

(2013) 09 CAL CK 0019
In the Calcutta High Court

Case No : M.A.T. No. 1211 of 2013 and C.A.N. No. 8263 of 2013

Biswajit Mitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 1 CHN 700

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—The appeal is directed against the judgment and order dated 02.07.2013 passed by the learned Single Judge in W.P. No. 17502 (W) of 2013 dismissing the prayer of the appellant to set aside the decision to disqualify him from participating in the tender for construction of proposed 50 bedded girls" hostel at Sibdas Balika Vidyalaya at Bishnupur Block in the District of Bankura. The appellant is a Class - III enlisted contractor (electrical) of Public Works Development, Government of West Bengal. A notice inviting tender bearing No. WBPWD/CB/EE/EDI/NIT47/2013-14 was issued by Executive Engineer vide memo. No. 855/115A for construction of proposed 50 bedded girls" hostel for Sibdas Balika Vidyalaya at Bishnupur Block in the district of Bankura at an estimated of cost of Rs. 5,22,278/- (Rupees Five Lakh Twenty Two Thousand Two Hundred and Seventy-Eight). Eligibility criteria for such bid was as follows:

Enlisted contractor of PWD (Class I and II), Government of West Bengal, Resourceful Outside Contractor (eligibility criteria as per serial No. 3 mentioned below).

2. Serial No. 3 of the said notice inviting tender also, inter alia, provided resourceful enlisted (electrical) contractor of PWD, Government of West Bengal shall be eligible to participate.

3. From an internet copy dated 4th June, 2013, the appellant initially came to know that his bid was opened and accepted by the committee. However, subsequently on the self-same day, the appellant found that his bid had been rejected as "technically disqualified".

4. The appellant being the lowest bidder made a representation before the appropriate authority against such decision. Receiving no positive response, the appellant challenged the decision of the respondent authority in the instant writ petition.

5. Learned Single Judge by the impugned order dismissed the writ petition on the premise that the appellant was neither a Class I nor Class II enlisted contractor of the Public Works Department and the appellant could not be classified as a "resourceful outside contractor" inasmuch as he was already a Class III enlisted contractor.

6. Mr. Dutta, Learned Counsel appearing for the appellant submitted that the word "resourceful outside contractor" in the eligibility criteria has not been defined in the notice inviting tender. He further submitted that in the absence of a specific definition, learned Single Judge ought not have exempted enlisted contractors like the appellant from the category of "resourceful outside contractor" merely because he was enlisted with P.W.D. He further submitted that the appellant had requisite capacity to carry out the work in question and was illegally disqualified from participating in the tender process although he was the lowest bidder.

7. Mr. Dhar, Learned Counsel appearing for the added respondent submitted that the appellant was not eligible in terms of the notice inviting tender and accordingly his bid was rightly rejected.

8. We have considered the submissions of the parties.

9. It is true the expression "resourceful outside contractor" is not defined in the notice inviting tender. In the absence of any specific definition, the expression has to be read "ejusdem generis" in the light of the immediately preceding expressions in the eligibility criteria. Hence, the word "resourceful outside contractor" would mean a contractor who is not enlisted with the P.W.D. but has sufficient experience and capability to be at par with an enlisted Class II or II contractor of P.W.D. Admittedly, the appellant does not fall in such category inasmuch as he is enlisted as a Class III contractor.

10. We are of the view that such a clause is neither arbitrary nor discriminatory in nature. Such eligibility criteria, in fact, not only permits enlisted contractors of a prescribed standard but also throws open the competitive field to other non-enlisted contractors who are of the same standing.

11. The appellant in no way comes within such field being admittedly an enlisted Class III contractor.

12. We are unable to accept the submission of the Learned Counsel for the appellant that he has been illegally eliminated from the fray. The eligibility criteria are reasonable and just and the appellant is no way discriminated as he is enlisted as Class III contractor after due assessment of his experience and resources in the specified field and, accordingly, he cannot claim parity in treatment with Class I or Class II enlisted contractors.

13. We find no reason to interfere with the impugned order passed by the learned Single Judge. The appeal and connected applications are accordingly dismissed.

A. Mishra, C.J.

I agree.