17.03.2026
Court No. 12
Item No. 05
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 1599 of 2025
IA No : CAN 1 of 2025
Radha Bimala Enterprise, represented by Tarun Basak
-Versus-
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Sayantan Hazra,
Ms. Sahina Parvin,
Mr. Soumyajit Roy Chowdhury
.....for the appellant
Mr. K. M. Hossain
.....for the State
Mr. M. P. Gupta,
Mr. Abhishek Sikdar,
Ms. Moumita Dhar,
Ms. Sahili Dey
....for the respondent nos. 3 & 4.
Mr. Aniruddha Mitra
....for the respondent no. 6.

1) The appeal arises out of an order dated September 2, 2025 passed by the learned single Judge in W.P.A. 13100 of 2025. By the order impugned, the writ petition was dismissed by the learned single Judge on two grounds. One that the objection to the non-selection of the writ petitioner was raised before the authority who was not the tendering authority and the second that the writ petition was filed after the work order was issued, hence it was belated.

2) Mr. Jahan, learned advocate for the appellant submits that the learned single Judge did not consider the cause of action in filing the writ petition. The appellant was disqualified in

the technical bid. However, the specific case of the appellant in the writ petition was that, one M/s. Ankur Industries, the respondent no. 5 in the writ petition was selected at the technical round although M/s. Ankur Industries suffered similar disqualification as the appellant. Ankur's solvency certificate was issued by the bank sometime in the year 2022, but the solvency certificate to be furnished, could not be beyond a period of one year from the issuance of the notice inviting tender.

3) Mr. Jahan further relies on the circular issued by the Finance Department, Government of West Bengal dated June 7, 2022. The circular states that, in case there were less than three bidders there had to be a second call and the financial bid could not have been opened. The specific contention is that, in order to circumvent such procedure, M/s. Ankur Industries was qualified at the technical round in order to keep the number of bidders at three and the auction could proceed without the second call as the matter was fixed between the tendering authority and the selected bidder. This aspect came into the knowledge of the appellant only after the documents and answers were furnished, to the queries made under the Right to Information Act.

4) Mr. Gupta, learned advocate for the tendering authority objects to the submissions of Mr. Jahan on the ground that the writ petition itself was not maintainable as the objection was not raised within the stipulated period. The delayed objection was made before a person who was not the tendering authority.

He also submits that similar writ petition filed by another tenderer was dismissed.

5) We restrict our adjudication to the order impugned. From the order impugned, it appears that the objection raised by Mr. Jalan was not taken into consideration by the learned single Judge.

6) Paragraphs 8 and 15 of the writ petition clearly spell out that the issues which were raised by the appellant. Thus, the submission of Mr. Gupta to the extent that the writ petition should have been dismissed in limini without inviting affidavits, is not accepted.

7) Paragraphs 8 to 15 of the writ petition are quoted below :-

> *"8. The petitioner Firm states that after publishing the result of the technical bid on 20.03.2025 he has gone through the documents of the three successful bidders as relied upon and uploaded by them respectively in the official server of the respondent no. 3. <u>After going through the documents of the respondent no. 5 being successful bidder in technical bid the petitioner Firm states as follows :-</u>*
>
> *<u>(a) The private respondent No. 5 stood as second successful bidder in the technical Bid. From perusal of the documents relied upon and uploaded by him it is evident that the concerned organization has lacked the manufacturing as well as supplying those specified items as mentioned in the Tender notification and also has failed to produce such documents as specified in the Clause 2(a) & (e) of the said notification. The</u>*

<u>respondent no. 5 has also uploaded the Solvency certificate</u> <u>which is shown as issued on 17.12.2022 by the concerned Bank authority</u>.

Photocopies of the relevant documents uploaded by the respondent no. 5 are annexed herewith and collectively marked as annexure 'P-4".

