

09.09.2021
SL No. 241
Court No. 24
(P.M)

WPA 13839 of 2021

BISWANATH SAHA
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu
... for the petitioner

Mr. Sagar Bandopadhyay,
Ms. Soma Kar Ghosh
... for the respondent No. 10

Mr. Amitesh Banerjee,
Mr. Sirsanya Bandopadhyay,
Ms. Ipsita Banerjee
... for the State

The matter relates to a tender process which was initiated by the Block Development Officer, Burwan. The petitioner and the private respondent both participated in the said tender process.

According to the petitioner, the rate that he quoted was the lowest rate. The petitioner submits that after opening of the bids the rate quoted by the private respondent was struck off in ink and the lowest rate which the petitioner had quoted was mentioned therein. In view of such striking off the previously mentioned rate by the private respondent, the rate quoted by the petitioner and the private respondent became the same.

The respondent authority took a decision to cancel the tender process and thereafter a fresh tender was floated.

An advertisement to that effect was published by the newspaper. The petitioner has annexed a copy of the newspaper cutting at page 29 of the writ petition which mentions that the tender for selection of carrying cum distribution agent under the mid-day meal is being published and the last date of submission of the application was 16th August, 2021. For detail information please visit the website.

The petitioner did not participate in the said tender. The petitioner submits that it was the duty of the respondent authority to intimate him about the cancellation of the said tender as he happened to be the lowest tenderer.

Fact remains that the private respondent participated in the second tender process and he was successful. Though the contract is yet to be executed by and between the authority and the successful tenderer, the petitioner submits that as the petitioner was not intimated about the cancellation of the earlier tender accordingly, he ought to be given another chance to participate in the tender process.

According to the private respondent, in response to the notice inviting tender (second call) published in the office board of the Block Development Officer he participated in the same and has emerged successful. The cause of action arose way back on 16th August, 2021 and the petitioner has approached this Court after the second tender was opened.

The private respondent relies upon a judgment of the Hon'ble Supreme Court passed in the matter of Maa Binda Express Carrier & Anr. – Vs – North East Frontier Railway & Ors. reported in (2014) 3 Supreme Court Cases 760 wherein the Hon'ble Supreme Court held that when the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The decision to cancel the tender process was in no way discriminatory or mala fide.

The learned advocate representing the State respondent submits that the details of the cancellation of the first tender process were mentioned in the website which was mentioned in the newspaper advertisement. The same was also published in the office board of the District Administration. It was the duty and responsibility of the respondent to go through the detail information that was available in the website.

After hearing the submissions made on behalf of both the parties and upon perusal of the materials on record it appears that after opening the bids of the first tender the respondent authorities thought it fit to cancel the same for any reason whatsoever. The said act of the respondent authority cannot be termed to be either discriminatory or mala fide or illegal. Both the parties who were the lowest

tenderer were affected by the same decision of the Block Development Officer.

The Block Development Officer thereafter proceeded to publish a further notice inviting application by a fresh tender. Any person who is or was interested to participate in the tender, ought to have been vigilant and should have gone through the details which were made available in the website of the District Administration, Murshidabad District and also in the notice Board of the Block Development Officer.

The petitioner has approached this Court long after the said process was over. The action of the respondent authorities in not communicating to the petitioner specifically as regards cancellation of the first tender will not be fatal on the part of the respondent authorities in proceeding with the second tender. The respondents did not communicate the matter of cancellation of the first tender to any of the successful tenderers. As such no one can take any advantage over the other. The private respondent participated pursuant to the fresh tender and was successful.

In view of the observations made herein above, no relief can be granted to the petitioner in this case.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)