

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 22551 of 2026

Shrimanta Das

Vs.

The State of West Bengal & Ors.

Mr. Soumya Majumder, Sr. Adv.

Mr. Abhinab Sinha

Mr. Satrojit Sinha Roy

....For the petitioner.

Mr. Surojit Nath Mitra, Ld. AG.

Mr. Srijib Chakraborty

Mr. Atreya Chakraborty

....For the State.

Mr. Saptansu Basu, Sr. Adv.

Mr. Swarup Paul

Mr. Guru Saday Dutta

....For the respondent nos. 11 and 13.

Md. T.M. Siddiqui, Sr. Adv.

Mr. Suman Banerjee

....For the respondent no. 12.

Mr. Anish Roy

....For the respondent no. 14.

WITH

W.P.A. No. 23264 of 2026

Sandip Halder

Vs.

The State of West Bengal & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.

Mr. Surya Maity

....For the petitioner.

Mr. Surojit Nath Mitra, Ld. AG.

Mr. Srijib Chakraborty

Mr. Sunny Nandy

Mr. Atreya Chakraborty

....For the State.

Mr. Jaydip Kar, Sr. Adv.

Ms. Jyoti Rauth

....For the respondent no. 13.

Hearing Concluded On : 01.09.2026

Judgment Delivered On : 03.09.2026

Judgment Uploaded On : 03.09.2026

Krishna Rao, J.:

1. In WPA No. 22551 of 2026, the petitioner has challenged the Notice Inviting Tender for supply of the cooked diet in the ESI Hospitals of the State of West Bengal, directing the respondent authorities for the evolution of the bids afresh submitted in the Notice Inviting Tenders for supply of the cooked diet and to set aside the Award of Contracts issued in favour of the private respondent for supply of the cooked diet in the ESI Hospitals of the State of West Bengal.
2. In WPA No. 23264 of 2026, the petitioner has challenged the Award of Contract dated 20th August, 2026, for supply of the cooked diet to the indoor patients admitted in ESI Hospital, Durgapur, issued in favour of the private respondent and prayed for direction for issuance of the work order in favour of the petitioner being the actual L1 bidder in terms of Memorandum No. 2320-F(Y) dated 7th June, 2022.
3. The Director, E.S.I. (M.B.) Scheme, West Bengal, has issued e-Tender notices for supply of the cooked diet to the indoor patients at different ESI Hospitals in the State of West Bengal. The petitioner in WPA No. 22551 of 2026 has participated in all the tender process of seven ESI Hospitals. The petitioner in WPA No. 23264 of 2026 has participated in the tender process of ESI Hospital, Durgapur.

- 4.** After opening of the financial evaluation bid, it was found that all the 15 bidders have quoted Rs. 173.65 and all bidders were declared as L1 bidders. The Tender Inviting Authority (hereinafter referred to as “TIA”) has conducted a meeting along with all bidders in connection with financial bid evaluation on 29th July, 2026. In the meeting, it was decided that as per Clause 17 (iv) of the Notice Inviting Tender and following the Memorandum No. 2320-F(Y) dated 7th June, 2022 of Finance Department, Audit Branch, Group-T, Government of West Bengal, all 14 qualified bidders should submit their sealed bids within 7 working days from the date of uploading of Financial-Fid evaluation in the particular drop box and the participating bidders may remain present at the time of opening of sealed envelope. The Tender Inviting Authority has already fixed the minimum accepting rate which will be informed to all the present bidders before opening of sealed bids and all qualified bidders were requested to quote consolidated revised rates in percentage.
- 5.** The Tender Inviting Authority has fixed the different percentage of different ESI Hospitals. As regard the Durgapur ESI Hospital, the Tender Inviting Authority has decided that the consolidated reduced rate upto 8.44% below L-1 Ceiling rate. Likewise the Tender Inviting Authority has fixed the different reduced rate of different hospitals.
- 6.** After opening of the revised sealed bid, the respondent authorities have issued Award of Contracts by taking into consideration, the revised

quoted rate in terms of the proceedings of the Financial-Bid evaluation dated 29th July, 2026.

