

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 06.03.2025
DELIVERED ON: 12.03.2025

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

MAT NO. 332 OF 2025

WITH

I.A. NO. CAN 1 OF 2025

BISWAS ENTERPRISES AND ANOTHER

VERSUS

STATE OF WEST BENGAL AND OTHERS

Appearance:-

Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Adv.

Mr. Sudipta Dasgupta, Adv.

Mr. Bikram Banerjee, Adv.

Mr. Suthirtha Nayek, Adv.

Mr. Baibhav Roy, Adv.

Ms. Sinjini Chakraborti, Adv.

.....For the Appellants

Mr. Sandipan Banerjee, Adv.

Mr. Sobhan Majumder, Adv.

.....For the Respondent Nos. 4 and 6

Mr. Pratik Dhar, Ld. Sr. Adv.

Ms. Kalpita Paul, Adv.

Mr. Arijeet Bhattacharjee, Adv.

.....For the Respondent No. 5

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. The writ petitioner is the appellant herein. The writ petition was filed for issuance of a writ of mandamus to direct the respondent authorities to set aside/rescind/modify the notice inviting e-tender dated 18.09.2024 for supply of good quality Vannamei Shrimp seed in the district of South 24 Parganas under the scheme of Monoculture of Vannamei Shrimp. The other prayers sought for in the writ petition were incidental and ancillary to the said main relief and pertaining to the tender for two other districts namely North 24 Parganas and Purba Medinipur.
2. The learned Writ Court dismissed the writ petition by the impugned order on the ground that the appellant writ petitioner did not have any right to make any submissions with regard to the terms and conditions that may be fixed by the tender inviting authority as the said authority is the best judge to fix terms and conditions and the scope of judicial review in such matters is very limited. Furthermore, the learned Writ Court held that the appellant writ petitioner having failed to match the minimum required credential was unable to participate in the bidding process. Further it was held that the appellant writ petitioner had approached the court belatedly much after the last day of submission of bid which was fixed on 30.10.2024 and the question of exercising power of judicial review at the instance of the appellant is not feasible and accordingly the writ petition stood dismissed.
3. We have elaborately heard Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate assisted by Mr. Sudipta Dasgupta, Mr. Bikram Banerjee, Mr. Suthirtha Nayek, Mr. Baibhav Roy, Ms. Sinjini Chakraborty, advocates

appearing for the appellants and Mr. Sandipan Banerjee and Mr. Sobhan Majumder learned advocates appearing for the respondent nos. 4 and 6 and Mr. Pratik Dhar, learned Senior Advocate assisted by Ms. Kalpita Paul and Mr. Arijeet Bhattacharjee, learned advocates appearing for the respondent no. 5.

4. The facts relating to the notice inviting tender is not in dispute. As could be seen from the writ petition, the petitioner challenged the three notices inviting tenders in respect of the same nature of work for three districts. Since the notice inviting tender are identical, it would suffice to refer to anyone of the notification and we take up the notification issued for the district of South 24 Parganas dated 18.09.2024.
5. E-tender for supply of the said product was invited in the e-procurement portal of the State Government by the Director of Fisheries, West Bengal on behalf of the Government of West Bengal. The total quantity to be supplied was 1,66,85,000 numbers of Vannamei Shrimp seed. The total estimated amount of the tender was Rs. 1,25,13,750.00/-. The intending bidder was required to deposit 2% as earned money which was fixed as Rs. 2,50,275.00/-. The e-tender consists of two bids system namely technical bid and financial bid. It was mentioned that the bidders will be selected on the basis of eligibility criteria, technical evaluation and financial evaluation. The time schedule of the e-tender was also mentioned of which the bid submission closing date would be relevant to the case on hand which was fixed as 30.10.2024 at 5:00 PM.
6. The eligibility criteria for participation in the tender was that the Shrimp seed producer/hatchery owners having CAA Registration Certificate

themselves or through their authorised agents or supplier having certificate from CAA registered hatchery from where seed to be procured having capacity to fulfill all the criteria up to the mark of satisfaction of Tender Evaluation Committee. Work credential was stipulated wherein the intending tenderers/bidders should produce credentials for supply of shrimp seed of minimum value of 30% in single work of the estimated amount put to tender during the last five years prior to the date of issue of e-tender.

7. The second condition was that the intending tenderers/bidders should produce credentials of two numbers of completed works for supply of shrimp seeds of the minimum value of 20% of the estimated amount put to tender during the last five years prior to the date of issue of the e-tender notice. It is an admitted fact that the appellant/writ petitioner did not satisfy the work credentials condition as stipulated in clause (b) of the notice inviting tender. The appellant's contention is that this work credentials condition has been so drafted so as to benefit three participants and it is a clear case of cartelization and to create a monopoly which is violative of Article 14 and 19(1)(g) of the Constitution of India and Section 3(3) of the Competition Act, 2002. Further it is submitted that the respondent in whose favour the tender was awarded, had it been awarded a couple of days later the certificate which was issued to satisfy the eligibility criteria would have expired and they would have not been qualified to be selected. Therefore, it is submitted that the impugned tender notification had to be rescinded.
8. The respondent who is the successful bidder contended that the writ petition was not maintainable as the writ petitioner was admittedly not

qualified to participate in the bid and a challenge to the tender notification at their instance is not maintainable. Furthermore, the writ petition was filed belatedly much after the bid submission closing date which was fixed as 30.10.2024. Further it is submitted there is no question of cartelization but the tenders were invited district wise as a part of centralisation of tender process which was pursuant to an audit para by the Principal Accountant General, West Bengal and centralisation of a tender process is at the discretion of the state and the same cannot be questioned by the appellant writ petitioner. In support of his contention, reliance was placed on the decision in ***Pathak Engineering Corporation and Another Versus State of West Bengal and Others***¹ and the decision of the Hon'ble Supreme Court in ***Michigan Rubber (India) Limited Versus State of Karnataka and Others***².

