1.3.2022
Court No. 19
Item no.7
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W.P.A. No. 955 of 2022

Ananda Banerjee Anr.
Vs.
The State of West Bengal & Ors.

Mr. Tulsi Das Roy
Mr. Tirthankar Roy
……for the petitioners.
Mr. Jahar Lal De,
Mr. Shamim ul Bari,
….for the State.

Mr. Tanmoy Chakraborty
Mr. Rajib Lochon Chakraborty
Ms. Vaswati Chakraborty
..for the respondents 3&4.

Ms. Ashmita Chakraborty
Mr. Arnab Sinha
..for the respondents 7&8.

Mr. Subrata Saha, Sub-Inspector of Police, Krishnaganj Police Station has produced the Pradhan before this Court pursuant to an earlier direction. The Pradhan, Krishnaganj Gram Panchayat is also present before this Court.

The Court appreciates the efforts of the police authorities. The Court was of the view that the Pradhan had intentionally avoided the proceeding. This had raised a doubt in the mind of the Court with regard to the process of initiation of the tender and conclusion thereof by the said Pradhan. Thus, the police authorities were directed to ensure the presence of the Pradhan.

The Pradhan of Krishnaganj Gram Panchayat floated a tender on January 8, 2022. The petitioners wanted to participate in the said tender process. The petitioners alleged that two demand drafts were deposited in the office of the Pradhan, but the receipts were not supplied, as a result of which, the receipts showing the deposit of the demand drafts could not be uploaded along with the tender documents. Their bids were cancelled. The petitioners uploaded all documents, but non-supply of the receipts by the Pradhan, led to rejection of the bids of the petitioners when the technical bids were opened. January 19, 2022, was fixed for opening the financial bids.

The writ petition was filed on January 18, 2022 for an order of cancellation of the tender process in view of the illegalities committed the Pradhan. The receipts were not supplied to the petitioners although, the authorities were duty bound under the law and as per the clauses provided in the tender process, to supply the same to the intending bidders. The said receipts were necessary to be uploaded along with other bid documents. Non-supply of the receipts led to the rejection of the bid documents of the petitioners and the petitioners were deprived from participating in the tender process.

The Pradhan did not appear despite service on January 19, 2022. Finding no other alternative, the Court directed the petitioners to add the Block Development Officer, Krishnaganj Block, as a respondent, so that the Court would be able to ascertain the facts through the Block Development Officer.

As the date for issuance of the financial bid was fixed on January 19, 2022, that is, the date when the writ petition was admitted and heard, the Court directed that the financial bid may be opened but the result should be kept confidential and in a sealed cover. It was directed that work orders should not be issued in favour of the successful bidders till January 28, 2022. The matter was made returnable on January 27, 2022 and the State respondents and the Pradhan were directed to intimate the Court as to whether the demand drafts were deposited in the office of the Pradhan and whether receipts had been supplied to the petitioners or not.

It was the specific case of the petitioners that the demand drafts had been deposited on January 13, 2022, but the receipts were not granted. The last date for filing the bid documents was January 15, 2022. It was further submitted that on January 14, 2022, the petitioners wrote a letter to the Pradhan for supply of the receipts, but the same were not supplied to them.

The matter appeared once again on January 27, 2022. The Pradhan did not appear. On the other hand, despite an order of injunction having been passed, the Pradhan opened the financial bid and issued work orders on the same date, in violation of the order of the Court.

Despite having information about the proceedings before this Court and the orders passed before the learned advocates for the State respondents who were present before this Court, there has been intentional violation of the order of this Court by the Pradhan. The Pradhan acted hurriedly for reasons which are not far to seek.

The successful bidders were directed to be added in the proceeding by the court and the petitioners were asked to serve copies of the writ petition upon them. They are represented today.

The Court restrained the parties from acting in furtherance of the work order. The Court further directed the police authorities to produce the Pradhan before this Court, as the Pradhan failed to appear repeatedly, despite notices and had acted in violation of the order passed by this Court.

Today, learned advocate for the Pradhan is present. He submits that the demand drafts were deposited on January 13, 2022 by the petitioners. The Pradhan had directed the petitioners to go back on the next day for the receipts. The petitioners wrote two letters for withdrawal of the demand drafts and as such, the receipts were not supplied upon an interpretation of the contents of the letters.

Although, the contention of the learned advocate for the Pradhan with regard to their prayer for withdrawal of the demand draft by Pradip Ghosh Chowdhury appears to be somewhat correct, but Ananda Banerjee, the other petitioner clearly wrote a letter on January 14, 2022 praying for supply of the receipts once again.

The demand drafts were deposited by the petitioners on January 13, 2022, but the receipts were not granted, which is an admitted fact. There is no reason why the authorities could not hand-over the receipts while receiving drafts or at least on January 14, 2022 when the petitioners went back with the letters.

One of the petitioners may have prayed for withdrawal of the demand drafts on the allegations of non-supply of receipts, but the other petitioner specifically prayed for grant of receipts once again. The Pradhan did not respond to the letters. Neither were the receipts granted nor were the demand drafts returned. January 15, 2022, was the last date for uploading all the documents and even if the authorities granted receipts in the morning of January 15, 2022 itself, the petitioners could have participated in the tender.

