

**07.
01.03.2021.
Ct. No. 11.
F.B.**

**MAT 169 of 2021
with
IA No. CAN 1 of 2021**

**Mosarraff Hossain & Ors.
-Vs.-
The State of West Bengal & Ors.**

**Md. Salahuddin,
Md. A. Zaman
..... For the Appellants.**

**Mr. Jahar Lal De,
Mr. Shamim ul Bari
..... For the State.**

**Mr. Debasish Saha
..... For the Respondent
Nos. 5 & 6.**

**Mr. Moniruzzaman
..... For the Respondent
No. 7.**

Under challenge in this writ petition is the order of the Hon'ble Single Bench dated the 5th of February, 2021 in the writ petition numbered as WPA 10418 of 2020. By the said impugned order the Hon'ble Single Bench dismissed the claim of the writ petitioners, who are the present appellants before this Court, for participating in a tender work under the Respondents/the Sadal Gram Panchayat, Khargram, Murshidabad.

The Hon'ble Single Bench, *inter alia*, observed that while rejecting the bid of the writ petitioners/the present appellants, the tendering authority took notice of the fact that no Bank Solvency Certificate was furnished on behalf of the writ petitioner no. 1/the present appellant no. 1 read with the further fact that the writ petitioner no. 1 already stood blacklisted from participating in any tender under the jurisdiction of Murshidabad Zilla Parishad (*MZP*) with effect from the 10th of January, 2020 for a period of one year.

Mr. Salahuddin, Learned Counsel appearing for the present appellants/the writ petitioners, submits that the tender document dated the 4th of September, 2020 of the Sadal Gram Panchayat does not show the submission of the Bank Solvency Certificate as an essential credential necessary for participating in the tender. Also referring to the Award of a Contract by the Block Development Officer (*BDO*), Khargram Development Block, Nagar, Murshidabad/the Respondent No. 4 to this appeal, it is submitted that the award of the said contract was on the 3rd of March, 2020 when the appellant no. 1/the writ petitioner no. 1 had already completed his one year of blacklisting *vide* Memo of the *MZP* dated 10th of January, 2020.

It is also submitted by the appellants that in the event the blacklisting was in force, then the

appellants/the writ petitioners and, particularly the appellant no. 1/the writ petitioner no. 1 ought to have been automatically blocked from entering the website of the tender in issue dated the 4th of September, 2020 and, hence restrained at the threshold from participating in the tender.

It is therefore argued that in the absence of a specific bar cast upon the appellant no. 1/the writ petitioner no. 1 from participating in the tender on behalf of the appellants as a whole, the reason for cancellation of the tender by the tendering authority cited as failure to submit the Bank Solvency Certificate, not being an essential reason, cannot stand.

The Respondents/Sadal Gram Panchayat, the successful tenderer being the private respondent no. 7 and the State Respondents respectively represented by their Learned Counsel, Mr. Moniruzzaman and Mr. De, Learned Senior Government Advocate, take the uniform stand that the appellants/the writ petitioners and, particularly the appellant no. 1/the writ petitioner no. 1, cannot arguably assume that any contract erroneously awarded during the period the blacklisting was in force would automatically enable the appellants to participate in the next tender. It is submitted that it is not in dispute that the blacklisting subsists and the appellant no. 1/the writ petitioner no. 1 has been

blacklisted from participating in the tender for a period of one year.

Having heard the parties and considering the materials placed, to the mind of this Court the blacklisting of the appellant no. 1/the writ petitioner no. 1 overwhelms the subsidiary question of the appellant no. 1/the appellants/the writ petitioner no. 1/the writ petitioners from proceeding on the basis of the alleged lack of requirement of a Bank Solvency Certificate. It is the admitted position that the order of blacklisting dated the 10th of January, 2020 uniformly applies to all tenders under the *MZP* for one year. It is further not in dispute that the tender in issue in the writ petition and, consequently the appeal, falls within the jurisdiction of *MZP* and has been notified within the period of blacklisting of one year on the 4th of September, 2020.

In the above view of the matter, notwithstanding the position that Affidavits were called for by the Hon'ble Single Bench as argued by the appellants today, the Hon'ble Single Bench was correct in holding that the order of blacklisting being an order in force during the period when the tender was called, in view of such admitted position the appellants as a whole had no legal right to participate in any tender under the *MZP* including the present tender in issue.

In view of the above discussion, Affidavits are naturally not invited in the present appeal and other allegations made are deemed to be denied. The appellants deserve no relief.

Accordingly, **MAT 169 of 2021** with **CAN 1 of 2021** stand **dismissed**.

Before parting with the discussion, this Court refers the matter for issuance of Bank Solvency Certificate dated 5th September, 2020 at page-30 of CAN 1 of 2021 by the Senior Manager, Nagar Branch, Punjab National Bank (*PNB*) to its Regional Manager, Regional office of the *PNB* at Kolkata to make an enquiry as to what prompted the said Senior Manager, Nagar Branch, *PNB* to issue a Bank Solvency Certificate when no such certificate was explicitly called for under the tender conditions of the Sadal Gram Panchayat dated 4th of September, 2020.

The matter on issue of Award of Contract by the *BDO*, Khargram Development Block, Murshidabad dated the 3rd of March, 2020 at page 48 of CAN 1 of 2021 during the subsistence of the blacklisting of the writ petitioner no.1/the appellant no. 1 is also referred for an enquiry to the Respondent No. 2/the District Magistrate (*DM*), Murshidabad.

The attention of this Court is again drawn to page 49 of the stay application, being CAN 1 of 2021 which is issued by the Pradhan, Sadal Gram Panchayat, Sankarpur, Murshidabad dated 13th March, 2020 issued during the subsistence of the blacklisting against the writ petitioner no.1/the appellant no.1 granting the appellant no. 1/the writ petitioner no. 1 a work supply order.

It is expected that both the Regional Manager, *PNB* and the *DM*, Murshidabad shall complete their enquiries within a period of three weeks from the date this order is communicated to them by any of the parties.

Let a copy of the Memo of appeal and the stay application be also served along with notice of this order by the **Registry** to the Regional Manager, *PNB* and the *DM*, Murshidabad.

It will be open to the Regional Manager, *PNB* and the *DM*, Murshidabad to recommend and take steps, if any, consequential to such enquiry.

Affidavit-of-Service filed in Court today be retained with the record.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)