7. Mr. Arabinda Nath Chatterjee, Learned Senior Advocate, appearing for the petitioner in WPA No. 23264 of 2026 submits that in Clause 17(iv) of the Notice Inviting Tender, it is provided that when there is a tie among the L1 bidders, keeping the discovered L1 rate as ceiling, sealed bid will be invited from all the L1 bidders and out of those the lowest one will be selected but in the present case, the respondent authorities without selecting the lowest one have fixed the minimum rate by violating the terms and conditions of the Notice Inviting Tender and issued the work order to the private respondent.

8. Mr. Chatterjee submits that in WPA No. 4479 of 2024, the Coordinate Bench of this Court has held that the all the Government departments and its undertakings who will be floating tenders in future will be liable to take steps in terms of the Memorandum No. 2320-F(Y) dated 7th June, 2022, and not otherwise. After the order passed by the Coordinate Bench of this Court, the Director (HA & Planning), Government of West Bengal, has issued a Circular dated 21st February, 2025, to all concerned authorities with the request to take steps in terms of the aforesaid memorandum for floating tenders in future and strictly maintained the stages which are to be followed in case of a tie bid as indicated in the memorandum.

9. Mr. Chatterjee submits that inspite of the order passed by this Court which was duly accepted by the respondent authorities, the respondent authorities have not followed the said memorandum in the present case and have fixed their own reduced rate instead of selecting the lowest bidder by violating the terms and conditions of Notice Inviting Tender.
10. Mr. Chatterjee submits that the respondent authorities have accepted the bid of the private respondent at the reduced rate upto 8.44% below the L1 Ceiling rate instead of accepting the lowest rate quoted by the bidders. He submits that from the impugned Award of Contract, it reveals that the petitioner has quoted the revised rate at 9% and if 9% is taken into consideration of the L1 Ceiling rate, the petitioner would be the lowest bidder than the private respondent who has quoted 8.42 %.
11. Mr. Chatterjee submits that by fixing the consolidated reduced rate instead of accepting the lowest rate, the respondent authorities have changed the game in the mid of the tender process which is contrary to law. In support of his submission, he has relied upon the unreported judgment passed by the Coordinate Bench of this Court in the case of ***Saheli Nandy vs. Union of India & Ors.*** passed in ***WPA No. 25906 of 2023*** dated ***12th December, 2023***, wherein the Coordinate Bench of this Court has held that the goal posts cannot be changed once the game has begun. By referring the said judgment, Mr. Chatterjee submits that in the present case, the respondent authorities have

altered the condition of the tender by fixing the consolidated reduced rate instead of awarding the contract to the lowest bidder.

12. Mr. Chatterjee has further relied upon the judgment in the case of ***Dutta Associates Pvt. Ltd. vs. Indo Merchantiles Pvt. Ltd. & Ors.*** reported in ***1996 Supreme (SC) 1921*** and submits that the tender notice did not prescribed for fixing of consolidated reduced rate but as per the tender condition, the respondents have to select the lowest one bidder instead of fixing the reduced rate.
13. Mr. Soumya Majumder, Learned Senior Advocate, representing the petitioner in WPA No. 22551 of 2026, submits that all the ESI hospitals are in West Bengal but the respondent authorities have fixed different reduced consolidated rates of different hospitals without assigning any reason and without any notice to the petitioner. He submits that as per the revised rate in percentage of ESI hospitals, several bidders including the petitioner have quoted much higher percentage which would be lowest rate but the respondent authorities have fixed the lowest reduced consolidated rate in violation of the terms and conditions of the Notice Inviting Tender document.
14. Mr. Majumder submits that as per Annexure "X" of the NIT document, the respondents have fixed the different rates of different categories i.e. general non-veg diet, admission diet, diet for cardio vascular disorder, diabetic diet, renal failure diet, boiled diet, full fluid diet and veg diet but while fixing the reduced consolidated rate, the respondent

authorities have not considered the rate prescribed by the authorities as Annexure “X” of the tender document.

