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**(2018) 06 CAL CK 0138**  
**In the Calcutta High Court**  
**Case No : W.P No. 6675(W) of 2018**

Namirah Enterprise & Anr.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

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**Date of Decision :** 13-06-2018

**Acts Referred:**

**Citation :** (2018) 06 CAL CK 0138

**Hon'ble Judges :** TAPABRATA CHAKRABORTY, J

**Bench :** Single Bench

**Advocate :** Debabrata Saha Roy, Debojit Mukherjee, Pingal Bhattacharyya,  
Indrajit Dasgupta, Sayani Saha

**Final Decision :** Dismissed

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## Judgement

The present writ petition has been preferred primarily praying for the following reliefs:

â??(a) A Writ of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns to rescind,

cancel and/or withdraw the result of the technical bid, published in the official website of AJCBIBG on 15.05.2018 in respect of e-mail tender

no.AJCBIBG33/135/Entry Fee/2018-2019/ Admn/3, floated by AJCBIBG, forthwith;

(b) A Writ of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns to declare the

petitioner as eligible candidate on technical bid and open their financial bid and select the highest bidder in respect of e-mail tender no. AJCBIBG-

33/135/Entry Fee/2018-2019/ Admn/3, floated by AJCBIBG, forthwith.â??

Shorn of unnecessary details, the facts are that Acharya Jagadish Chandra Bose

Indian Botanic Garden (in short, AJCBIBG) floated e-tender (in short, e-NIT) for grant of license for collection/sale of entry ticket/fee for visitors and still photography fee in AJCBIBG premises. The petitioner no.1

is a proprietorship firm and it applied pursuant to the said e-NIT. On 15th of May, 2018 the result of technical evaluation was published in the website.

The bid of the petitioner no.1 was rejected. Aggrieved thereby, the petitioners have approached this Court.

Mr. Saha Roy, learned senior counsel appearing for the petitioners submits that the petitioner no.1 was disqualified on a purported ground that it has

not incorporated the EPF number and its validity of registration under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (in short,

EPF Act). Such requirement was not a mandatory criterion for consideration of the technical bid. In the tender documents there is no whisper that the

tenderer has to supply EPF registration number. In support of such contention he has drawn the attention of this Court to the General

Information/Guidelines and the General Terms and Conditions for providing services. The supplementary affidavit filed by the petitioner be kept on

record.

He further contends that the eligibility criterion pertaining to experience of parties was relaxed by the authorities. The petitioner no.1 did apply for EPF

registration under the EPF Act on 15th May, 2018. Such application was also responded to by the authorities as would be explicit from the memo

dated 15th May, 2018 issued by the EPF authorities. Though such fact was brought to the notice of the respondents, the same was not taken note of.

In a cryptic manner the petitioner no.1's technical bid was rejected stating that documents rejected.

Drawing the attention of this Court to the documents annexed at pages 59 and 60 of the writ petition, he submits that in the tender process there were

four participants. One participant, namely, Macneill withdrew its candidature and out of the remaining three participants the bid of the petitioner no.1

and of another participant, namely, Kyazoonga were rejected and only one participant, namely, KKB Enterprise was declared successful. Such

sequence of fact reveals that the intent of the authorities was to favour a particular tenderer.

He further submits that EPF registration was not an essential condition and that

for carrying out the work in question, no such registration is necessary and as such the petitioner no. 1 has been ousted from the tender process in an illegal and arbitrary manner and such action warrants interference of this Court. In support of his argument Mr. Saha Roy has placed reliance upon a judgment delivered in the case of Chhattisgarh State Industrial Development Corporation Limited & Anr. Vs. Amar Infrastructure Ltd. & Ors., reported in (2017) 5 SCC 387. Per contra Mr. Dasgupta, learned advocate appearing for the respondent nos.1 to 3 submits that the petitioner no.1 neither did specify the EPF registration number nor did furnish a proper plan of work and accordingly, its technical bid was rejected for non-fulfillment of mandatory eligibility criteria as specified in the tender documents.

He further submits that a pre-bid meeting was held on 7th May, 2018 in which the petitioners duly participated and sought for a clarification as to whether the ESI and EPF registrations are mandatory for qualification in the technical bid. The same was answered by the authorities categorically stating that such registrations were mandatory. The petitioner no.1 thus applied knowing well that it does not fulfil the eligibility criterion. Its bid was rightly rejected and there was no error in the decision making process. The minutes of the pre-bid meeting, as produced be kept on record.

He further submits that Clause 8 of the General Terms & Conditions categorically provides that the tender bids would be opened to evaluate the credentials submitted by the Tender/Agency like the experience of the manpower possession, their expertise, plan of work, experience in similar or related fields, financial suitability/status etc. as per Annexure-III. In Annexure-III the tenderer was required to incorporate the EPF number and validity. As the petitioner no.1 did not have such registration, the specified column was marked as 'N/A'. All the participants were required to fulfil the criterion and to disclose the particulars as sought for in Annexure-III of the General Terms. The petitioners also did not furnish the plan of work in details as was required under the tender documents.

In reply Mr. Saha Roy submits that in the General Information/Guidelines, there was no provision to the effect that the tenderer has to supply EPF registration number. Such condition also did not feature in the check list which was furnished to the petitioners, as annexed at page 36 of the writ

petition. Such condition could not have construed to be mandatory on the basis of the General Terms & Conditions and on the basis of a statement in

the pre-bid meeting and as such the abrupt rejection of the petitioners' bid smacks of arbitrariness. Clause 8 of the General Terms reads as

follows:

"The Technical Bids will be opened first and evaluated by the Tender-cumConsultancy Evaluation Committee constituted in BSI to

evaluate the credentials submitted by the Tender/Agency like the experience of the manpower possession, their expertise, plan of work, experience in

similar or related fields, financial suitability/status, etc. as per ANNEXURE-III. The decision of the Committee so constituted will be final regarding

acceptance or rejection of the Technical Bid(s)."

Annexure-III as referred to requires disclosure of the EPF number. Admittedly, the petitioner no.1 did not have such EPF registration on the date it

uploaded its technical bid, as would be explicit from the documents at pages 25 and 26 of the writ petition wherein the column seeking EPF number

has been marked N.A. (Not Available). The General Information/Guidelines, the General Terms & Conditions and the Annexure-III needs to be read

together. The conditions, as incorporated in the NIT, need to be considered together and not in isolation. A particular clause cannot be taken up and

highlighted.

In the instant case the authorities have taken a decision on the basis of the tender documents. No mala fide can be attributed to such action of the

authorities and it cannot be said that the authorities have acted in a manner which would benefit a private party at the cost of the authorities. It also

appears from the pre-bid meeting minutes that the petitioner no.1 duly participated in the same which was held on 7th May, 2018 and it was

categorically stated by the authorities that EPF registration was mandatory. It thus cannot be said that the authorities have acted to favour any

particular participant.

The judgment delivered in the case of Chhattisgarh State Industrial Development (supra) is distinguishable on facts inasmuch as the tender documents

in the instant matter clearly reveal that EPF registration number was a mandatory requirement. It is well settled that the scope of judicial review in

award of contracts is very limited. The petitioner has failed to establish any

arbitrariness or unreasonableness in the tender process. There is also no error in such decision making process warranting interference of this Court in exercise its discretionary jurisdiction. For the reasons discussed above, this Court is unable to grant the reliefs, as prayed for, by the petitioners and the writ petition is, accordingly, dismissed. There shall, however, be no order as to costs. Urgent photostat certified copy of this order be supplied to the parties on compliance of all formalities.