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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 141 of 2024

**M/s. P.G. Enterprise & Anr.
-versus
The Chief Engineer, Irrigation and Waterways
Directorate, North East circle & Ors.**

**Mr. Debabrata Dhar,
Mr. Ankan Mitra.
...For the Petitioners.**

**Mr. Hirak Barman,
Mr. Kumar Shantanu.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner no.1 participated in a tender process in the year 2023. The end date for submission of the tender was 10th January, 2023 and the technical bid was to be opened on 13th January, 2023.

On 10th February, 2023, an application was filed by one of the partners of the petitioner no.1 intimating that the petitioner no.1 intends to withdraw from the tender process. The ground for withdrawal for tender process as mentioned by the petitioner no. 2 is that one of the partners of the partnership firm is suffering from cancer and it would not be possible for the firm to execute any kind of work because of the health issue of the partner of the petitioner no.1.

Financial bid was opened on 23rd February, 2023 and the petitioner was found to be the L1 bidder.

The petitioner no.1 was intimated by a communication dated 10th March, 2023 that the application for withdrawal cannot be accepted in terms of clause 23 of NIT. The petitioner no.1 was directed to submit the Additional Performance Security failing which the earnest money will be summarily forfeited.

The respondent authorities have show caused the petitioner no.1 as to why steps shall not be taken for not depositing the Additional Performance Security and to further show cause as to why the earnest money deposited by the petitioner no.1 will not be forfeited.

The petitioner challenges the said act of the authority.

It appears in the instant case that prior to the financial bid being opened, the petitioner no.1 applied before the Superintending Engineer with request for withdrawal from the tender process. On the date the application for withdrawal was filed by the petitioner, neither of the parties was aware that the petitioner no. 1 would emerge as the L1 bidder.

Had the Superintending Engineer acted upon the application filed by the petitioner seeking withdrawal from participation in the tender process immediately on receipt of the same on 10th February, 2023, the petitioners would have been out of the competition on that day itself. The financial bid of the petitioner was not required to be opened at all. The bid of the petitioner ought to have been rejected at that stage so that the tender could proceed with the rest smoothly.

The very purpose of holding an open tender is to select the best applicant who may perform the work successfully. When the applicant itself seeks to withdraw from the selection process prior to conclusion of the bid, there is no reason to force him to take him to the next stage of selection and later impose penalty by forfeiting the security deposit and the earnest money deposit. The idea of the State is not to make profit by earning money forfeiting deposits from the bidders. As long as there is no mala fide intent to withdraw in the midst of a tender process, there is no reason as to why an unwilling bidder will not be permitted to drop out.

In such case, the competition is to be restricted amongst the other bidders. For reasons best known, the Superintending Engineer did not act on the application for withdrawal filed by the petitioner no.2 and kept the petitioners in the fray.

Subsequently, the financial bid was opened and the petitioner no.1 was found to be the lowest bidder. Being found to be the lowest bidder, the petitioner no.1 was directed to submit the Additional Performance Security which the petitioner did not as the petitioner no.1 intended to withdraw from the tender process.

The respondent authority cannot force a bidder to continue with the bid even after the bidder has expressed intention and desire to withdraw from the competition prior to selection. There is no reason to force an unwilling bidder to perform the work. By this way the work will never be completed.

The Superintending Engineer ought to have permitted the petitioner no.1 to withdraw at the very initial stage prior to conclusion of the tender process.

The department ought to have proceeded with the tender from amongst the willing bidders and not force an unwilling bidder to perform the work. By this manner the very purpose for floating the open tender gets frustrated and the work in question gets delayed.

Had the bidder withdrawn the candidature after the selection is concluded, then the position would have been different. Then the mala fide intention of the bidder could have been questioned. Here the candidature has been sought to be withdrawn prior to finalization of the bid. On withdrawal of the bid from the petitioner no.1 the tender process could have continued with the remaining bidders.

The subsequent steps taken by the department in penalizing the petitioner no.1 by forfeiting the earnest money deposit for not paying the additional performance security is absolutely unwarranted and cannot be permitted to stand.

In view of the above, the instant writ petition is disposed of by directing the Superintending Engineer, Irrigation and Waterways Directorate, North East Irrigation Circle-1, the respondent no. 2 herein to treat the bid filed by the petitioner no.1 as withdrawn and to cancel the candidature of the petitioner in respect of the subject tender.

The earnest money deposited by the petitioner no.1 shall be returned and no coercive steps shall be taken against the petitioners for withdrawing the candidature in the subject tender process.

The instruction forwarded by the respondent authority is taken on record.

The writ petition stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)