Vacation Bench
November 6, 2026
Sl. No.1
Court No.08
s.biswas

MAT 1920 of 2026
with
CAN 1 of 2026

Altabur Rahaman Mollah
vs.
The State of West Bengal and others

Mr. Tilak Bose, Sr. Adv.
Mr. Suddhasatva Banerjee
Mr. Sagnik Majumdar
Ms. Anyapurba Banerjee
Ms. Shreya Ghosh
Ms. Arin Chakraborty
... for the appellant

Mr. D. N. Ray, GP
Mr. Ajit Kumar MIshra, AGP
Mr. Prashant Agarwal
Mr. Sourav Haldar
... for the State

Mr. Biswaroop Bhattacharyya
Mr. Sounak Mondal
... for the respondent no.3

1. Affidavit of service filed on behalf of the appellant is taken on record.

2. The present appeal arises out of a writ petition filed by the appellant, whereby the action of the tender issuing authority in permitting the private respondent to upload further additional documents much after the last date of submission of documents in terms of the tender document, as well as assailing the eligibility criteria at the technical stage of the private respondents. The learned Single Judge, by the impugned judgment, relegated the matter for decision to the tender issuing authority.

3. Learned Senior Counsel appearing for the appellant argues that in view of the private respondent having failed to meet the essential criteria which was essential for crossing the technical eligibility threshold, the learned Single Judge ought to have allowed the writ petition, thereby precluding the participation of the private respondent at any further stage of the tender process.
4. Secondly, it is contended that the additional documents which the private respondent was permitted to upload much after the last date of submission of the documents as per the tender document ought not to be looked into at all by the tender issuing authorities. It is contended that "the rules of the game cannot be changed after the game has started", in the sense that if the private respondent is permitted to file such document to cure the shortfalls pertaining to the eligibility itself and the essential criteria thereof, it would be a travesty of the tender process, in effect tantamounting to contravention tender condition themselves, without extending such facility/advantage to the other unsuccessful bidders.
5. Learned Senior Counsel takes the Court in particular through several clauses of the tender document, whereby the criteria and credentials for participation in the tender are delineated.
6. It is argued that although the Clause (ii) under the heading "Non-Statutory Cover" and the sub-heading "To

be filled in Credential Folder" stipulates that the bidder must produce records satisfactorily evidencing similar nature of a single work "with experience in providing mechanized cleaning and housekeeping service in a government hospital etc. having minimum involvement of Rs.7 crore per annum for three years prior to the date of issue of e-tender notice", the private respondent failed to upload any document indicating experience in mechanized/automated cleaning. Furthermore, it is contended that the list of documents which were compulsorily to be submitted were not uploaded within time and a proforma performance statement as per format given in Form-7 with required documentary evidence was not filed, rather, the private respondent altered the format itself.

7. Furthermore, the checklist for bidders also included a valid licence for providing pest control service under Insecticide Rules, 1971, whereas the private respondents furnished a licence at the initial submission stage which had expired on December 31, 2025 and was not valid at the relevant juncture. Only subsequently, in garb of furnishing additional documents with the blessings of the tender issuing authorities, the private respondent furnished an apparently valid document in that regard.

8. Moreover, in the checklist-in-question, a complete work plan indicating buildingwise, floorwise and shiftwise deployment of manpower was required to be furnished

at the inception, which was only submitted later by way of additional documents.

9. Learned Senior Counsel places reliance on the instruction in bold letters at the end of such list, which categorically provides that valid documents as noted in the said table will "have to be" submitted and that the same will form a part of the Technical Evaluation (T.E.).

10. Learned Senior Counsel next takes the Court through Clause 18.2 of the tender document, which permits the relevant committee of the tender issuing authority to summon bidders and seek clarification, information/additional documents or original hard copies of documents submitted online.

11. If those are not produced within the specified time limit, as per the said clause, the bid proposals would be liable for rejection.

12. Learned Senior Counsel argues that the expression "additional documents" in the said clause has to be read in the context of the other criteria stipulated therein and had to be in the nature of clarification.

13. Learned Senior Counsel cites ***Banshidhar Construction Private Limited vs. Bharat Coking Coal Limited and others*** reported in ***(2024) 10 SCC 273***, in support of the proposition that when the technical bid of a particular bidder was rejected on the ground that it did not comply with the essential clauses of the Notice Inviting Tender (NIT), there was no justification on the part of the respondent authorities

for accepting the technical bid of the said bidder, which clearly was not in compliance of the said mandatory clause stipulated in the essential criteria. In the said case, it was observed that the tender issuing authority has miserably failed to justify as to how the technical bid of the said bidder was accepted, when it had not submitted the requisite document related to the qualification criteria as mentioned in the said essential clause, being Clause 10 of the NIT in the said matter.

14. A submission made on behalf of the tender issuing authority that the tender evaluation committee could call for the shortfall of the documents was turned down by the Hon'ble Supreme Court in the said judgment.

