**(2018) 06 CAL CK 0174**

**In the Calcutta High Court**

**Case No :** MAT 539 of 2018, CAN 3628 of 2018

P P Bafna Ventures Private Limited & Anr. APPELLANT

Vs

West Bengal Text Book Corporation Limited & Anr. RESPONDENT

**Date of Decision :** 20-06-2018

**Acts Referred:**

**Citation :** (2018) 06 CAL CK 0174

**Hon'ble Judges :** JYOTIRMAY BHATTACHARYA, CJ;ARIJIT BANERJEE, J

**Bench :** Division Bench

**Advocate :** Abhrajit Mitra, Anirban Ray, Atanu Ray Chowdhury, Amit Kumar Nag, D. Bhaduri, Samrat Sen, Debdatta Ray Chowdhury

**Final Decision :** Dismissed

## Judgement

Arijit Banerjee, J.

(1) This is an appeal against the judgment and order dated 11 June, 2018 passed by the learned Single Judge whereby the appellantâ??s writ petition

was dismissed. The writ petition was directed against an order dated 7 June, 2018 whereby the petitioner companyâ??s bid in connection with a

tender was rejected by the respondent Corporation.

(2) On 8 May, 2018 the respondent Corporation issued a Notice Inviting Tender (NIT) calling for bids for supply of 3.5 crore exercise books for being

distributed amongst various Government and Government Aided Educational Institutions in the State of West Bengal. The petitioner company put in its

bid. 11 May, 2018 was the date specified for uploading all bids. By way of a corrigendum dated 9 May, 2018 paras 1.2, 1.10 (i) and 2.4.1(a) of the

general conditions of supply were amended. By a letter dated 5 June, 2018 the Purchase Committee of the respondent corporation called upon the petitioner company to submit relevant documents in support of proof of operation in West Bengal since 2015-16 as mentioned in para 1.2 as amended

by the said corrigendum. The petitioner replied to the said letter by a letter dated 6 June 2018. By the impugned communication dated 7 June, 2018 the

petitioner was informed that its bid had been rejected during technical evaluation by the duly constituted committee for the reason â??Not Fulfil the

Tender Criteriaâ??. In the said communication it was also stated that in case of any clarification or feedback the petitioner may contact the Tender

Inviting Authority.

(3) The petitioner company filed a writ petition on 8 June, 2018 challenging the said communication. By the impugned judgment and order dated 11

June, 2018 the learned Judge dismissed the writ application. The operative portion of the impugned judgment and order reads as follows:-

â??All the paragraphs in Parts 1 and 2 of the bidding documents read in conjunction with the corrigendum dated 9 May, 2018 reveals that submission

of documents towards statutory registration in West Bengal was a mandatory requirement for all the participants in the tender process. Indisputably,

the petitioner no. 1 does not fulfil the criterion towards statutory registrations in West Bengal. 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.

I find substance in the argument of Mr. Sen that the reason behind incorporation of the criterion towards statutory registration in West Bengal was to

ensure that the selected bidder has the potential to successfully carry out the word. Such reasoning is a plausible one. 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. The writ court cannot transpose itself as an appellate authority and in cases where two views emerge, it cannot interfere even if it feels

that one is more logical. The petitioner has failed to establish any arbitrariness or unreasonableness in the tender process.

The scope of judicial review in award of contracts is very limited. In support of contracts entered into on behalf of the State, the court is primarily

required to ascertain as to whether there has been any infirmity in the decision making process. The invitation to tender is in the realm of contract and cannot be open to judicial scrutiny. 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 petitioner, and the writ petition

is, accordingly, dismissed.â??

(4) Appearing for the appellant Mr. Abhrajit Mitra, learned Sr. Advocate, drew our attention to Clauses 2.4.1 and 2.4.2 of the NIT. Clause 2.4.1

stipulates that the bidder must have been in production for the last three years. Clause 2.4.2 enlists the documents that a bidder was required to furnish

to meet the eligibility criteria. The documents mentioned in the said clause included copy of GST Registration Certificate.

(5) Learned Sr. Counsel then referred to the corrigendum dated 9 May, 2018 whereby para 1.1 in Section 1 at page 3 of the NIT was amended. As

amended, the said para reads as follows:-

â??WBTBC hereby invites bids through â??e-tenderingâ?? from (i) eligible and qualified Paper Mills situated and operating from West Bengal or (ii)

manufacturer of Learning Stationery situated and operating from West Bengal or operating nationally and having office at West Bengal â??To

ascertain the rate per copy of Exercise Book for procurement of approximately 3,50,000,00 copies Exercise Book for students studying in Government

and Government aided schools in the state of West Bengalâ??. The bidder must submit documents for statutory registration in West Bengal i.e.

