

17
25.01.2021
(Suvendu)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

WPA 947 of 2019

Sahebganj Taj Club
Vs.
State of West Bengal & Ors.

Mr. Jagriti Mishra
Mr. Subham Gupta
..... for the petitioner

The affidavit of service filed in Court today is kept on record.

The State is, however, not represented.

The petitioner initially prayed for an order restraining the Executive Officer, Dinhata-II Panchayat Samiti from proceeding with an impugned Memo dated 22nd November, 2019 by which the concerned authority proceeded to give the work, which had been given to the petitioner, to a third party. On filing of the affidavit-in-opposition by the concerned respondents, the petitioner subsequently came to know that the petitioner's work order was cancelled by a Memo dated 12th June, 2019. Learned counsel appearing for the petitioner places the engagement order of the petitioner for the purpose of constructing toilets at different schools in Cooch Behar. The order of engagement is dated 8th March, 2019 and issued by the Executive Officer, Dinhata-II

Panchayat Samiti. Counsel places a communication dated 11th September, 2019 from the Sub-Divisional Officer, Dinhata to the Block Development Officer, Dinhata-II, Sahebganj requesting the later to take necessary action in terms of the prayer of the petitioner for payment for the work done. Counsel also places hand written certifications from different schools stating that the construction work has been duly completed by the petitioner. It is submitted that the cancellation of the work order dated 8th March, 2019, issued by the Executive Officer, Dinhata-II Panchayat Samiti, was affixed on the door of the petitioner's office by the Officer of the concerned respondent. Counsel relies on a judgment reported in 2004 (1) CLT 467 (Kisore Kr. Sen Vs. State) wherein a learned Single Judge of this Court explained the doctrine of "acting under dictation" in administrative law and held that the impugned direction in the facts of that case to be invalid.

On perusing the materials on documents, it is clear that the petitioner was engaged by the very same respondent authority who subsequently decided to cancel the appointment of the petitioner. It is also evident from the documents that the petitioner had completed the work for which it was appointed and further that the prayer made on behalf of the petitioner for payment for the work done was not

acceded to by the concerned authority despite the prayer being forwarded by the Sub-Divisional Officer to the concerned Block Development Officer, Dinhata-II, Sahebganj.

Although the Memo No. 252 dated 12th June, 2019 has not been challenged in the writ petition, which the petitioner admittedly came to know only from the affidavit-in-opposition filed by the respondent no.9, being the Executive Officer, Dinhata-II Panchayat Samiti, Sahebganj, the impugned Memo is totally arbitrary and without any reason as to why work order issued to the petitioner should be cancelled. The only reason which is stated in the communication is "Stands cancelled as per the direction of the higher authority". There is no indication as to the identity of the higher authority or the nature and basis of the instruction received from the higher authority. In view of the arbitrary nature of the said communication dated 12th June, 2019, this Court is of the view that the Executive Officer, Dinhata-II Panchayat Samiti, being the respondent no.9 herein, should be forthwith restrained from proceeding with the Memo dated 12th June 2019 or to give any further effect thereof.

The WPA 947 of 2019 is accordingly disposed of.

There shall be, however, no order as to costs.

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

(Moushumi Bhattacharya, J.)