said clause, the petitioner is not in a position to participate the said tender. Learned counsel for the petitioner further draws the attention of this Court the authorities of Jalpaiguri and Kolkata as well as Jhargram have also issued the tender notice wherein the petitioner has participated in the said tender and the petitioner has qualified for the said tender for the same work but in the present tender the authorities have imposed the said condition so that the petitioner could not participate in the said tender. Learned counsel for the petitioner submits that by incorporating the said clause, the authorities have violated the provision of Article 19(1)(g) of the Constitution of India and the petitioner has relied upon the judgment in the case of ***Vinishma Technologies Pvt. Ltd. vs. State of Chhattisgarh & Anr.*** reported in **2025 SCC Online SC 2119** and submits that the Hon'ble Supreme Court held that the object can be achieved by requiring

the bidders to demonstrate financial capacity, technical experience, and past performance in contracts of similar nature, regardless of place of performance of contract. The learned counsel for the petitioner submits that the case of the petitioner is duly covered by the judgment of the Hon'ble Supreme Court.

4. Learned counsel appearing for the State submits that the petitioner has participated in the said tender issued by the Jalpaiguri Zila Parishad wherein, the same condition was imposed and the petitioner without any objection had participated in the said tender and has got the award in his favour. He submits that the petitioner cannot take the benefit of one tender by participating the tender process without challenging the terms and conditions and in other tender, the petitioner has challenged the tender condition which is not suited to the petitioner.
5. Learned counsel for the State further submits that the respondents have incorporated the said condition as the materials are required to be supplied for the purpose of Pre-School Education of Anganwadi Centres and if after the supply of the material it is found that the materials are damaged and required to be replaced and if the bidder is not having its establishment in the local area, it would be very difficult to exchange the damaged goods and it will take further time to

exchange the same, for which the kids of the Anganwadi Centres will be badly prejudiced. The counsel for the State further submits that the authorities are the best persons to incorporate the condition in the tender and the same cannot be challenged in the writ jurisdiction. In support of his submission, the learned counsel for the State has relied upon the judgment in the case of ***Silppi Constructions Contractors vs. Union of India & Anr.*** reported in **(2020) 16 SCC 489** wherein the Hon'ble Supreme Court held that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

6. The learned counsel for the State further submits that in the said judgment the Hon'ble Supreme Court further held that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.
7. Heard the learned counsel appearing for the respective parties and perused the materials on record. The petitioner is having the GST Registration of Berhampore Village, District Murshidabad which is within the State of West Bengal. District Berhampore, Murshidabad is just adjacent to the district of Malda. The tender notice published by the Jalpaiguri put the condition that the bidder/OEM must have a functional service centre in the jurisdiction of Jalpaiguri District,

West Bengal. Bidder has to submit documentary evidence (Trade License) of having functional service centre in Jalapiguri District, West Bengal in this regard. The petitioner had the requisite qualification and participated in the said tender and got the work order. For which it cannot be said that the petitioner cannot challenge the other tender conditions.

8. As per Clause 10 of the present tender availability of office in the State as well as District of consignee or Dakshin Dinajpur or Uttar Dinajpur during last 3 years as per GST Registration. Documentary evidence required for this Bid.
9. This Court failed to appreciate that the GST Registration cannot be issued in two separate districts. Once the bidder/OEM is getting the GST registration, it is valid for all over India. There cannot be two registration numbers of one firm. As regard the place of business, the authorities cannot restrict the persons to having the place of business where the tender has been issued. The authorities have to consider whether the tenderer is competent to supply the materials which are the subject matter of the tender. If the authorities find that after issuance of work order, the firm fails to supply materials, the authorities can free to take appropriate action against the firm.

10. In **Vinishma Technologies Pvt. Ltd.** (supra), the Hon'ble Supreme Court categorically held that as follows:-

“17. In the backdrop of well settled legal principles, we advert to the fact of the case in hand. The present tender is for supply of Sports Kits to the students of Primary School, Upper Primary School and High and Higher Secondary School run by the State Government in the State of Chhattisgarh. The eligibility criteria mentioned in the impugned tender notices must have rational nexus with the object sought to be achieved i.e., supply of good quality Sports Kits to students of the school, at the best price. The eligibility criteria in impugned notices therefore, should be framed in a manner which encourages wider participation and secures the best prize for the State, which in turn safeguards the public exchequer.

18. This Court in BHARAT FORGE supra has enunciated the doctrine level playing field and has stated that the same finds expression in Article 19(1)(g) of the Constitution. The doctrine of level playing field requires that all equally placed competitors must be given an equal opportunity to participate in trade and commerce. It is designed to prevent the State from skewing the market in favour of few by erecting artificial barriers. In the instant case, the impugned tender condition has the effect of excluding bidders who though otherwise financially sound and technically competent, have no experience of supply of sports goods

to the State Government agencies of Chhattisgarh in past three years. The State by linking the eligibility criteria with past local supplies has created an artificial barrier, against the suppliers who had no past dealing with the State of Chhattisgarh. The impugned condition curtails the fundamental rights of the bidders, who have been ineligible to participate in the tenders.

19. *The object of public procurement is to secure quality goods and services for the benefit of public exchequer. The said object can be achieved by requiring the bidders to demonstrate financial capacity, technical experience, and past performance in contracts of similar nature, regardless of place of performance of the contract. To confine the eligibility to participate in the tender, within one State is not only irrational but is also disproportionate to the goal of ensuring effective delivery of Sports Kits.”*

11. In the present case, this Court finds that the several authorities have issued the tender notice and the petitioner has participated in the said tender with regard to the same work and the authorities have accepted the tender of the petitioner and issued the work order. In the present case the petitioner could not participate because of the condition imposed by the authorities. This Court finds that the authorities have violated the provision of Article 19(1)(g) of the Constitution of India as the authorities cannot restrict

the tenderer should have the business in the same place of the tender.

12. The judgment relied by the State in the case of ***Silppi Constructions Contractors*** (supra), it is settle law that the terms of the invitation to tender cannot be open to judicial scrutiny but it is also settled law if the Court finds that the terms and conditions imposed by the authorities are arbitrary and against the law, the Court can very well interfere with the terms and conditions of the tender documents.
13. This Court finds that the condition imposed by the authorities is violative of Article 19(1)(g) of the Constitution of India. Accordingly, Clause 10 of the tender notice dated 21st January, 2026 is set aside and quashed. The authorities are directed to issue corrigendum by deleting Clause 10 of the tender document and to extend the time for submission of the tender documents as well as the date of opening of the tender documents.
14. WPA 3723 of 2026 is disposed of.
15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
16. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)