

22-23
Court
No. 11 21.9.2021
G.S.Da
s

**MAT 2 of 2021
With
CAN 1 of 2021**

Raj Kishore Singh

-Vs-

Manikchak Astha Welfare Society & Ors.

With

WPA (P)/209/2021

Muntaj Ali & Ors

-vs-

State of West Bengal & Ors.

(Via Video Conference)

Mr. Surajit Nath Mitra
Mr. Aritra Basu
Mr. Shayak Mitra
Mr. Abhijit Sarkar

... for the appellants

Mr. Jishnu Chowdhury

... for the State

Mr. Subir Sanyal

... for the appellant in WPA(P) 209 of 2021

Mr. Ram Dulal Manna
Mr. Swapan Kr. Mallick
Mr. Bijon Bihari Ray
Mr. Sayan Mukherjee
Ms. Saswati Ghosh Sinha

.... For the respondent No. 1 & 2.

Party/Parties is/are represented in the order of their
name/names as printed above in the cause title.

Under challenge in this appeal is the order of the
Hon'ble Single Bench dated 14th December, 2020.

The grievance raised before the Hon'ble Single Bench
relates to the auction of a Public Ferry Ghat service at
Manikchak in the district of Maldah. The dispute has grown
in proportion considering that the Ferry Ghat service, being

the significant medium of public transportation in the area, particularly during the Monsoons, has also attracted a Public Interest Litigation, which stands tagged with the present appeal for analogous disposal.

The appellant is the private respondent before the Hon'ble Single Bench and, the private respondents in this appeal are the writ petitioners before the Hon'ble Single Bench.

The State is the common respondent in both the writ petition and the present appeal.

Bereft of prolixity, it may be noted that the Hon'ble Single Bench was called upon to decide the validity of the first auction as also the second auction of the said Ferry Ghat.

The Hon'ble Single Bench cancelled the first auction held on September, 2020 holding, *inter alia*, that there is evidence that the successful tenderer of the second auction, who is the present appellant, has acted in a manner so as to raise doubts regarding the *bona fides* of the second auction process.

One of the reasons for which the Hon'ble Single Bench entertained doubts regarding the *bona fides* of the second auction relates to the demand drafts submitted by the present appellant, who was the successful bidder in the second auction, which appeared to have been drawn and produced before the tender authority even before the second auction was finalised.

The Hon'ble Single Bench, *inter alia*, held that the purported cancellation letter connected to the first auction was dated 23rd September, 2020 and, the demand drafts of

the present appellant/the successful bidder in the second auction were shown to be drawn on the 8th of September, 2020 and on the 6th of October, 2020.

The Hon'ble Single Bench therefore held that the present appellant had acted in anticipation of being declared as a successful bidder in the second auction.

The Hon'ble Single Bench also went on to hold that the writ petitioners/the private respondents in this appeal were accepted as the successful bidder and were directed to place the requisition amount declared in the first auction of the said Ferry Ghat. The tender calling authorities therefore ought not to be allowed to resile from such position arising out of the first auction and unilaterally cancel the bid in the first auction.

Mr. Mitra, Learned Senior Counsel appearing for the appellant, emphatically denies the above factual position arrived at by the Hon'ble Single Bench.

Mr. Mitra submits that there is no evidence to come to the conclusion that the second auction process lacked *bona fides* since the demand drafts dated 8th September, 2020 and the 6th of October, 2020 were prepared by the appellant while participating in the first auction which was ultimately cancelled on the 23rd of September, 2020. Therefore, the appellant lost no time in depositing the same demand drafts within their validity period upon being declared as the successful bidder in the second auction which was held on the 7th of October, 2020, i.e. immediately after the cancellation of the first auction.

Mr. Mitra further submits that there is no evidence shown by the writ petitioners/the private respondents in

this appeal, with regard to the findings arrived at by the Hon'ble Single Bench that the writ petitioners have acted in a manner so as to complete all their obligations upon being declared as the successful bidder in the first auction.

There is no evidence therefore to show that the writ petitioners put in the requisition amount for the tender to be completed *qua* the first auction.

Mr. Chowdhury, Learned Counsel appearing on behalf of the State-respondents, takes this Court to the cancellation notice dated 23rd of September, 2020 which speaks of the fact that the first auction notice stands cancelled on the following grounds:

- “a) Experience certificate was not produced during and after the bidding.*
- b) Vessel registration certificate was not supported by updated survey report issued by competent authority.*
- c) Seating capacity & other related requirements were not mentioned in the registration certificate.*
- d) No updated Vessels insurance certificates issued by the competent authority were produced.”*

Therefore, for the reasons stated in the notice dated 23rd September, 2020, the first auction for the said public Ferry Ghat stood cancelled and fresh auction notice was to be issued shortly.

Learned State Counsel points out that thereafter challenge being thrown to the second auction by way of a writ petition, the adjudication whereof is challenged in this appeal, the State-respondents called upon the writ

petitioners to act in terms of the order of the Hon'ble Single Bench and complete the first auction process.

Learned State Counsel refers to a communication dated 15th of October, 2021, wherein the writ petitioners have, *inter alia*, stated that in view of the present appeal being pending connected to the auctions of the said Ferry Ghat, the writ petitioners will prefer to await the adjudication in the appeal.

The point is thus taken by Learned State Counsel that with both the auctions coming under a cloud of litigation and also considering that the mode of transport by ferry is essential to the area, the State respondents are ready to hold a *de novo* auction so that disputes receive a quietus once and for all.