- 15.** Mr. Majumder submits that the respondent authorities have not implemented Clause 17(iv) read with the Memorandum dated 7th June, 2022. He submits that as per Clause 17(iv) and the Memorandum dated 7th June, 2022, the respondent authorities are required to accept the bidder who has offered the lowest rate but the respondent authorities instead of accepting the lowest rate have fixed the reduced consolidated rate in violation of the terms and conditions of the NIT document.
- 16.** Mr. Majumder by way of a supplementary affidavit has disclosed the Award of Contracts issued to the various bidders and by referring the said Award of Contracts, submits that the respondent authorities instead of accepting the bid of the lowest bidder have issued the Award of Contract to the bidder who has not quoted the lowest percentage of the L1 Ceiling rate.
- 17.** Mr. Surojit Nath Mitra, Learned Advocate General, submits that after opening of the financial bid, it was found that all the 15 bidders have quoted 173.65 and all have been declared as L1 bidders and accordingly, a meeting was held with all the bidders by the Tender Inviting Authority on 29th July, 2026. In presence of all the bidders including the petitioners herein it was decided that all bidders should submit their sealed bids within 7 working days from the date of

uploading Financial-Bid evaluation in the particular drop box and the participating bidder may remain present at the time of the opening of the sealed envelope. The Tender Inviting Authority has already fixed the minimum accepting rate which will be informed to all the present bidders before opening of the bids. It was also decided that all qualified bidders should quote consolidated revised rates in percentage.

- 18.** Learned Advocate General submits that after the said decision, the petitioner in WPA No. 22551 of 2026 has participated with respect to the tender of all ESI hospitals and the petitioner in WPA No. 23264 of 2026 has participated with respect to the ESI Hospital, Durgapur and quoted their respective consolidated reduced revised rates in percentage and after being unsuccessful in the bid process, have filed present writ petitions.
- 19.** Learned Advocate General submits that the meeting was held on 29th July, 2026, and on 12th August, 2026 the, consolidated reduced rate below the L1 Ceiling rate was declared by the Tender Inviting Authority but the petitioners have not challenged the said decision of the Tender Inviting Authority and waited till the opening of the bid and after opening of the bid when the petitioners were found unsuccessful have filed the present writ petitions.
- 20.** Mr. Mitra submits that the petitioner in W.P.A No. 22551 of 2026 has filed the writ petition by suppressing the facts that the petitioner has appeared in the meeting of the Tender Inviting Authority on 29th June,

2026 and after attending the meeting, the petitioner has participated in the revised tender process. He submits that in the said meeting, all the qualified bidders were requested to quote consolidated revised rate in percentage and the petitioner has quoted the rate in percentage.

- 21.** Mr. Mitra submits that the work orders have already been issued to the successful bidders and from 1st September, 2026, the successful bidders have started their work and at this stage, if this Court will interfere with the tender process, the patients of all ESI hospitals will suffer very badly.
- 22.** Learned Advocates representing the private respondents submits that the writ petitions filed by the petitioners is not maintainable as both the petitioners after participating in the meeting of the Tender Inviting Authority and after participating in the tender process when they were declared as unsuccessful bidders have filed the present writ petitions.
- 23.** They submit that in the meeting, it was decided that the Tender Inviting Authority already fixed the minimum accepting rate which will be informed to all the present bidders before opening of the sealed bids and all qualified bidders were requested to quote consolidated rate in percentage and the petitioners were accordingly quoted their rates by submitting sealed cover and now the petitioners cannot challenged the tender process.
- 24.** They submit that the Tender Inviting Authority has fixed the rate of the respective ESI hospitals and the petitioners have also quoted their

different rates of different hospitals and now they cannot claim why the respondents have fixed different rates for the different hospitals.

25. Md. T.M. Siddiqui, Learned Senior Advocate, appearing on behalf of one of the private respondent submits the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. In support of his submissions, he has relied upon the judgment in the case of ***Bharat Coking Coal Limited & Ors. vs. AMR Dev Prabha & Ors.*** reported in ***(2020) 16 SCC 759***.
26. Mr. Siddiqui submits that the petitioner by suppressing all the material facts has filed the present writ petition. In support of his submissions, he has relied upon the judgment in the case of ***K.D. Sharma Vs. Steel Authority of India Limited*** reported in ***(2008) 12 SCC 481*** and submits that the petitioner approaching the writ court must come with clean hands, put forward all the material facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.
27. After Financial-Bid evaluation was opened, it was found that all 15 bidders have quoted similar rate i.e. Rs. 173.65/- and all have been declared as L1 bidders. Clause 17 (iv) of the Notice Inviting e-Tender provided as follows:

“17. Evaluation of Financial Bid and Award of Contract: -

(iv) When there is a tie among the L-1 bidders, the following procedure shall be followed:----

Keeping the discovered L-1 rate as ceiling, sealed bids will be invited (which will be informed all the L-1 bidder vide <http://www.wbtenders.gov.in> portal) from all the L-1 bidders and out of those the lowest one will be selected.

