

## Mackintosh Burn Limited Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** July 18, 2006

**Citation:** (2007) 2 CTLJ 28

**Hon'ble Judges:** Prasenjit Mandal, J; Prabir Kumar Samanta, J

**Bench:** Division Bench

**Advocate:** Kishore Dutta and Ashok Kumar Jana, for the Appellant; Bidyut Mukherjee and Sridhar Panja for Respondent No. 7 and M.K. Basu and D.P. Dutta, for the Respondent

**Final Decision:** Dismissed

### Judgement

Prasenjit Mandal, J.

This mandamus appeal has arisen out of the judgment and order dated 13.12.2005 passed by the Hon'ble Justice

Jayanta Kumar Biswas in Writ Petition No. 22143 (W) of 2005.

2. Being aggrieved by and dissatisfied with the said judgment and order, this mandamus appeal has been filed by the writ petitioner.

3. The petition for stay is also moved. As both the petition for stay and the mandamus appeal involve the same matter, the two are taken together

for convenience.

4. The appellant's case in short is that the Department of Public Works and Public Works (Roads), Government of West Bengal issued notice

inviting tenders on February 28, 2005 for construction of a bridge over the river "Dwarka" at Ganthala Ghat in the district of Murshidabad and

then the writ petitioner and the respondent No. 8 and others submitted their quotations. The tender committee having found tender of the

respondent No. 8 as lowest accepted the same but the tender committee has failed to consider the notification of the government bearing No.

10500-F dated November 19, 2004 wherein price preference might be allowed to the extent of 10 per cent, to the writ petitioner. But such

notification was ignored by the tender committee and then the tender of the respondent No. 8 was accepted. Thereafter, the writ petitioner filed the

writ application but the learned judge dismissed the writ petition.

5. The State of West Bengal is not contesting the mandamus appeal but the respondent No. 7, i.e. the Superintending Engineer, P.W.D. (Roads),

Directorate and the respondent No. 8, i.e. M/s. Rajpath Constructors and Engineers Limited, are contesting the mandamus appeal.

6. Having considered the contentions of both the parties and on hearing submissions of the learned advocates of both the sides, I find that

according to the Notification No. 10500-F dated November 19, 2005, the appellant may be allowed 10 per cent of the price preference only for

the purpose of selection, but once selected on the basis of such preference, the appellant shall have to execute the work at the lowest bid received

in the process of selection.

7. The respondent No. 8 offered quotation 10.26 per cent, below the estimated price as indicated in the NIT (Notice Inviting Tenders), whereas

the appellant offered quotation 6.88 per cent, below the tender price. The tender price was for Rs. 11,91,83,832 and the writ petitioner's offer

amounts to Rs. 11,09,83,984.35 paise after deduction of 6.88 per cent, and further deduction of 10 per cent, is awarded thereon, the offer price

of the appellant becomes Rs. 9,98,85,585.92 paise; whereas the offer price of the respondent No. 8 after deduction of 10.26 per cent becomes

Rs. 10,69,55,570.84 paise. This signifies that if the benefit of the said notification is allowed to the writ petitioner/appellant, its quotation becomes

the lowest and so it should be accepted.

8. But, the said notification does not lay down that the appellant is entitled to have further benefit of 10 per cent, as a matter of right but such

benefit "may" be allowed to the appellant as per notification. This signifies that the writ petitioner has no right at all but it deserves consideration of

such notification in the matter of selection. The tender committee asked the appellant whether it was agreeable to the offered price tendered by the

respondent No. 9 and then the appellant agreed to such proposal, but ultimately such proposal was not accepted. The tender committee obtained

the opinion of the Finance Department and the LR of the Government of West Bengal and then accepted the offer price of the respondent No. 8.

Thus, I find that the action of the respondent No. 7 does not amount to violation of any rule of natural justice because the notification lays down

that the concerned authority "may" allow further benefit of 10 per cent, if it desires. Alternatively, I can say that the appellant cannot have claim of

further deduction of 10 per cent, as a matter of right by dint of the said notification.

9. Learned advocate for the appellant has referred to the rulings Indian Drugs and Pharm and Others Vs. Punjab Drugs Manufacturers Association

and Others, to show that such relaxation to the petitioner is not arbitrary and the legislator can well grant such preference to a sick company.

Nobody raises any dispute of the proposition of the law as stated in the said two rulings. But I hold that these two rulings are not in a position to

help the petitioner in anyway. As discussed above, the tender committee did not act on its own in selecting the respondent No. 8 as the lowest

bidder. It obtained the opinion of the Finance Department and the LR of the Government of West Bengal and then the quotation tendered by the

respondent No. 8 was accepted. Therefore, the action of the respondent No. 7, I hold, cannot be said to be arbitrary and done with malice.

Therefore, the action of the respondent No. 7 is not vitiated in any manner and in such a situation the court should not interfere with the order of

the tender committee.

10. What fact must be considered is that the notice inviting tenders did not lay down that the appellant might be allowed 10 per cent of the price

preference; but the same had been noted in the bid document. Had such fact been noted in the NIT, the bidders might have changed their offer

according to the situation they would have thought fit and proper. Such proposition has been clearly laid down in the ratio of the ruling in

Harminder Singh Arora Vs. Union of India (UOI) and Others, particularly in para Nos. 9, 18 and 19. Such ruling is applicable in the instant

situation of the case from where the appeal arose, I hold that it is immaterial whether the bidders knew the said notification or not.

11. Another ruling in AIR 1983 NOC 182 (Delhi) is also applicable in the situation and in this ruling the Hon"ble Court observed that the High

Court should not interfere unless there is favouritism or arbitrariness in the action of the concerned authority.

12. The respondent No. 8 submitted offer price of the construction according to the terms and conditions mentioned in the NIT and so thereafter

they could not be placed to the disadvantageous position to give some benefits to the appellant. According to the ruling Sangeeta Singh Vs. Union

of India (UOI) and Others, when the terms and conditions are clear, sufficient and creates no doubt, due importance should be given to the said

terms and conditions without further explanation and so the court is to look into the matter whether the concerned authority had acted according to

the terms and conditions laid down in the NIT.

13. Therefore, I hold that upon receiving the clarification of the Finance Department and the LR of the Government of West Bengal, the tender

committee had rightly accepted the lowest offer tendered by the respondent No. 8. And so I hold that there is no justification for interference with

the tender process adopted by the tender committee.

14. Above all, I find that work order was issued to the lowest bidder, i.e. the respondent No. 8 on 27.10.2005 and they started construction since

November 2005 and as per submission of the learned advocate for the respondent No. 8 they have completed 40 per cent of the construction of

the bridge. The learned advocate for appellant did not dispute such claim. The appellant did not seek/obtain any stay order against the work order

issued in favour of the respondent No. 8 and so as usual the respondent No. 8 proceeded with the construction work as per work order received

from the concerned authority.

15. Therefore, in such a situation if the work of the respondent No. 8 is stopped by any order of the court, it will unnecessarily create many

troubles to the respondents particularly in the matter of assessment of the cost of work and other pecuniary features of the construction so far

made by the respondent No. 8. Therefore, I hold that it will not be justified and proper to stop the work of the respondent No. 8 in the midst of

the construction they are doing.

16. In the above premises, I hold that there is nothing to interfere with the judgment and order dated 13.12.2005 passed by the learned trial judge

in WP No. 22143 (W) of 2005. Accordingly, the petition for stay is dismissed. Consequently, the appeal is dismissed.

There will be no order as to costs.

17. Urgent xerox certified copy of this order, if applied for, be supplied as expeditiously as possible.

Prabir Kumar Samanta, J.

19. I agree.