

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.23205 OF 2023

+

CAN 1 of 2023 (vacating application)

**S. B. Construction and Co. and Another
Vs.
State of West Bengal and others**

For the petitioners	:	Mr. Debabrata Saha Roy, Mr. Pingal Bhattacharyya, Mr. Neil Basu, Mr. Rahul Kumar Singh, Mr. Sankha Biswas
For the State	:	Mr. Suman Sengupta, Mr. Arindam Mondal, Mr. Sambuddha Dutta, Mr. Sanatan Panja
For the respondent no.4	:	Mr. Ramdulal Manna, Mr. Manas Dasgupta, Ms. Manju Manna, Mr. Sayan Mukherjee
Hearing concluded on	:	17.11.2023
Judgment on	:	20.11.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is a registered partnership firm and petitioner no.2 is its managing partner. The petitioner no.1 participated in a tender floated by the respondent-Authorities. However, after submission of technical bid, certain clarifications were sought by the respondent-Authorities from the petitioners to which the petitioners duly replied

with clarifications. Upon the petitioners having given such reply, the respondent-Authorities *vide* communication dated September 18, 2023 retained their decision to reject the petitioners' bid as technically ineligible. The grounds of rejection were primarily two-fold - that the petitioners had failed to fulfil the technical criteria required for the work and that there were discrepancies in the PAN number provided by the petitioners with regard to the debarment of the petitioner no. 1 and withdrawal of such debarment in a prior project done by the petitioners.

2. Learned counsel for the petitioners places reliance on the documents annexed to the writ petition and uploaded duly by the petitioners with their bid to argue that the petitioners met all technical criteria. Learned counsel points out that one of the components of the work was Interlocking Concrete Block Pavement (ICBP), which was also a component of the previous works done by the petitioners. It is submitted that insofar as the requirement of the previous work meeting forty per cent of the estimated amount, the tender document did not distinguish between ICBP and other works. It is argued that the works contemplated in the Notice Inviting Tender (NIT) was widening and strengthening of roads under Birbhum Highway Division No.II in the District of Birbhum. The value of work done by the petitioners on the past occasions sufficiently fulfilled the criteria set out in the present NIT, being above forty per cent of the estimated amount.

- 3.** Learned counsel appearing for the State argues that the format of price schedule indicating the percentage of BoQ was an integral part of the tender document and clearly indicated the amount of ICBP work to be done by the prospective bidder. It is argued that such criteria were not met by the petitioners at least insofar as the ICBP work was concerned, since the previous work experience of the petitioners primarily relates to Bitumen work.
- 4.** Insofar as the discrepancies of PAN is concerned, it is argued that the PAN disclosed in the petitioners' affidavit Y/declaration regarding previous debarment and withdrawal of such debarment does not tally with the PAN of the petitioner no.1-firm which was uploaded at the time of bidding.
- 5.** Learned counsel for the respondent no.4, the successful bidder argues that the nomenclature of the work is 'similar nature'. However, the petitioners failed to fulfil previous work experience criteria with regard to individual items as stipulated in the BoQ. Particularly, the ICBP work of the petitioners was below par.
- 6.** It is further argued that the GST number connected with the PAN of the petitioner no.1 is different from the PAN of the petitioner no.1 which also disqualifies the petitioners.
- 7.** Taking the last point first, the said ground was never disclosed by the respondent-Authorities for rejecting the technical bid of the petitioners and cannot be permitted to be taken by the successful bidder for the first time during arguments in the writ petition.