If none of the L-1 bidders is ready to offer further reduced rates:

A. For items divisible in nature-----

- (i) The work may be distributed equally among the consenting L-1 bidders.*
- (ii) If none of the L-1 bidders is ready to accept reduced quantity, the bidder with higher credential based on the following parameters may be selected among L-1 bidders in the following manner:*

(a) In case of supply of goods, last three years average turnover of the bidder shall be considered.

(b) In case of execution of work/supply of service, value of single work/service of similar nature completed during last three years shall be considered.

(c) In case of supply of man power, number of personnel supplied in a single contract during the last 3 years shall be considered.

B. For items non divisible in nature—

- (i) If none of the L-1 bidder is ready to offer further reduction of rates, the bidder with higher credential based on parameters, as mentioned in A (ii) above may be selected among L-1 bidders.”*

28. When the respondent authorities have finds that all the participating bidders have quoted similar rates, a meeting was conveyed by the Tender Inviting Authority along with all the bidders who have quoted similar rate on 29th July, 2026. All bidders have attended the said meeting including the petitioners herein. In the said meeting out of 15 bidders, a bidder, namely, M/s Bimal Chatterjee was declared L2, as the said bidder did not quoted gas rate against the Diet No. 7 and he was declared disqualified. In the said meeting, the following decision was taken by the Tender Inviting Authority in presence of all the bidders:

“Now, as per Clause no. 17(iv) of NIT and following the Memorandum No. 2320-F(Y) dated: 07.06.2022 of Finance Department, Audit Branch, Group-T, Govt. of West Bengal. TIA decided to invite sealed bid from all the fourteen (14) qualified bidders in the following manner:

- i. All the Bidders should submit their sealed bids within 7 working days from the date of uploading Financial-Bid evaluation in the particular drop-box which will be kept at the chamber of Additional Director, ESI (MB) Scheme, W.B. (Room No. 204)*
- ii. The drop-box will be opened on the next working day 12:00 P.M. after completion of the above said 7 days.*
- iii. The participating bidders may remain present at the time of opening of sealed envelope, TIA has already fixed the minimum accepting rate which will be informed to all the present bidders before opening of the sealed bids*
- iv. All the qualified bidders are requested to quote consolidated revised rate in percentage*

There being no further points for discussion the meeting ended with vote of thanks from and to the chair,

MOSD-II
ESI (MB) Scheme, W.B.

Assistant Director
(Accounts) ESI (MB)

Assistant Director
(Audit) ESI (MB)

*Scheme, W. B**Scheme, W.B*

*Deputy Director
(Planning) ESI (MB)
Scheme, W.B.*

*Additional Director ESI
(MB) Scheme, W.B.*

*Additional Director
(Admin) ESI (MB)
Scheme, W.B.”*

- 29.** After the said meeting, the petitioner in WPA No. 22551 of 2026 has submitted his sealed bids with respect to all ESI Hospitals and the petitioner in WPA No. 23264 of 2026 has submitted his sealed bid with respect to ESI Hospital, Durgapur. On 12th August, 2026, the Tender Inviting Authority has declared the consolidated different reduced rates for different ESI Hospitals. After declaration of revised reduced rates, on 17th August, 2026, the sealed bids were opened in respect of e-Tender for selection of agency to supply of the cooked diet to indoor patients of different ESI Hospitals in the State of West Bengal. After evaluating the revised rates quoted by the bidders in percentage, the authorities have issued work orders to the respective bidders who have quoted revised rates in percentage nearer to the consolidated reduced revised rate fixed by the Tender Inviting Authority.
- 30.** The petitioner in WPA No. 23264 of 2026 quoted the revised reduced rate as 9% of the L1 Ceiling rate in respect of ESI Hospital, Durgapur. The Tender Inviting Authority fixed the consolidated reduced revised rate up to 8.44% below L1 Ceiling rate of ESI Hospital, Durgapur. The private respondent has quoted revised reduced rate in percentage as 8.42% which is nearer to the consolidated reduced rate fixed by the Tender Inviting Authority and accordingly, work is awarded to the private respondent.

