

**(2006) 12 CAL CK 0011**

**Calcutta High Court**

**Case No:** Writ Petition No. 4081 (W) of 2003

Gayatri Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Dec. 4, 2006

**Citation:** AIR 2007 Cal 233

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** S.K. Halder and Arunabha Jana, for the Appellant; Ahi Bhushan Chakraborty and D.S. Mishra, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The petitioner (a participating tenderer) questioned the selection of the fifth respondent as the successful tenderer in the process initiated by notice dated November 25th, 2002. The short question in the case is whether the fifth respondent was eligible to participate in the process.

2. The notice inviting tender (it was mail motor contract) specifically mentioned that the vehicle should be one not having already run more than one lakh kilometers and crossing the age of five. The admitted position is that the vehicle sought to be placed by the fifth respondent was more than five years old. Though the work order was given, he could not work, since this case was pending. The department continued to get the work done by the erstwhile tenderer.

3. Counsel for the department submits that the word "and" appearing in fifth line of page one of the tender notice was to be read as "or". He says that the word "and" had come to be inserted because of a printing error. I do not find any merit in this afterthought argument. If there was really a printing error, the department was at liberty to issue appropriate notice correcting it. No such step was taken.

4. It is submitted that subsequently the fifth respondent acquired a new vehicle. That could not have made him eligible, since at the date he participated, his vehicle sought to be placed, was more than five years old. I therefore, hold that the fifth respondent was wrongfully selected by the department.

5. For these reasons, I set aside the selection of the fifth respondent and allow the writ petition to this extent. It is made clear that the department will be at liberty to initiate fresh tender process on such terms and conditions as to may deemed fit. If the petitioner and the fifth respondent are eligible to participate, they will be at liberty to do so. There shall be no order for costs in the case.

6. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.