The contention of the Pradhanthat the drafts were deposited in the bank and the Pradhan required at least a day's time to hand over the receipts, does not impress the Court in view of the subsequent inaction and failure of the Pradhan to hand over the receipts within the next two days. Till date, the demand drafts have not been returned. The other bidders were supplied the receipts. Even if the Court accepts that the Pradhan was persuaded by letters written by the petitioners that the petitioners wanted to withdraw their demand drafts, the hot haste with which the Pradhan issued the work order on the same day when the financial bid was opened, although restrained by an order passed by this Court, has persuaded the Court to hold that the entire process was done in an arbitrary, irrational, mala fide and irregular manner. The works involved are public projects. All persons have a right to participate. Without making any further comment on the action of the Pradhan, this Court is of the opinion that the entire process of e-tender up to issuance of the work order must be set aside for various irregularities and mala fide action, which has been enumerated hereinabove.

The learned advocate for the respondent nos. 7 and 8 are before this Court. The Court has not found any fault with the said respondents, who participated in the tender process, but the work order issued to these persons are non-est in the eye of law as the same were issued in breach of the order of injunction passed by this Court.

It has been well settled by judicial pronouncement that any action taken in violation of the order of injunction would have no force and existence in the eye of law. The action would be a nullity.

Reference may be made to the decision of ***Satyabrata Biswas v. Kalyan Kumar Kisku***, reported in ***(1994) 2 SCC 266.*** The Hon'ble Apex Court held that, that any act done in the teeth of the order of status quo was clearly illegal.

In the decision of ***Century Flour Mills Ltd. vs. S. Suppiah*** reported in ***1975 SCC OnLine Mad 73,*** it was held by a Full Bench of the Madras High Court that, when something had been done in disobedience of an order of injunction it would be the duty of the court, as a policy to set the wrong right and not to allow the perpetuation of the wrong done. As a matter of judicial policy, the court should guard itself against being stultified in circumstances like this, by holding that it was powerless to undo a wrong done in disobedience of the court's orders.

In the decision of ***Jehal Tanti v. Nageshwar Singh*** reported in ***(2013) 14 SCC 689,*** the Hon'ble Apex Court held as follows:-

> "11. The same issue was considered in Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd. (2012) 8 SCC 384
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> 42. … At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity."

Now, comes the question of judicial review by this court in the facts of this case with regard to the allotment of the work orders.

In the decision of ***Silppi Constructions Contractors v. Union of India***, reported in ***(2020) 16 SCC 489,*** the Hon'ble Apex Court held as follows:-

> "20. The essence of the law laid down in the judgments referred to above is the exercise of

restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. **The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case**."

In the decision of ***Jagdish Mandal v. State of Orissa,*** reported in ***(2007) 14 SCC 517*** the Hon'ble Apex Court held as follows:-

"22. **Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides**. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. **Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:**

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

Similarly in ***Montecarlo Ltd. vs. NTPC Ltd.*** reported in ***(2016) 15 SCC 272***, the Hon'ble Apex Court held that, exercise of power of judicial review would be called for if the approach was arbitrary or mala fide or the procedure adopted was meant to favour one.

In the decision of ***Tata Cellular vs. Union of India*** reported in ***(1994) 6 SCC 651*** the Hon'ble Apex Court held that, the decision must not only be tested by the application of Wednesbury principle of reasonableness, but must be free from arbitrariness and not affected by bias or actuated by mala fides.

On an appreciation of the principles of law enunciated above, this court is of the opinion that the process adopted by the pradhan and the decision taken were vitiated by malafide actions and arbitrariness. The intention was to oust the petitioners from participating in the tender process. The allegation of favouritism cannot be ruled out.

The Court does not make any observation about the bidders, who have been added in the proceeding as there is nothing on record for the Court to draw any adverse interference with regard to their genuineness. However, as there was already an order of injunction passed by this Court on January 19, 2022, restraining the parties from working in furtherance of the work allotted and as it is submitted by Ms. Chakraborty, that the respondent nos. 7&8 have obeyed the same and have not proceeded with the work, no loss financial loss has been suffered by the respondents Nos.7 and 8.

The writ petition is disposed of upon setting aside the entire e-tender process, which is the subject matter of this writ petition and in which the petitioners wanted to participate. The works are elaborated in page 16 of the writ petition, namely, (I) Construction of Sajaldhara Unit for Arsenic free water Treatment plant with soak pit at Nidhipota Primary School under 15th Finance Commission(Tied

Fund) of Krishnaganj Gram Panchayat (AAP-35/2020-21., (2) Construction of Sajaldhara Unit for Arsenic free water Treatment plant with soak pit at L/o- Dipak Majumder at Chowgachha under Primary School under 15th Finance Commission(Tied Fund) of Krishnaganj Gram Panchayat (AAP-36/2020-21).

The e-tender notice dated January 8, 2022, bearing memo no. 27/KNJGP/2022 is set aside.

The authorities are at liberty to issue fresh notice inviting tender for the same works.

This writ petition is disposed of.

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

All parties are act on the basis of the server copy of this order.

(Shampa Sarkar, J.)