Trade License, VAT/GST Registration and any other such document as proof of operation in West Bengal since 2015-2016. The bidder must submit

trade license, any other statutory license, GST registration certificate as proof of having office in West Bengal. The tender will comprise of the

Technical Bid and the Financial Bid. Bidders shall submit the Technical Bid through â??e0tenderingâ?? while the Financial Bid in the form of the Bill

of Quantities (BoQ) given in the e-tendering portal.â??

Mr. Mitra submitted that the petitioner does not have any paper mill in West Bengal nor has any significant operation in this State but it operates

nationally and has an office in West Bengal and as such is eligible to bid in the tender process. However, as on the date of submitting its bid the

petitioner company did not have GST registration in West Bengal since the same was not required. The GST registration certificate was only to be a proof of the petitioner company having office in West Bengal. The petitioner submitted other proof of the same, e.g., a lease deed dated 12 May,

2015. It was not essential or necessary for the petitioner to submit the GST registration certificate, contended Mr. Mitra.

(6) Learned Sr. Counsel then argued that the impugned communication dated 7 June, 2018 is vague and does not disclose in what manner the

petitionerâ??s bid did not fulfil the tender criteria. However, in the course of argument before the learned Single Judge, learned Counsel of the

respondent-Corporation submitted that the petitioner company had participated in the tender process as a paper mill situated in and operating from

West Bengal when the fact is otherwise. Mr. Mitra submitted that the petitioner company never made such representation and never stated that it has

a paper mill in West Bengal. If the respondent Corporation had some misconception not caused by any representation made by the petitioner

company, the latter cannot be penalized for the same.

(7) Mr. Mitra further submitted that the petitioner companyâ??s bid was lower than the bids of the other tenderers. The price on which letters of

intent have been issued to five other tenderers is Rs. 15.74 per exercise book which was a negotiated price after the financial bids were opened. Had

the bid of the petitioner company not been wrongfully rejected, the petitioner company would have participated in the negotiation process and could

have offered a price even less than Rs. 15.74 per exercise book. This would have enured to the benefit of the Government and would have saved

public money.

(8) Mr. Mitra relied on the decision of the Honâ??ble Apex Court in the case of Reshmi Metaliks Ltd. and Anr.-vs.-Kolkata Metropolitan

Development Authority and Ors., (2013) 10 SCC 95. We have considered the decision and in our opinion the same is not germane to the facts of the

present case.

(9) Appearing for the respondent Corporation Mr. Samrat Sen, learned Sr. Counsel, submitted that the credentials of the petitioner company are

suspect. The lease deed disclosed by the company is an unregistered and inadequately stamped document. It mentions a rent of Rs. 5,000/- per month.

However, at page 486 of the stay petition the company has disclosed an application for certificate of enlistment (Trade License) wherein monthly rent in respect of the premises from which the company claims to be carrying on business is mentioned as â??FREEâ??. Further the area of the lease

premises is mentioned as 100 sq. ft. in the application for trade license whereas in the schedule to the purported lease deed the area is mentioned as

171.03 sq. mts. Further, it would appear from the application for trade license which was made on 21 May, 2018 that prior thereto the petitioner never

had any trade license in West Bengal. Mr. Sen referred to clause 1.22 of the NIT which reads as follows:-

â??During tender evaluation or even during delivery as per order, if any record submitted by any bidder is found to be incorrect, manufacture,

fabricated, untrue or false the bid of such bidder will be rejected and if Order has already been awarded, the Order will be cancelled, without any

prejudice to any rights of the Corporation. In that case the BID Security/EMD will be forfeited.â??

He submitted that relying on this clause alone the bid of the petitioner could be rejected as the lease deed is obviously a manufactured document.

Another similar clause is 1.10 (ii) of the NIT which also provides that if any document submitted by a bidder is found at any stage to be manufactured

or false or untrue in any material respect, the bid of the bidder will be rejected outright without prejudice to any right of the Corporation including right

to forfeit the EMD/Bid Security.

(10) Mr. Sen referred to clause 2.6 of the NIT which provides, inter alia, that the bid documents consist of Parts I and II which include all the Sections

indicated therein and should be read in conjunction with any addenda/corrigenda issued in accordance with ITB 2.8.1. Clause 2.8 of the NIT provides

that any addendum/corrigendum issued shall be part of the bidding documents. Hence, the corrigendum dated 9 May, 2018 would very much be a part

of the bid documents and since the petitioner company failed to satisfy the conditions mentioned in the corrigendum, its bid was rightly rejected.

