

30.03.2022
Court No. 19
Item No.5
sn

WPA 5536 of 2022

Neburuli Sekh
Vs.
State of West Bengal & ors.

Mr. Tusher Kanti Mukherjee.....for the petitioner

Mr. L.M. Mahato
Mr. Rudranil De ..for the State

Mr. Tapas Kr. Mondal
Ms. Priya Dey ..for the Zilla Parishad

As despite service, none appears on behalf of the State respondents, Mr. L.M. Mahato, learned Senior Government Advocate, is requested by this Court, to enter appearance in this matter. His appearance may be regularized. Affidavit-of service is taken on record.

The petitioner participated in an auction held by the Zilla Parishad, South 24 Parganas. The notice of such auction was published on February 28, 2022. The auction was with regard to operation of a ferry ghat, namely, Kotakhali ferry ghat.

The petitioner contends that four persons participated in the public auction, which was held on March 15, 2022. According to the petitioner, the rates, as submitted by the participants were as follows:-

- | | |
|--------------------|---|
| 1. Mostafa Sekh | - One Crore & Seven Lacs. |
| 2. Nur Islam Molla | - One Crore Six Lacs & Eighty thousand. |

- | | |
|-----------------|------------------------------------|
| 3.Neburali Sekh | - Six Lacs & Fifty thousand |
| 4. Bapi Sardar | - Six Lacs and Forty Five thousand |

The first and second bidder did not deposit the bid money within the stipulated time.

The petitioner approached the authorities for grant of the lease of Kotakhali ferry ghat. The petitioner being the third highest bidder offered to deposit Rs. 6,50,000/-, which was his bid amount.

The Zilla Parishad did not consider such representation of the petitioner, which was filed on March 22, 2022. The said representation was addressed to the Additional Executive Officer, South 24 Parganas Zilla Parishad. It is submitted that as the petitioner was the third highest bidder, the ferry ghat should be settled in favour of the petitioner. The first and second highest bidder failed to deposit the bid money as per clause 5 of the Notice Inviting Tender. Hence, they were disqualified.

Reliance has been placed on a decision of this Court in the matter of Anchar Sekh Vs. The State of West Bengal & Ors passed in WPA 3738 of 2022 dated March 14, 2022. The petitioner submits that this Court relying upon different decisions of the Hon'ble Apex Court, had directed that the Zilla Parishad may hold public auctions for settlement of ferry ghats, for maximization of revenue. In this case,

the third highest bidder has thus prayed that the ferry ghat be settled in favour of such bidder.

Mr. Mahato and Mr. Mondal both refer to Clause 5 of the Notice Inviting Tender, which provides that, if the first and second highest bidder fail to deposit the money in terms of the said clause, the Zilla Parishad reserves the right to take a final decision in the matter or call for fresh auction by allowing the remaining bidders to participate along with other eligible persons. The first and second highest bidders shall not be allowed to participate in the next auction, in view of their failure to deposit the bid money in the earlier round, as per the said clause. Further reference is made to Clause 6 of the Notice Inviting Tender. The Zilla Parishad also reserves the right to not only cancel the participation, but also forfeit the earnest money deposited by the first and second highest bidder.

Under such circumstances, this Court directs that, as no re-auction has yet been notified, the prayer of the petitioner be considered in accordance with law on the basis of the representation dated March 22, 2022, by the respondent No. 4.

The petitioner shall be heard and allowed to submit his case. The Court cannot pass a mandate upon the Zilla Parishad to settle the ferry ghat in favour of the petitioner, as prayed for. In view of the

provision of Clause 5 of the Notice Inviting Tender, the Zilla Parishad, is empowered to take the final decision in such cases. The competent authority of the Zilla Parishad shall decide the matter, independently and in accordance with law.

Judicial review of a tendering process or clauses in the Notice Inviting Tender is not permissible, except under exceptional circumstances. Unless the clauses in the notice inviting tender are irrational, arbitrary and discriminatory, the same cannot be set aside by courts of law.

The terms and conditions of a tender notice is within the domain and knowledge of experts, i.e., the tender issuing authority. This court cannot rewrite the said conditions. Moreover, clause 5 has not been challenged, before this court. A policy decision cannot be interfered with.

The observations made hereinabove are only for the purpose of disposal of the writ petition, and the respondent No. 4 shall proceed independently, without being influenced by any observations made hereinabove.

A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of two weeks from date of communication of this order.

The Notice Inviting Tender is taken on record.

This writ petition is disposed of.

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

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)