

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 3574 of 2020

Reliable Facilities Services Private Limited & Anr.

Vs.

Chittaranjan National Cancer Institute & Ors.

For the petitioners : Mr. Suddhasatva Banerjee, Adv.
Mr. Sagnik Majumder, Adv.
Mr. Aritro Mukherjee, Adv.
Mr. Prasun Ghosh, Adv.

For the respondent no. 4 : Mr. Kallol Basu, Adv.
Mr. Nilanjan Pal, Adv.

For the respondent nos. 1 to 3 : Ms. Aparna Banerjee, Adv.

Last Heard on : 12.09.2022.

Delivered on : 21.09.2022.

Moushumi Bhattacharya, J.

1. The petitioners pray for an injunction restraining the Chittaranjan National Cancer Institute from giving any further effect to its decision of awarding the tender, which is in dispute in the present proceeding, to the

private respondent no. 4. The tender in question is for Mechanized/Automated Cleaning/House Keeping of Chittaranjan National Cancer Institute, Kolkata. The Notice Inviting e-Tender (NIeT) was issued on 4th September, 2019.

2. By an order dated 18th March, 2021 a learned Judge of this Court directed that the allotment of the work to the respondent no. 4 with regard to the awarded contract shall abide by the result of the writ petition. Affidavits were exchanged thereafter and the matter was heard by this Court on several occasions.

3. The question before the Court is whether the private respondent no. 4 could have been awarded the contract pursuant to the NIeT. According to learned counsel appearing for the petitioners, the private respondent no. 4 was in breach of at least two of the tender conditions on the date of assessment of the technical bids put in by the bidders including the petitioner no. 1 herein. Learned counsel appearing for the Institute and the private respondent oppose the relief prayed for on the ground that the private respondent fulfilled the tender conditions and was adjudged the lowest bidder/ L1 which resulted in the private respondent being awarded the contract. Counsel appearing for the respondents further submit that a writ court should abstain from entertaining matters of the present nature where the Court may not have the expertise to enter into specialized tender conditions. According to counsel, the private respondent was the best suited for being awarded the tender and had the necessary qualifications for such.

4. The documents placed by learned counsel for the parties show that the petitioner no. 1, the private respondent no. 4 and another entity qualified in the technical bid for the tender for mechanised housekeeping of Chittaranjan National Cancer Institute. The Tender Summary Report dated 4th February, 2020 features the names of the three entities that emerged successful in the technical bid. The private respondent was adjudged as L1 and the petitioner no. 1 as L2 in a price bid evaluation of the concerned tender. The documents further show that the Price Bid Committee recommended issue of the work order to the L1 bidder after approval by the competent authority. The private respondent no. 4 was thereafter issued the work order in question.

5. The relevant tender conditions required the intending bidder to submit technical documents in the form of statutory and non-statutory documents. The financial bid of the concerned bidder was to be considered only if the technical documents satisfied the conditions in Clause 1 of the tender conditions under NIEt. The statutory documents which are part of “Instruction to Bidders” and “Bid A” of Part-I of the Technical Proposal Bid required the firm to have experience of at least three years and more in mechanized cleaning for 24X7 hours in any Government hospital with minimum “500 or more bedded capacity”. The firm was also required to submit suitable documentary evidence in the form of work orders along with the tender application. Clause 2 of “Bid A”: Part- I also provided that Govt./Trust run private hospitals can also apply with minimum 500 or more bedded capacity.

6. The non-statutory documents included Completion Certificate from any hospital with at least 500 or more beds in a single contract. The Pre-Qualification Application Format required examination of the statutory, non-statutory and NIT documents together with submission of all the necessary information and relevant documents for evaluation. The selected technical bids were to be evaluated as per eligibility and experience criteria based on the statutory documents submitted by the bidder. This was provided under Clause 3.0 of the Information & Instructions for Bidder/Bidders. The said Clause further provided that details of similar works with three years completion credential certificate from any Government hospital with at least 500 beds or more in a single contract within the last three years before publication of the tender notice was to be provided. The bidders were also to produce supporting documents/ certificates in the form of completion certificates from clients in accordance with the given format.

7. The documents submitted by the private respondent for technical qualification are part of the records before the Court and include performance certificates from 2018 and agreement between the private respondent and JSS Hospital, Mysore with regard to housekeeping and other allied facility management certificates. The documents forming part of the writ petition do not disclose any copy of the work order given by the private respondent. The statutory documents forming part of "Bid A": Part-I required "suitable documentary evidence (work order copy)" to be submitted along with the tender application- Clause 2 of the Statutory Cover: Technical Documents. Moreover, the Completion Certificate submitted by the private

respondent does not disclose the work done by the private respondent pertaining to any hospital with more than 500 beds. Incidentally, the private respondent submitted documents in respect of its eligibility for the contract by way of a supplementary affidavit pursuant to an order passed by this Court on 12.7.2022. The said supplementary affidavit discloses work done by the private respondent for JSS Hospital Facility, Mysore. The description of JSS Hospital Facility having 1800 beds under one roof and being one of India's biggest hospitals does not amount to documentary evidence of a work order showing that the private respondent had at least three years' experience in mechanized cleaning for 24X7 hours in a Government hospital with minimum 500 or more bedded capacity required under Clause 2 of the statutory technical documents to be submitted by a bidder. Moreover, the Performance Certificate dated 18.3.2020 forming part of the said supplementary affidavit of the private respondent is also admittedly a post-tender document (the notice inviting tender being issued on 13.12.2019).