31. The petitioner in WPA No. 22551 of 2026 has quoted 6.5% of Belur ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 6.8% and the private respondent has quoted 6.75% which is nearer to 6.8%. The petitioner has quoted 6.15% of Sealdah ESI Hospital, but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 4.25% and the private respondent has quoted 4.248 % which is nearer of 4.25%. The petitioner has quoted 6.88% of Gourhati ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 7.14% and the private respondent has quoted 7.11% which is nearer of 7.14%. The petitioner has quoted 6.4% of Baltikuri ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 6.79% and the private respondent has quoted 6.77% which is nearer of 6.79%. The petitioner has quoted 7% of Budge Budge ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 6.68% and the private respondent has quoted 6.66% which is nearer of 6.68%. The petitioner has quoted 6.75 % of Durgapur ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 8.44% and the private respondent has quoted 8.42% which is nearer of 8.44% and the petitioner has quoted 6.9% of Serampore ESI Hospital but the Tender Inviting Authority has fixed the consolidated revised reduced percentage as 7.19% and the private respondent has quoted 7.1% which is nearer of 7.19%. Though the petitioner has disclosed revised rates in percentage quoted by each

bidder including the petitioner but the petitioner has not disclosed his rate quoted with respect to Budge Budge ESI Hospital and Durgapur ESI Hospital as the petitioner was supplying the cooked diet to the indoor patient of the said two ESI Hospitals before awarding contract in the present tender process to the private respondents.

32. In Clause 17(i) of the NIT, it is prescribed that the Technically qualified agency who offered L1 rate in the financial bid as per BOQ shall be Awarded the Contract but in the present case all bidders have quoted similar rates and declared L1 bidders. To resolve the issue in terms of Clause 17(iv), a meeting was conducted by the Tender Inviting Authority along with all bidders and a conscious decision was taken that all the bidders will submit their sealed bids within seven working days and the Tender Inviting Authority has already fixed the minimum accepting rates which will be informed to all bidders before opening the sealed bids and the bidders should quote their revised consolidated revised rates in percentage. Both the petitioners without any agitation have submitted their respective sealed bids by quoting consolidated revised rate in percentage and thus the petitioners cannot say that the respondents have violated Clause 17(iv) of the Notice Inviting Tender.

33. As regards not following the Memorandum No. 2320-F(Y) dated 7th June, 2022, the Circular issued by the Director (HA & Planning), West Bengal and the order passed by the Coordinate Bench of this Court, this Court finds that the petitioners in the meeting dated 29th July, 2026, accepted that they will submit sealed bids by quoting

consolidated revised rates in percentage and have acted upon, thus the petitioners cannot raised the said issue after participating in the revised bid process and after being unsuccessful in the bid process.

- 34.** The judgment relied by the petitioner in WPA No. 23264 of 2026 in the case of **Saheli Nandi (supra)**, is distinguishable from the facts and circumstances of the present case. In the case in hand, the petitioners have acted upon the decision taken in the meeting dated 29th July, 2026 wherein all the bidders have been given liberty to submit sealed bids by quoting consolidated revised rate in percentage and the petitioner has acted upon.
- 35.** The petitioner in WPA No. 22551 of 2026 has disclosed the rate chart wherein it reveals that what percentage is fixed by the Tender Inviting Authority and what rates in percentage has been quoted by the bidders but the petitioner has not disclosed the rate quoted with respect to ESI Hospital Budge Budge and Durgapur wherein the petitioner was supply the cooked diet to the indoor patients of the said hospitals. The petitioner has also suppressed the fact that the petitioner attended the meeting held on 29th July, 2026 with the Tender Inviting Authority and after the said meeting, the petitioner has submits his sealed bid by quoting reduced rate of L1 Ceiling rate in percentage. Thus the petitioner has suppressed the material facts. In the case of **K.D. Sharma (supra)**, the Hon'ble Supreme Court held that:

“38. The above principles have been accepted in our legal system also. As per settled law, the

party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. *If the primary object as highlighted in Kensington Income Tax Commrs is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”*

- 36.** Considering the above, this Court did not find any illegality in the tender process and Awarding Contracts to the private respondents. Accordingly, **WPA No. 22551 of 2026** and **WPA No. 23264 of 2026** are **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)