

S/L 6
03.02.2022
Court. No. 19
GB

W.P.A. 788 of 2022

Ajoy Kumar Mondal
VS
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Billwadal Bhattacharyya,
Mr. Debanik Banerjee,
Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha,
Mr. Surojit Saha.*

...for the Petitioner.

*Mr. Jaharlal De,
Mr. Shamim Ul Bari.*

...for the State.

*Mr. Tanmoy Mukherjee,
Mr. K.R. Ahmed,
Mr. Rudranil Das,
Mr. Vivekananda Tripathi,
Mr. Kamal Mishra.*

...for the Respondent Nos.3 &4.

The petitioner claims to be an interested intending participant in the tender floated by Gokulnagar Gram Panchayat dated December 24, 2021. It is the specific contention of the petitioner that the petitioner expected that the tender notice would be in the online mode and, as such he requested the authority of the gram panchayat to hold the tender process in the online mode instead of the offline mode and to enable him to participate in the notice inviting tender dated December 24, 2021.

According to Mr. Bhattacharyya, learned advocate appearing on behalf of the petitioner, there was lack of transparency in the tender process and only in order to

benefit the chosen persons of the gram panchayat authorities, e-tender was not done. It is alleged that works have been bifurcated to reduce the valuation of the works, so that e-tender need not be floated. Mr. Bhattacharyya submits that the instant gram panchayat habitually practiced such illegalities. A complaint has also been made to the Block Development Officer. Reliance has been placed on an order of this Court dated September 30, 2021, by which this Court had made observations that no one could be prevented from participating in a tender process and the Pradhan of the concerned gram panchayat must hand over the form to the petitioner in the said writ petition. Thus, Mr. Bhattacharyya prays before the Court that the entire tender process be set aside and quashed and fresh e-tender notice be issued.

Mr. Mukherjee, learned advocate appearing on behalf of the gram panchayat submits that the procedure to be followed for issuance of tender notices and for conclusion of the process, have be adhered to by the authorities. That none of the works covered under the notice inviting tender were above Rs.5,00,000/- and, as such e-tender was not required. Each of the tender was for separate works to be done at separate locations and all of them were valued below Rs.5,00,000/-. The notices were published in the panchayat office, block office and also the zilla parishad's office. He further submits that the work orders were issued on the successful bidders sometime in the second week of January, 2022. He specifically places reliance on a letter issued by the petitioner in order to demonstrate that the petitioner was

aware that the tender process was being carried on in the offline mode, but as the petitioner wanted to participate in the same through the digital platform, he had requested the authority to initiate e-auction.

Mr. De, learned senior Government advocate also supports the contention of Mr. Mukherjee and submits that in the instant tendering process, there was no requirement under the law for issuance of e-tender. It is further submitted that work orders have been issued and the works have commenced. Third party rights have been created. There cannot be any reason for interference in the tender process at this belated stage as no illegality could be pointed out.

Having heard the rival contentions of the parties, this Court is of the view that although it is the specific contention of Mr. Bhattacharyya that the petitioner was not aware of the tendering process, it appears from the records that the petitioner had visited the office of the gram panchayat before the last date of submission of the tender documents and had also written a letter requesting for e-auction, instead of putting in his bid documents. The last date for submission of the documents had not expired. The Court is also satisfied that the works were all valued below of Rs.5,00,000/- and, as such e-tender was not essential in this case. However, publicity of the notice is an essential ingredient in order to maintain transparency and to avoid *mala fide* and arbitrary decisions. In this case, the petitioner was well aware that the tender forms were available physically as the letter of the petitioner stands proof of the fact that the petitioner had

approached the authorities for initiation of e-tender in place of the offline mode. Instead of writing the letter, the petitioner could have easily taken the forms and dropped his papers as the last date of submission was January 7, 2022. The letter was written on January 5, 2022. The Court is not satisfied with the explanation as to why the petitioner could not have obtained the form on the day the petitioner had written the letter so that he could easily participate in the tender process.

Under such circumstances, in view of the amendment to the Specific Relief Act and also in view of the fact that the work orders have been issued and the work has started, there cannot be any reason to interfere with the tendering process at this stage. These are time bound public projects under MGNREGA. It also appears that the petitioner all along had knowledge of the fact that the tender notice had been floated.

Under such circumstances, the remedy of the petitioner would be to approach the higher authority with his general grievances against the said gram panchayat. The petitioner shall file a complaint with the concerned District Magistrate in accordance with law. The District Magistrate shall enquire into the alleged activities of the panchayat authorities as per the contention of the petitioner and if it is found that the panchayat authorities have indulged any illegal practices by not publishing the tender notices and in not giving a fair chance of participation in the tenders to the interested parties, the said authority shall proceed against the erring official. A reasoned order shall be passed and

communicated to all concerned. The petitioner as also the gram panchayat authorities and the successful bidders will be heard. On the basis of the decision arrived at by the District Magistrate pursuant to the enquiry as directed by this court, the petitioner shall be at liberty to sue the erring official for damages, if the enquiry goes in favour of the petitioner.

This order shall not prejudice the petitioner from taking necessary steps as may be permitted under the law before the appropriate forum. The panchayat authorities assures the Court that publication of the notices inviting tenders for works under the MGNREGA have been and will be done in accordance with law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)