

11.05.2023

ASR Ct. no. 16

4.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

WPA 3388 of 2022

Shib Prosad Banerjee

Vs.

The State of West Bengal & Ors.

Mr. Saptansu Basu

Mr. Swarup Paul

Mr. Surya Maity

.....for the petitioner

Mr. Satrajit Sinha Ray

.....for the respondents

Ms. Sanchita Barman Ray

.....for the respondent no. 1.

In spite of the direction made in the order dated 7th February, 2023, the respondents have not filed their affidavit-in-opposition in the writ application.

As a last chance time to file the affidavit-in-opposition by the state respondents as well as by the private respondent is extended till 19th May, 2023 peremptorily.

Affidavit-in-reply may be filed by 9th June, 2023.

Re: CAN 1 of 2023

The application (CAN 1 of 2023) is treated as on the day's list.

The applicant is an unsuccessful bidder in the subject tender process.

The writ petitioner, in the writ application, has challenged cancellation of the tender by the state respondents. If the writ petitioner succeeds, it could possibly have the ultimate effect of award of the contract in his favour.

The applicant in this application does not want this.

He wants the writ application to be dismissed so that he might have an opportunity of participating in a fresh tender.

The association of the applicant with the cause of action in the writ, in my opinion is extremely remote. Nevertheless the decision of the Supreme Court in ***Afcons Infrastructure Limited – Vs.- Nagpur Metro Rail Corporation Limited & Anr. reported in (2016) 16 Supreme Court Cases 818*** has been cited by learned counsel for the applicant to support his contention.

Paragraph 18 of the judgement is extracted below:

“Before we conclude, it is necessary to point out that the High Court was of

the opinion that the eligible bidders were not entitled to be either impleaded in the petition filed in the High court by the ineligible bidder GYT-TPL JV or were not entitled to be heard. With respect, this is not the appropriate view to take in matters such as the present. There are several reasons for this, one of thme being that there could be occasions (as in the present appeals) where an eligible bidder could bring to the notice of the owner or employer of the project that the ineligible bidder was ineligible for additional reasons or reasons that were not within the contemplation of the owner or employer of the project. It was brought to our notice by Afcons Infrastructure in these appeals that GYT-TPL JV did not have any experience in the construction of a viaduct by the segmental construction method and that the translations of documents in Mandarin language filed in the High Court were not true English translations. Submissions made by the learned counsel for Afcons Infrastructure in this regard are important and would have had a

bearing on the decision in the writ petition filed in the High Court but since Afcons Infrastructure was not a party in the High Court, it could not agitate these issues in the writ petition but did so in the review petition which was not entertained. It is to avoid such a situation that it would be more appropriate for the constitutional courts to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder.”

The above Supreme Court judgement laid down that eligible bidder were necessary parties_in proceeding filed by “an unsuccessful ineligible bidder.”

In this case the Supreme Court was very concerned that the contract was awarded to the most eligible bidder and that to evaluate the eligibility claim of an unsuccessful bidder assistance of eligible bidders could also be taken by the court. Here this is not the case. This is more an attempt of another unsuccessful bidder to displace another unsuccessful bidder from the contest.

I am not minded to implead the applicant as a party in the writ application but only to allow

him to participate in the proceedings to such extent allowed by the learned judge hearing the writ application.

Considering the prima facie case, and the balance of convenience no new tender with regard to the subject matter shall be invited by the state respondents till 14th July, 2023 or until further order whichever is earlier.

The application (CAN 1 of 2023) is disposed of.

List the main writ for hearing before the next circuit on 12th June, 2023.

(I. P. Mukerji,J.)