Mr. Manna, Learned Counsel appearing for the writ petitioners/the private respondents to this appeal, takes this Court once again to the sequence of events narrated above. It is submitted that the first auction could not have been cancelled without granting the writ petitioners an opportunity to complete the auction process.

The attention of this Court is drawn to a representation dated 20th September, 2020 by which the writ petitioners approached the State Respondents with their offer to deposit the auction amount.

Learned Counsel for the writ petitioners/private respondents draws the attention of this Court to the fact that there are discrepancies in the auction rates of the first auction as compared to the second auction.

For the benefit of this discussion, it is important to place the relevant rates for quick appraisal of the

discrepancies as pointed out by Mr. Manna.

*“26.08.2020 : Auction Notice was issued
for Rajmahal-Manikchak Fixing:-*

*Auction date;- **22.09.2020***

*Economic Rent = **Rs. 58,00,000/-***

*Earnest Money = **Rs. 25,000/-***

*Bank Balance – **Rs, 10,000/-***

*“25.09.2020 : **Re-auction** Notice was issued
for Rajmahal-Manikchak fixing:-*

*Auction date;- **07.10.2020***

*Economic Rent = **Rs.94,00,000/-***

*Earnest Money = **Rs.5,00,000/-***

*Bank Balance = **Rs.10,00,000/-**”*

Mr. Manna submits on the strength of several judicial authorities that the Government being a tenderer in several contracts has a duty to prevent all arbitrariness.

Having heard the parties and considering the materials placed, this Court comes to the following findings:

This Court has reasons not to agree with the Judgment and Order of the Hon’ble Single Bench, which are as follows:

First, the substance of the stand taken on behalf of the appellant of the demand drafts which were to be deposited in the first auction and, such first auction having been cancelled by the authorities on the 23rd of September, 2020, such demand drafts could have been deposited by the appellant as a measure of participation in the second

auction on the self-same subject of the said public Ferry Ghat is acceptable in law and in fact. In such a view of the matter, this Court does not find reason to agree with the *purported circumstances* on the basis of which the Hon'ble Single Bench doubted the *bona fides* of the second auction.

Second, the reason for disagreement is that the findings of the Hon'ble Single Bench that there is no evidence brought to the notice of the Hon'ble Court that the successful bidder in the first auction, viz the writ petitioner, acted within time to put in the requisition amount for being declared as the successful bidder in the first auction appears to be factually vulnerable.

It is on record before this Court that the first auction was cancelled by the notice dated 23rd September, 2020. It is also recorded that the petitioner relies on representations dated 30th September, 2020 and the 5th of October, 2020 to state that they were ready and willing to complete the first auction process by depositing the requisite amount. It is quite obvious to this Court that both the representations dated 30th September, 2020 and the 5th of October, 2020 are beyond the period of the notice of cancellation dated 23rd September, 2020 and the purported good intentions of the writ petitioners to act in terms of the first auction therefore fail to carry legal weight.

Accordingly, having regard to the above discussion, the order impugned in this appeal of the Hon'ble Single Bench stands set aside.

However, it will be now necessary to notice the submission of Mr. Manna, Learned Counsel for the writ petitioners, connected to the wide difference in rates

between the first auction and the second auction. This Court may mention only a few for the purpose of this discussion.

It must be first stated that the first auction was dated 22nd September, 2020 and the 2nd Auction was dated soon thereafter on the 7th of October, 2020.

The economic rent for the first auction went from Rs. 58 lakhs to 94 lakhs in the second auction. The earnest money in the first auction went up to from 25 thousand to Rs. 5 lakhs in the second auction.

The Bank balance for the bidders went up from Rs. 10,000/- in the first auction to Rs.10 lakhs in the second auction.

This Court is at a loss to understand such divergence in rates within such a short span of time.

Next, this Court notices the notice of cancellation dated 23rd of September, 2020.

The grounds on which the first tender was cancelled do not relate to any rates or, any other economic parameter. The grounds for cancellation only relate to the lack of physical and, not economic parameters.

Since no economic barrier was mentioned in the notice of cancellation dated 23rd September, 2020, the position must be accepted as binding that any fresh auction notice ought to proceed keeping in mind that the inadequacies connected to the first tender notice were to be made good and therefore the second tender had become inevitable.

However, having observed as such, this Court does not intend to wholly trespass on the authority of the State-

respondents to fix tender rates commensurate to the applicable economic environment, except that the divergence in rates between the first and second auctions is wholly disproportionate.

Accordingly, the second tender stands also set aside.

The State-respondents are permitted hold a fresh tender wherein all the parties shall be allowed to participate and the tender completed in accordance with law.

Since this appeal is heard on this basis of materials which are already on record without requiring additional materials, affidavits are neither necessary nor invited and the allegations made are therefore deemed to be denied.

MAT 2 of 2021 and **CAN 1 of 2021** stand thus **disposed of**.

In view of disposal of this appeal permitting the State respondents to hold a fresh tender, the submission of Mr. Subir Sanyal, Learned Counsel appearing for the petitioner in the PIL, being WPA(P)/209 of 2021, that interim arrangements be made till such fresh tender is finalised, cannot be accepted.

Accordingly, **WPA (P)/209 of 2021** also stands **disposed of** on the same terms.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Kesang Doma Bhutia, J.) (Subrata Talukdar,J.)