15. Learned Government Pleader appearing for the tender issuing authority contends that the learned Single Judge in the impugned judgment has left the matter to be decided by the tender issuing authority, which, according to the learned Government Pleader, includes a prima consideration of whether a clause in the tender document is essential or not. It is contended that in such view of the matter, no interference is called for at this stage.

16. Learned Government Pleader further submits that as yet, no final decision has been arrived at in respect of the evaluation of the technical bids. In such context, learned Government Pleader places reliance on Clauses 18.2, 18.3 as well as 18.4. According to the learned Government Pleader, a composite reading thereof would

clearly indicate that it was open to the tender issuing authority to summon bidders and seek additional documents as well even if those were not produced within the last date of submission initially fixed for the tender.

17. Learned counsel appearing for the private respondent no.3, whose participation in the tender process has been challenged by the appellant, cites ***Central Coalfields Limited and another vs. SLL-SML (Joint Venture Consortium) and others*** reported at ***(2016) 8 SCC 622*** and argues that the issue of acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer and the terms of the NIT cannot be ignored as being redundant or superfluous.

18. It was further observed in the matter whether the terms of an NIT are essential or not, the decision taken by the employer should be respected.

19. Learned counsel takes the Court through the relevant clauses of the tender document, in particular Clause 3 under Section V thereof, stipulating the general conditions of contract. According to learned counsel, it were the said provisions which were to be met by a bidder for qualifying at the technical stage. It is submitted that all the said criteria were substantially complied with by the respondent no.3. Moving on to the list of documents which were relied on by the

appellant, learned counsel submits that said list does not comprise a part of the essential criteria but is only an ancillary clause.

20. Learned counsel further submits that all the additional documents permitted to be uploaded in respect of the bid of the respondent no.3 are in the nature of clarification of the original information filed by the respondent no.3 before the cut-off date.

21. Learned counsel for the respondent no.3 also adopts the arguments of learned Government Pleader to the effect that it is the tender issuing authority which ultimately interprets as to which of the conditions of the tender document are essential criteria and which are not.

22. Upon a careful consideration of the arguments of the parties and the materials on record placed before us, including the tender document clauses, this Court is of the opinion that on a proper reading of Clause 18.2, it would be evident that the doctrine of *Noscitur a Sociis* is squarely applicable insofar as the phrase “additional documents” is concerned, since the said phrase finds place in the relevant clause between the expressions “clarification” and “original hard copies of documents submitted online”. Thus, on a plain reading of the said provision, it is clear that the nature of the additional documents is inextricably tied up with the information and clarification which the tender issuing authority is entitled to seek and has to be in the nature of such

clarification, which is further evident from the fact that the next part of the clause permits the authority to seek original hard copies, not of new documents but of documents already submitted online, essentially meaning that the documents which are submitted before the cut-off date for submission of documents.

23. However, we are equally aware of the dictum laid down in the ***Central Coalfields*** (supra), which is a trite principle of law, that whether a tender clause is essential or not ultimately needs to be decided by the employer and it is not for the Court to adjudicate on the merits of such issue. Moreover, the issue of acceptance or rejection of bid also has to be seen from the perspective of the employer, who floated the tender to meet his needs.

24. Be that as it may, simultaneously, we also find logic in the argument of the appellant to the effect that unless the private respondent no.3 or any of bidders did not meet the essential technical eligibility criteria at the outset and furnish all necessary documents in that regard within the last date for such submission i.e. October 5, 2026, subsequently, by invoking Clause 18.2 read with Clauses 18.3 and 18.4, it was not open to the tender issuing authority to permit entirely new documents to be submitted which, if those were not produced at the outset, would have altogether invalidated the candidature of the concerned bidder.

25. Thus, although we do not find much fault with the impugned judgment to the effect that the decision has been left for the tender issuing authority to be taken, such decision has to be subject to the following yardsticks:

i) The tender issuing authority has to ascertain and take a reasoned decision as to what are the essential criteria as per the tender document for crossing the technical stage;

ii) Whether the private respondent no.3, as per documents which were furnished before the cut-off date, i.e., October 5, 2026 by the said respondent, could have been otherwise held to be eligible;

iii) Whether the additional documents furnished by the respondent no.3 are in the nature of clarification of the original information and document furnished by the respondent no.3.

26. Upon taking such decision in the light of representation given by the appellant, the tender issuing authority shall pass a reasoned order in writing and communicate the same to the parties to the present litigation.

27. For such purpose, the entire time-line scheduled by the learned Single Judge is extended by/postponed for a week.

28. It is made clear that we have not entered into the merits of such adjudication. However, the adjudication

to be undertaken by the tender issuing authority shall be in terms of the yardsticks as stipulated hereinabove.

29. It is made clear that the other components of the impugned judgment are not interfered with.

30. MAT 1920 of 2026 is disposed of with the above observations, by modifying the impugned order by reading into the same the yardsticks which have been mentioned above.

31. CAN 1 of 2026 is consequentially disposed of as well.

32. There shall be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Arindam Mukherjee, J.)