9. The petitioner Firm states that after publication of the result of the technical bid with showing "criteria not fulfilled" as reason behind such disqualification, the proprietor of the said Petitioner Firm immediately sent an email on 04.04.2025 at 8:04pm to the respondent No. 3 requesting inter-alia to reevaluate the documents and take a correct decision.

Photocopies of the extract from emails annexed herewith and marked as annexure "P-5".

10. <u>The petitioner firm states that an application under RTI Act, 2005 was made by one of the partners of another participant Firm namely DD Enterprise on 24.03.2025 praying inter-alia to get certain informations stated in the application.</u> The concerned authority vide its' letter dated 26.03.2025 supplied all the informations.

Photocopy of the reply dated 26.03.2025 is annexed herewith and marked as annexure "P-6".

11. <u>From perusal of the reply of the respondent authority being annexure 'P-6' to this application it is found that the petitioner firm has been disqualified from</u>

the technical bid as the issuance date of the solvency certificate submitted by the firm was more than one year from issuance date of the Tender. It is pertinent to mention that the respondent no. 5 who submitted solvency certificate issued on 17.12.2022 and which was beyond the stipulated date as mentioned in the Tender, has been declared as qualified bidder in the technical bid. Since the technical bid of the petitioner Firm and as well as technical bid of M/s Ankur Industries had been suffering from Similar Defects, both ought to have been rejected on the same ground but suprisingly that was not done with some oblique motive, more specifically, to show that at least three qualified bidders were there to empower the authority to proceed with finalization of financial bids.

12. The petitioner firm state that out of the total five Participant Firms in the instant Tender process, three participants were declared qualified for Financial bid. Had the technical bid of M/s Ankur Industries been declared disqualified, the total number of successful bidders would have been only two and the authority could not have proceeded with financial bid.

13. The petitioner firm states that he has fulfilled all the eligibility criteria as specified in the tender notification and he has submitted all the documents which are at par with the requirement of the respondent authority. There should not be *any reasons to disqualify the petitioner Firm from the Technical Bid.*

14. The petitioner firm states that the on-line status of the Tender till 29.03.2025 shows as the financial bid 'opening in progress'. On 06.04.2025 it was showing that the financial bid has been published and respondent No. 5 has been stood as L2 bidder.

Server copies of the status of the financial bid dated 29.03.2025 and 06.04.2025 are annexed herewith and collectively marked as annexure "P-7".

15. <u>The petitioner Firm states that upon perusal of the Financial bid it is ample clear that the Tender has been settled illegally in favour of M/s SNM Alchemist. Whose financial bid was for an amount of Rs. 99,14,260/- while financial bid of the petitioner firm was Rs. 92,26,255/- and that means the Government has suffered loss of at least Rs. 7,00,000/-.</u>

Photocopies of the Financial Bids of the petitioner firm and M/s. SNM Alchemist as uploaded in the official portal in the Tender are annexed herewith and collectively marked as annexure "P-8".

8) The respondents and the selected bidders have filed their respective affidavits. However, these factual aspects will have to be decided by the writ Court. The learned single Judge has committed an error in dismissing the writ petition without addressing issues raised in the writ petition. The writ petition should be heard afresh.

9) We are not inclined to interfere with the work order. The work has already been completed as per the submissions made. If the writ petition succeeds to the extent that the appellant is in a position to demonstrate before the writ Court that the procedure followed in holding the auction was contrary to the provisions of the circular issued by the Finance Department, Government of West Bengal, in that event the appellant will have the relief by way of damages against the tendering authority before the appropriate forum. Under such circumstances, the appeal is disposed of, by relegating the writ petition for de novo hearing before the learned single Judge. The successful bidder will be made a party to the writ proceeding and copy thereof shall be served. Affidavits to the writ petition will be exchanged within four weeks by the respective parties and the writ petition shall be heard after exchange of affidavits.

10) The order impugned is set aside.

11) Accordingly, F.M.A. 1599 of 2025 and the connected application are disposed of.

12) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)