(2018) 11 CAL CK 0021

In the Calcutta High Court

Case No : Writ Petition No.23049 (W) Of 2018

United Enterprise & Anr	APPELLANT
Vs	
State of West Bengal & Ors	RESPONDENT

Date of Decision : 22-11-2018

Acts Referred:

West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 — Section 3, 4, 5, 7(4), 7(21)(2), 8

Citation : (2018) 11 CAL CK 0021

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Saptangsu Basu, Swarup Paul, Ashish Dutta, Jishnu Chowdhury, Samim Ul Bari,

Final Decision : Dismissed

Judgement

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

a) A writ in the nature of Mandamus commanding the respondents and/or their subordinates and/or agents and/or assigns to act and proceed strictly in

accordance with law and complete the tender process as per norms and rules mentioned in there under document and set aside the impugned rejection

order of the technical bid of the petitioners dated 16.11.2018 being annexure P-3 to this writ application and open the financial bid of the petitioners;

Mr. Basu, learned senior advocate appearing for the petitioners submits that responding to the e-Tender notice dated 9th October, 2018 issued by the

respondent no.6 for supply of cooked diet for indoor patients of Bolpur SD Hospital and Suri Hospital, the petitioner no.1 submitted its bid. The

technical evaluation bid was opened on 5th November, 2018 but the authorities did not upload the technical evaluation sheet on the specified date. The same was uploaded on 16th November, 2018 in which the technical bid of the petitioner no.1 was rejected â??due to Professional Tax Registration

certificate not foundâ??.

Placing reliance upon Sections 3, 4 and 5 of the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 (in short, the

said Act of 1979), Mr. Basu submits that the petitioner no.1 is not liable to pay any tax to the State Government inasmuch as from the third column of

the schedule, as referred in Section 3 of the said Act of 1979, it would be explicit that employees earning monthly salary or wages not exceeding Rs.

8,500/- are not required to pay tax. In support of such contention, he has also placed reliance upon the Labour Department's circular dated 22nd June,

2018 which provides inter alia that pertaining to the Zone B which includes Suri, the monthly minimum rates of wages for semi-skilled employees is

less than Rs. 8,500/-. The contents of Section VIII of the e-tender notice would also reveal that the minimum monthly wage rate should be calculated

as per the labour department guidelines. In view thereof, there is no requirement to obtain registration certificate and as such the authorities could not

have rejected the bid insisting for production of Professional Tax Registration certificate. The respondents also did not take into consideration the

enrolment certificate issued under the said Act of 1979 in favour of the petitioner no.1. Let a copy of the circular dated 22nd June, 2018 be kept on

record.

Drawing the attention of this Court to clause 21.2 under Section VII of the e-Tender notice, he submits that the tender committee was under an

obligation to seek clarification from the petitioners but without discharging such obligation, the bid of the petitioner no.1 was illegally rejected.

Per contra, Mr. Chowdhury learned advocate appearing for the State respondents submits that all the bidders were required to produce Professional

Tax Registration certificates as the same was a mandatory criterion specified in the tender documents, as would be explicit from the check list

annexed to the tender documents. In support of such contention he has also drawn the attention of this Court to a check list submitted by one of the

participating tenderers. The said check list was signed by the representative of the petitioner no.1 inasmuch as without signing such check list and

accepting the requirement to produce all the said documents as indicated therein, the petitioner no.1 would not have been allowed to participate in the tender process.

Drawing the attention of this Court to Clause 4 of Section VII of the e-Tender notice annexed at page 55 of the writ petition, he submits that in the event the petitioners were not required to produce Professional Tax Registration certificates, they could have obtained necessary clarification from the respondents.

In reply, Mr. Basu denies the contention that the check list was signed on behalf of the petitioner no.1 stating that they have the Professional Tax Registration certificate.

Clause 12.3 of the e-Tender notice provides that the non-statutory cover must contain the documents as specified therein including Professional Tax Registration certificate. The conditions, as incorporated in the e-Tender notice are required to be considered together and not in isolation. A composite reading of the tender documents reveal that production of Professional Tax Registration certificate is a mandatory criterion. From technical evaluation report annexed at page 250 of the writ petition, it appears that bids of other tenderers have also been rejected on the ground of non-submission of Professional Tax Registration certificate. No mala fide can be attributed to the 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 petitioners have failed to establish any arbitrariness or unreasonableness in the tender process.

The invitation of the tender is in the realm of contract and the scope of judicial review in award of contract is very limited. There is also no error in the decision making process warranting interference of this Court in exercise of 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.

There shall however be no order as to costs.

Photostat plain copy of this order, duly counter-signed by the Assistant Registrar (Court), be given to the learned advocates for the parties on their usual undertaking.