8. One of the vital points on which the rejection was effected was that the petitioners failed to fulfil the credentials required to participate.
9. The plinth of the arguments of the respondents is insufficient ICBP work done by the petitioners on previous occasions.
10. To put things in perspective, the name of the work of the present NIT dated July 24, 2023 is required to be looked into. The nature of work disclosed therein is “widening and strengthening work” under the concerned Birbhum Highway Division No.II. There is nothing apart from that to indicate the exact components of the work to be performed to fulfil the past experience criteria.
11. Under the provisions of Defect Liability Period and Refund of Security Deposit in Clause 18 of the NIT, an explanation, although in a somewhat different context, defines ‘work’ to mean and include road work, bridge work, building work, sanitary and plumbing work, electrical work and/or any other work contemplated within the scope and ambit of the contract. While stipulating the defect liability period, thorough bituminous surfacing work was also contemplated as one of the components of the work in item (ii) under the explanation clause.
12. Under clause (iii) of the explanation, widening and strengthening of flexible pavement and extension of building/bridge/culvert as well as construction of new flexible pavement up to bituminous level was also contemplated. Construction of rigid pavement and new flexible pavement was also another component of the work. Thus, several components found place in the NIT description of the widening and strengthening of road work. However, conspicuously, no segregation

was made between the different components of work individually, nor was any special stress laid on any particular component of the work such as ICBP. Also, no particular financial break-up was given in the in the credentials clause of the NIT corresponding to the value of work previously done for particular components of the work vis-à-vis the required percentage of the estimated amount. Hence, the respondents' argument as to the petitioner no.1 not fulfilling the purported requirement of sufficient ICBP work is not borne out by the tender document itself. The petitioners, in fact, submitted duly the price schedule in terms of the percentage BoQ format given with the NIT. The aggregate work done previously by the petitioners, as reflected from the documents uploaded by the petitioners, clearly indicated that the tender criterion of more than forty per cent of the estimated amount put to tender was fulfilled by the petitioners.

- 13.** Clause 3.0, so vociferously relied on by the respondents, contemplates work of 'similar nature', which, as per the tender document itself, was restricted to 'widening and strengthening' of road and contemplated bituminous work, building of pavement and several other ingredients. No particular stress was laid on ICBP or any other component as such.
- 14.** The language used in Clause 3.0 (i)(a) was that the contractor was to have satisfactorily completed during the last five years prior to the date of issue of the NIT at least one work of similar nature having a magnitude of more than 40 per cent of the "Estimated amount put to tender of intended job", which was squarely fulfilled by the petitioners.

Thus, the artificial distinction between ICBP work and bituminous and/or other works sought to be introduced subsequently by the respondents is *de hors* the NIT and created by the respondents merely to suit their purpose. Thus, the first ground of refusal of eligibility of the petitioners cannot be sustained in law and in terms of the NIT.

- 15.** Insofar as the second ground of refusal is concerned, the petitioners have given sufficient explanation that the petitioner no.2, being the managing partner of the petitioner no.1-firm, was in charge of the entire process of bidding previously and, in the previous order of debarment and subsequent order of withdrawal of the same, the PAN of petitioner no.2 was erroneously referred to. However, it is the petitioner no.1 with its own PAN number, which had submitted the bid on the previous occasion as well as in the present tender. Mere misquotation of PAN number of the managing partner of the bidder/firm instead of the firm by the previous employer cannot be so palpable as to vitiate the entire eligibility of the petitioners. The petitioners were not at fault for the same and, in any event, such discrepancy, even if any, was minor in nature and sufficiently explained away by the petitioners upon being given such opportunity by the respondent-Authorities themselves. Hence, the rejection of the petitioners' bid on the ground of technical ineligibility is palpably *de hors* the law and perverse.
- 16.** Accordingly, WPA No.23205 of 2023 is allowed, thereby setting aside the communication dated September 18, 2023 *vide* Memo no. 480-R/PIU-I whereby the petitioner no.1 was held to be ineligible.

17. CAN 1 of 2023 (vacating application) is also disposed of accordingly.
18. The respondent nos.1 to 3 are directed to reopen the tender process from the financial bid stage, deeming the petitioner no.1 to be a technically eligible bidder. All consequential action taken by the respondent nos.1 to 3 in terms of the impugned rejection of the bid of the petitioner no.1 are hereby set aside. The respondent nos.1 to 3 shall now resume the tender process from the financial bid stage and proceed with the tender accordingly, as expeditiously as possible.
19. There will be no order as to costs.
20. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)