
(2014) 12 CAL CK 0060
In the Calcutta High Court

Case No : Writ Petition No. 34617 (W) of 2013 and C.A.N. No. 2232 of 2014

Rausheena Udyog Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 2 WBLR 974

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Pratap Chatterjee, Kalyan Kr. Bandopadhyay, Shyamal Sarkar, Sr. Advs., Aniruddha Chatterjee, Sunil Singhania, Kushal Chatterjee, R.A. Agarwal, Kumar Gupta, Rajesh Kr. Gupta, Nibedita Pal, Ramesh Dhara and Ananda Kr. Mukherjee, Advocate for the Appellant; Sakya Sen and Amritlal Chatterjee, Advocate for the Respondent

Judgement

Arindam Sinha, J.—Four petitioners have joined together in this writ petition seeking to maintain a challenge against order dated 13th November, 2013 made by the Government of West Bengal cancelling tender dated 21st November, 2012 requiring supply of ready-to-eat rice-based and wheat-based micro nutrient fortified energy dense food for consumption by Below Poverty Line adolescent girls. The four petitioners were found to be technically qualified tenderers by the e-Tender Committee.

2. At the outset Mr. Kalyan Bandopadhyay, learned senior advocate appearing on behalf of an applicant who wanted to be added as a party, submitted his client had also bid for the said tender and put in earnest money. Therefore, his client was interested in the tender that stood cancelled and consequentially interested in any proceeding that may affect such cancellation.

3. Mr. Aniruddha Chatterjee, learned advocate appearing on behalf of the petitioner opposed the prayer of the applicant. He submitted it would appear from the annexure to the application for addition of party, the applicant therein had accepted the rejection of his bid and was only interested in obtaining refund

of earnest money deposited. Hence, according to Mr. Chatterjee, the applicant was neither a necessary nor a proper party in a matter between the petitioners who were successful bidders, in seeking to maintain their challenge against the cancellation of the tender.

4. It appears from the minutes of the meeting held by the Tender Committee on 23rd May, 2013, inter alia, that if the four qualified bidders are taken into account, then the required quantity of ready to eat food packets would be made available. In that meeting the said committee had resolved to place the entire matter before the Government for approval. It is after this the impugned order dated 13th November, 2013 cancelling the tender was issued. It is, therefore, clear the petitioners do not have a concluded contract. In the circumstances, the objection of Mr. Chatterjee to the applicant's prayer for being added as a party cannot be sustained. CAN No. 2232 of 2014 is allowed and the applicant therein added as a party upon amendment to be made to the cause title of the writ petition.

5. Mr. Bandopadhyay, then took a preliminary point relying on the decision reported in *Maa Binda Express Carrier and Another Vs. Northeast Frontier Railway and Others*, to urge submission of a tender in response to a notice inviting tenders is no more than making an offer which the State or its agencies are under no obligation to accept. He submitted the case decided by the Hon'ble Supreme Court was similar to the case at hand. In that case it had been held the decision to cancel the tender process was not discriminatory nor mala fide, in favour of the case of the Railways who had urged, inter alia, the cancellation of the tender process was also on the ground that the Railways administration had discovered a serious deficiency in the same in as much as the tender forms had been issued without enclosing therewith the terms and conditions subject to which the contract could be allotted or awarded.

6. Mr. Pratap Chatterjee, learned senior advocate appeared on behalf of the petitioners and relying on the decision reported in *Shimnit Utsch India Pvt. Ltd. and Another Vs. West Bengal Transport Infrastructure Development Corporation Ltd. and Others*, thereof submitted the Government had the administrative discretion to cancel the tender process in public interest provided such action was not actuated with ulterior motive or was otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provision. He submitted in this case the cancellation of the tender was arbitrary and irrational.

7. This court finds the Hon'ble Supreme Court in both the decisions referred to above had considered the matter of cancellation of a tender to be a decision which was in no way discriminatory or mala fide or arbitrary or irrational or in violation of some statutory provision. As such the preliminary objection was not sustained and the petitioners invited to argue on merits.

8. Petitioners submitted the impugned order dated 13th November, 2013 was purportedly made in compliance of the order dated 19th March, 2013 of the

Hon'ble Division Bench of this court passed in MAT 231 of 2013. The reasons alleged were that the tender suffers from so many handicaps and could not be finalized on the ground of incapability of the lowest bidders, technically qualified on the basis of production capacity, to supply the required quantity of the micro nutrient fortified dense food, vitiating the purpose of the tender. It was submitted the tender required supply of the micro nutrient food of approximately 2680 MT per month for a period of one year which would mean the aggregate quantity 32,160 MT to be supplied in one year. However, by requiring the credentials of the tenderers being to produce certificates regarding annual production capacity of 18000 MT per annum of micro nutrient fortified energy dense food, no single tenderer was expected to fulfil the supply requirement under the tender individually. The tender, according to the petitioners, contemplated the Government would obtain the supply from technically qualified suppliers whose tenders were accepted. As such the alleged reason that the lowest bidders technically qualified being incapable of supplying the required quantity of micro nutrient fortified dense food was no reason at all and, therefore, the cancellation of the tender, arbitrary and irrational.

9. Mr. Sakya Sen, learned advocate appeared on behalf of the State to submit no concluded contract was awarded in favour of the petitioners. As such they did not have locus standi to seek judicial review on the decision made by the State to cancel the tender. He went on to refer to the documents disclosed in the affidavit in opposition filed by the State to submit the bidders had offered rates which were higher than the Government rate and they were also found to be incapable of supplying the required quantity. He submitted, in those circumstances, the State was justified in cancelling the tender. It was the decision of the State to call a fresh tender to obtain supply of the food and the petitioners would be entitled to put in their offers.

10. It appears from the annexures to the affidavit in opposition filed by the State, the petitioner Nos. 3 and 4 were found to be the lowest bidders. It was the decision of the Finance Department, Government of West Bengal that negotiation was possible with L-1 bidders only. The said two petitioners found to be L-1 bidders had stated the petitioner No. 4 would supply 750 MT of the food per month and the petitioner No. 3 would supply 700 MT of the food per month. The requirement of the Government, it appears from such annexures, was 50% of 2680 MT of food to be wheat-based nutrient food and the balance 50% to be rice-based nutrient food. Therefore, the Tender Committee decided to negotiate with the petitioner No. 4 for supply of wheat-based nutrient food of the approximate quantity of 1340 MT per month and with the petitioner No. 3 for supply of rice-based nutrient food of the same quantity per month. It appears from the minutes of the meeting of the Tender Committee held on 22nd May, 2013 the petitioner Nos. 3 and 4 were invited to make their offers regarding reduction of rate quoted as well as their capability of supplying Sabla food of 1340 MT each per month. The said petitioners expressed inability to supply more than 750 and 700 MT respectively per month.

11. In view of the aforesaid, this court is satisfied the challenge to the cancelling of the tender by the State Government cannot be sustained. The lowest bidders being the petitioner Nos. 3 and 4 by their own showing, either individually or together, are incapable of supplying the quantity of Sabla food required by the tender. Thus, this court does not find any merit in the writ petition and the same is accordingly dismissed.

12. Urgent certified copy of this judgment, if applied for, be given to the parties on usual undertakings.