(11) Mr. Sen then submitted that clause 2.21 of the NIT provides that to assist in the examination, evaluation and comparison of the Technical and

Financial Bids, the Corporation may ask any bidder for a clarification of its bid. The Corporation had asked the petitioner company for such

clarification vide letter dated 5 June, 2018, calling upon the petitioner company to submit relevant documents in respect of proof of operation in West

 

Bengal since 2015-16 as mentioned in Page 3, Section 1, Part 1.2 of the corrigendum dated 9 May, 2018. In its reply dated 6 June, 2018 the petitioner

did not state that it was not applying under that category but under the category of having national operation with office in West Bengal. On the

contrary, the petitioner clearly stated that it was operating in West Bengal. Hence, the petitioner cannot now take a stand that it never gave the

impression that it was not submitting its bid under the category of having operation in West Bengal.

(12) Mr. Sen relied on two decisions of the Apex Court, i.e., JSW Infrastructure Limited & Anr.-vs.-Kakinada Seaports Limited & Ors., (2017) 4

SCC 170 and Jagdish Mandal-vs.-State of Orissa & Ors. (2007) 14 SCC 517. In both the cases the Apex Court has laid down that the Courts should

show restraint in interfering with tender or contractual matters and unless the process adopted or decision made by the authorities is mala fide or

intended to favour someone or is completely arbitrary, the Courts should not interfere.

(13) In JSW Infrastructure Limited (supra) the Apex Court quoted its observation in the earlier case of Afcons Infrastructure Limited-vs.Nagpur

Metro Rail Corporation Limited, (2016) 16 SCC 818 to the effect that it is possible that the owner or an employer of a project may give an

interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the

interpretation given. In Jagdish Mandal (supra) the Apex Court held that evaluation of tenders and awarding contracts are essential commercial

functions and if the decision is bona fide and taken in public interest the superior courts should refrain from exercising the power of judicial review.

(14) We have carefully considered the rival contentions of the parties.

(15) We are in agreement with Mr. Sen that the GST registration certificate was an essential document that a bidder was required to submit along

with its bid. Para 1.2 of the NIT as amended by the corrigendum dated 9 May, 2018 made that amply clear. Clause 2.4.2 of the NIT also provides that

a bidder shall have to furnish, inter alia, copy of GST registration certificate. Clause 2.11.2 of the NIT provides that the technical bid would comprise

of two folders i.e. Technical Info Folder and Financial Info Folder. Copy of GST registration certificate was one of the documents which was mandatorily required to be included in the Financial Info Folder. Indisputably, the petitioner company did not have GST registration certificate in West

Bengal on the date when it submitted its bid, nor did it have VAT registration. It would also appear from the application made by the petitioner for

certificate of enlistment that it did not have certificate of enlistment prior to the date of making that application i.e. 21 May, 2018. Hence, the petitioner

company could not have carried on business in West Bengal from 2015-16 as was a requirement under the terms and conditions of the NIT. On this

ground alone, the petitionerâ??s technical bid was liable to be rejected and in our opinion was rightly rejected.

(16) As regards having an office in West Bengal, the lease deed disclosed by the petitioner company is a suspect document and does not inspire any

credence. The inconsistencies between the lease deed and the application made by the petitioner for trade license have been noted above while

recording the submission of Mr. Sen. The lease deed appears to be a manufactured document and does not establish that the petitioner company had

presence in West Bengal since 201516. The statement in the petitioner companyâ??s letter dated 6 June, 2018 written in response to the

Corporationâ??s letter dated 5 June, 2018 to the effect that the petitioner company is operating in West Bengal since 2010 but commenced its office

on 12 May, 2015 is self-defeating. It is not credible that the petitioner did business in West Bengal since 2010 without having any office. In any event,

without a trade license the petitioner could not have lawfully carried on business. It does not appear to us that the petitioner has approached this Court

with clean hands. On this ground also the petitioner is not entitled to any relief.

(17) The petitioner company obviously gave the impression that it was carrying on business in West Bengal since 2015-16 and not that it was applying

under category of having a national presence with an office in West Bengal. The contention of the petitioner company to the contrary is not

acceptable.

(18) We are of the considered opinion that there is nothing wrong with the approach and decision of the learned Single Judge. The learned Judge

rightly held that the submission of GST registration certificate was a mandatory requirement and in the absence of the same the petitioner

companyâ??s technical bid was rightly rejected. It is also established law that the writ court does not sit in appeal over the decision of an Authority

but is concerned only with the decision making process. The learned Judge rightly held that there is nothing wrong with the decision making process

and no mala fide can be attributed to the respondent Corporation. The employer must have necessary freedom to take administrative decisions with

certain boundaries as observed by the Apex Court in Tala Cellular-vs.-Union of India, (1994) 6 SCC 651. In Afcons Infrastructure Limited (supra) it

was observed that a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a

constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before

the constitutional court interferes with the decision making process or the decision. We find no infirmity in the impugned decision of the respondent

Corporation or the decision of the learned Single Judge.

(19) In view of the aforesaid, this appeal fails and is dismissed along with the application with costs assessed at Rs. 10,000/-.

(20) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.