8. It is relevant to state that the tender conditions required documents to be submitted both under the categories of statutory and non-statutory. The statutory conditions require work order copy to be submitted while non-statutory documents require Completion Certificate in respect of the work for which a work order copy was to be submitted along with the statutory documents. The tender conditions clearly delineate evaluation of bids at the technical stage into two parts; namely on the statutory documents where technically sound bids would be eligible for evaluation at the next level. The

post-qualification evaluation would be done at the stage of Clause 3.0 of Section-II, "Information & Instruction for Bidder/Bidders".

9. The manner in which the tender conditions have been framed indicate that the bidder must give evidence by way of a work order proving that the bidder has sufficient experience in executing work similar to the scope of the tender in a Government hospital of certain size and coverage. The specific requirement of "*hospitals with minimum 500 or more bedded capacity*" is an indication of the width of the work experience requirement of the tenderer. The aforesaid has been categorised as a statutory condition which a bidder must possess for fulfilling the technical component of the tender. The non-statutory conditions as would be evident from the list of documents in the Instructions are more on the evidence of completion of work in relation to which a work order is to be submitted by the bidder along with the other statutory documents. Taken together, the bidder must not only have shown that the bidder was engaged for a work in the nature of the subject matter of the tender with sufficient breadth and coverage but also that the bidder was able to successfully complete the work.

10. The absence of any work order copy being submitted by the private respondent in compliance with clause 2 of Bid A in connection with a hospital with 500 beds or more reflects that the respondent no. 4 may not have fulfilled the required eligibility of statutory documents for qualifying in the technical bid. The private respondent has also not been able to show any completion certificate with regard to a hospital with more than 500 beds. Therefore, the private respondent being assessed as technically eligible for

proceeding to the next level namely post-qualification evaluation is found to be questionable. The respondent nos. 1-3, being Chittaranjan National Cancer Institute does not have a satisfactory explanation with regard to the private respondent being awarded the contract despite the lacunae in the submission of both statutory as well as the non-statutory documents. Even if the documents enclosed in the supplementary affidavit filed by the private respondent in August, 2022 is considered as filling in the gap, the documents do not indicate compliance of the tender conditions particularly in relation to the statutory and non-statutory documents.

11. The question is not so much whether the petitioner no. 1 has been unfairly eliminated from the race but more of whether the tendering authority conducted sufficient due diligence of the bidders fulfilling the tender conditions. A tender is meant to advance transparency in the process of selection of a bidder, hence any deviation from the tender conditions for the purpose of selecting the successful tenderer raises a presumption of the selection being for extraneous reasons.

12. The defence of the respondent Institute in the form of the verification of documents of the private respondent on 10th February, 2020 aggravates the presumption of wrongdoing rather than mitigating the same since the verification was done just before evaluation of the price bids of the bidders. Clause 3.0 of the Information & Instructions for Bidders clearly indicates that the bid of any bidder who has not complied with one or more conditions prescribed in the terms will be summarily rejected. The said clause also provides that the selected technical bids will go to the next level where the

bids shall be evaluated as per eligibility and experience criteria. It also provides that financial bids of only technically qualified bidders will be open for evaluation. Hence, calling the respondent no. 4 for verification of its documents at the post-technical bid stage despite the respondent no. 4 failing to submit documents as per clause 2 of the "Bid A": Part-I under Technical Documents is patently contrary to the tender conditions.

13. The defence of the respondent no. 4 with regard to the agreement entered into with the JSS hospital, Mysore, does not fulfil the tender conditions by way of the documents, statutory and non-statutory, which were to be submitted by the respondent no.4. Hence, this Court finds substance in the petitioner's case that the respondent no. 4 lacked the eligibility for being awarded for the work order. *N.G. Projects Limited vs Vinod Kumar Jain; 2022 6 SCC 127* has been cited on behalf of the respondents on the point of the writ court refraining from imposing its decision over the decision of the employer as to whether a bid should be accepted or not does not assist the respondents since the Supreme Court was of the view that the Court can and should examine as to whether the decision-making process is in sync with the tender conditions. In any event, the scope of work completed in the said decision was infrastructure project under Section 41(ha) of the amended The Specific Relief Act, 1963.

14. In view of the above reasons, this Court finds sufficient ground to hold that the awarding of the work order to the private respondent no. 4 cannot be supported in the background of the documents shown to the Court. However, since the private respondent has been engaged as the contractor

from February, 2020 onwards and has been performing the work for the respondent Institute, any sudden stoppage of that work would result in difficult consequences for the Institute where mechanised cleaning/house-keeping is required on a daily basis. Hence, the Institute is directed to revisit the evaluation of the statutory and non-statutory submission of documents by the three bidders in light of the tender conditions and come to a fresh decision within eight weeks from this judgment and order. The re-evaluation shall be transparent and strictly in accordance with the tender conditions. The petitioner no. 1 and the private respondent shall be communicated with the order within an outer limit of ten weeks from today. The private respondent shall continue to perform its work until the parties seek recourse against the decision of the tender authority as directed by the Court.

15. WPA 3574 of 2020 is disposed of in terms of the above.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)