9. After we have³ elaborately heard the learned advocates for the parties and carefully perused the materials placed on record, we first propose to take note of the legal principle which has been culled out by the Hon'ble Supreme Court qua the jurisdiction of this court in interfering with tender matters more particularly the terms and conditions of tender as stipulated by the tender inviting authority. In ***Michigan Rubber (India) Limited*** several decisions of the Hon'ble Supreme Court have been noted and the following principles were culled out from those decision:-

From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in

¹ (2023) 2 HCC (Cal) 55 (DB)

² (2012) 8 SCC 216

action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

- 10.** Paragraph 23(b) of the above decision of the Hon'ble Supreme Court would be relevant for the case on hand wherein it has been held that fixation of value of the tender is entirely within the purview of the executive and the court hardly have any role to play in this process except for striking

down such action of the executive as is proved to be arbitrary or unreasonable. Thus, we are to examine as to whether the process adopted by the respondent or the decision taken by the respondent namely the tender inviting authority was mala fide or intended to favour someone or the process was so arbitrarily or irrational and whether the public interest would be affected.

11. The case of the appellant/writ petitioner itself is that fixation of the value at more than one crore is only with a view to award the tender in favour of the chosen few and this has resulted in cartelisation. It is not clear as to how the appellant writ petitioner can take such a stand when the appellant writ petitioner themselves had participated in another tender by invited State Fisheries Department during May 2023 where the estimated amount of the tender was Rs. 99,95,025.60/- and the estimated amount of the subject tender was Rs. 1,25,13,750/-. Thus, the margin between those tenders were very narrow and on this ground the appellant/writ petitioner can hardly make out a case for interference with the fixation of the value of the tender and allege that this has been so made to benefit certain individuals. Therefore, such contention has to be rejected and accordingly the same stands rejected.

12. Having held so, we propose to answer the question we posed to ourselves as to “whether the process adopted or the decision taken by the tender inviting authority was arbitrary or irrational?” The official respondents have justified the need to centralize the tender process by referring to an audit para of the Principal Accountant General. The Director of Fisheries, West Bengal was informed by the memo dated 22.06.2023

referring to an audit conducted by the Principal Accountant General (Audit-I), West Bengal and the observations made by the audit team was referred to. In the audit observation/para it was pointed out that on scrutiny of records, it was found that block wise tender notice was circulated by the local office in compliance of memo dated 31.12.2021 by the Director of Fisheries during the year 2020-2021 to 2022-2023 and different L1 prices was quoted for the different blocks in the same year for the same variant of fish, shrimp and crab. Thus, it was inferred that the decision of the authority to float decentralized tender and make the procurement process of various inputs for Swarna Matsya Yojana is the prime reason of loss to Government Exchequer amounting to Rs. 20,15,959.00/-. Further the audit team pointed out that the authority (tender inviting authority/fisheries department) adopted the centralized procurement process and invited the centralised tender for procurement of all its inputs taking into consideration the requirement of the entire Sub-division and not fragmented/split procurement block wise, the Government Exchequer need not shoulder excess expenditure amounting to Rs. 20.16 lakhs. Therefore, the authority was advised by the Principal Accountant General that they need to adopt a holistic approach instead fragmented approach while inviting tender. Therefore, the Assistant Director of Fisheries sought for necessary instructions from the Director of Fisheries or issuance of guidelines so that they may follow the guideline to avoid loss to the Government Exchequer as pointed out in the inspection report of the Principal Accountant General. The observations made by the Principal Accountant General pointing out the loss to the Government Exchequer on account of fragmented/split

procurement process block wise had to be avoided and precisely for such reason, the notice inviting tender which were impugned in the writ petition have been centralised and tenders have been invited district wise. This decision of the tender inviting authority or that of the state cannot be held to be arbitrarily or irrational for this court to interfere.

13. That apart, the appellant/writ petitioner did not satisfy the eligibility criteria as stipulated in the notice inviting tender. Therefore, the appellant could not have maintained the writ petition that too much after the bid closing day which was fixed as 30.10.2024 at 5:00 PM. The writ petition was filed only on 23.12.2024 which undoubtedly is much after the last bid closing date. The learned advocate appearing for the respondent department has produced written instructions dated 04.03.2025 from which it is seen that after the dismissal of the writ petition further steps have been taken and it is submitted that the work order has already been issued to the lowest bidder.

14. Thus, for the above reasons, we find no good grounds to interfere with the order passed by the learned single bench. Accordingly, the appeal fails and is dismissed. No costs.

(T.S. SIVAGNANAM, CJ.)

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]

(P.A.- SACHIN)