

29.09.2020

Item No.06
Court No.11
Avijit Mitra

W.P.A. No. 5729 of 2020 (Via Video Conference)

**In re: Md. Sarifuddin Ahmed
- Versus -
State of West Bengal & Ors.**

Mr. Golam Mostafa,
Mr. Tara Sankar Samanta
For the Petitioner
Ms. Sutapa Sanyal
For the State Respondents
Mr. Chitta Ranjan Chakraborty
For the Respondent no.6

The present writ petition has been preferred primarily praying for the following relief :

“ (a) a Writ in the nature of a writ of Mandamus commanding the respondents their men, agents and subordinates not to give any effect or further effect to the Notice Inviting Tenders dated 3.6.2020 being NIT-01/AGP/2020-21, NIT-02/AGP/2020-21, NIT-03/AGP/2020-21 and NIT-04/AGP/2019-20 and further commanding them to revoke, cancel and/or set aside the same.”

Records reveal that the writ petition was initially heard on 7th July, 2020. Pursuant to such direction affidavits have been exchanged. In view thereof, the matter is taken up for final hearing.

Mr. Mostafa, learned advocate appearing for the petitioner submits that the prodhan of

Alinagar Gram Panchayat (in short, the said Panchayat) in collusion with the secretary issued four notices inviting tender dated 3rd June, 2020. The said notices were not published in the newspapers having wide circulation with the sole intent to issue work orders to a favoured few.

He submits that pertaining to earlier tender processes initiated by the said panchayat earlier several other writ petitions were also preferred. Taking advantage of the extraordinary situation due to the pandemic the panchayat authorities have excluded eligible participants who could have competed in the said tender processes.

Placing reliance upon the documents annexed in the affidavit-in-opposition filed by the prodhan of the said panchayat, Mr, Chakraborty, learned advocate appearing for the said panchayat submits that four notices were widely circulated in a Bengali daily newspaper namely "LIPI". In the said notices, the date of submission of applications was scheduled to be 16th June, 2020. The date of opening of the tenders was fixed on 19th June, 2020. Pursuant to the said notices, applications were submitted. The same were duly

considered and work orders were issued to the participants who emerged to be successful in the tender processes on and from 24th June, 2020. The tenure stipulated towards completion of work was 15 days and by this time all the works have been completed.

He argues that the petitioner is not a participant in the said tender processes. He is a member of the said gram panchayat and he has no locus to challenge the tender processes initiated by the said gram panchayat. No legal right of the petitioner has been infringed warranting interference of this Court. In support of such contention reliance has been placed upon Sections 8(c) and Section 11(1)(c) of the West Bengal Panchayat Act, 1973.

Mr. Chakraborty further submits that the tenders were finalised in the meeting of the Artha-O-Parikalpona Upa-Samity held on 19th June, 2020. Such majority decision of the competent authority cannot be challenged by a single member of the said panchayat through an application under Article 226 of the Constitution of India.

Mr. Mostafa in reply, submits that as a member of the said panchayat it is his duty to protest against the illegalities perpetrated by

the prodhan. The entire fact-scenario would reveal that the tender notices were not appropriately circulated and not made known to eligible participants. By restricting such publication, the prodhan issued the work orders to a favoured few. Such blatant illegalities certainly warrants interference of this Court.

Ms. Sutapa Sanyal, learned advocate appearing for the State respondents denies and disputes the contention of the petitioner and submits that as the work orders had been issued and works had been substantially completed, question of any interference of this Court at this stage does not occasion.

In the order passed on 7th July, 2020 Her Ladyship observed that *“it is inconceivable that 46 number of works involving construction of concrete roads could have been substantially completed in the space of a month”*. Her Ladyship was also pleased to direct the concerned respondents *“to circulate the notice inviting tender in ‘Anandabazar Patrika’ and ‘Protidin’ within a period of two days*. It was also observed that *“no other relief can be granted at this time without examining the relevant documents which are in the*

possession of the respondents. The work under the tenders will be continued, if already commenced, after a period of seven days from the date of circulation of such notice in the newspapers specified”.

A perusal of the said order reveals that the Court was not satisfied with the publication of the notices in the newspaper namely “LIPI” and accordingly directed publication of such notices in ‘Anandabazar Patrika’ and ‘Protidin’. Pursuant to the said order dated 7th July, 2020 advertisements were made in the newspapers as directed by this Court.

Mr. Chakraborty submits that even thereafter no fresh application was received by the said gram panchayat pertaining to the said tender processes. In terms of the order dated 7th July, 2020, the panchayat waited for a period of seven days from the date of circulation of such notice in the newspapers specified. Such contention of Mr. Chakraborty has, however, been disputed by Mr. Mostafa.

Drawing the attention of this Court to four documents annexed at pages 10 to 13 of the affidavit-in-reply, Mr. Mostafa submits that M/s. Sayf Construction, Raj Enterprise, Samima Enterprise and Kalimi Construction applied for

participation pursuant to the advertisements made in the newspapers namely 'Anandabazar' and 'Protidin'.

Indisputably the tender notices are dated 3rd June, 2020 and the same were published in one newspaper namely "LIPI" on 3rd June, 2020 itself. Responding to such tender notices applications were received on the stipulated date being 16th June, 2020. Upon considering such applications bids were opened on 19th June, 2020 and thereafter work orders were issued to the selected participants on 24th June, 2020.

There is a serious dispute as to whether the petitioner being a member of the gram panchayat has the locus to prefer the present writ petition. Such issue was, however, not agitated at the time when the writ petition was initially heard on 7th July, 2020. The order dated 7th July, 2020 reveals that the Court was *prima facie* of the opinion that the works cannot be completed within a period only 15 days and as the publication was not made in an appropriate newspaper, the Court directed fresh publication so that persons, who did not get any opportunity to respond to the initial tender

notices, can apply afresh and compete in the tender processes.

Mr. Chakraborty submits that no application has been received by the gram panchayat where as Mr. Mostafa submits that four persons applied. Such disputed question of fact cannot be decided by this Court.

In the said conspectus, no interference is called for in the present writ petition. However, in the event any person applied pursuant to the publication of the notice, as directed by the order dated 7th July, 2020, they would be at liberty to challenge the tender processes, if so advised and in accordance with law.

With the above observations and directions, the writ petition is disposed of.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Tapabrata Chakraborty, J.)