

Sl.no.9
18.1.2022
Court. No. 19
sn

WPA 9278 of 2021

Abu Tahir Saikh
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

Mr. Lal Ratan Mandal
..for the petitioner
Mr. Baidurya Ghosal
..for the respdt. Nos. 7&8
Mr. Bibek Jyoti Basu
Mr. Uttam Kr. De
..for the State

The petitioner has filed this writ petition seeking orders which would amount the reviewing the order passed by a co-ordinate Bench of this Court dated March 9, 2021.

The petitioner participated in a e-Tender process notified by the Dahapara Gram Panchayat. The first e-Tender dated October 1, 2021 was cancelled. Thereafter, the second e-Tender was floated. The petitioner took part in the same. The technical bid was scheduled to be opened on November 12, 2020. The said technical bid was not evaluated. The petitioner requested the authorities to let him know as to why the technical bids were not evaluated. Having received no response from the Panchyat authorities, the petitioner approached this Court by filing a writ petition being WPA 4087 of 2021. This writ petition

was disposed of by a co-ordinate Bench of this Court by passing the following orders:-

“The learned advocate representing the Gram Panchayat submits, upon instruction, that the tender process was cancelled in view of the scarcity of the funds as per the direction of Artho O Parikalpana Samity.

As it is appears that the bids have not been opened and the tender process has already been cancelled, accordingly, the petitioner will not be prejudiced in any manner whatsoever.

No relief can be granted to the petitioner in the instant case.”

Today, this writ petition is being moved with a prayer upon the Pradhan of Dahapara Gram Panchayat to act in accordance with law by opening the technical bid pursuant to the e-Tender notice dated November 3, 2020, which was the subject matter of WPA 4087 of 2021.

The petitioner relies on text messages at page 47 being Annexure P/4 to the writ petition which contains two text messages, which read as follows:-

“Dear User, Your bid for the tender 2020_ ZPHD 303100 _1 has been rejected during Technical evaluation by the duly constituted committee Due to minimum two bidder required – NICS

Dear User, Your bid for the tender 2020_ ZPHD 303100 _2 has been rejected during Technical evaluation by the duly constituted committee Due to minimum two bidder required – NICS”.

It has been pleaded in paragraph 12 of the writ petition that the said text messages had come to the petitioner on February 18, 2021 with regard to tender no. ZPHD 303100_ 1, intimating the petitioner that the

bid of the petitioner had been rejected as the minimum requirement of two participants had not been met.

The petitioner submits that the order was passed on March 9, 2021 by this Court on the submissions that the tender process had been cancelled due to paucity of fund whereas, the text messages sent to the petitioner were contrary to the submissions made by the learned advocate on behalf of the panchayat authorities. It is submitted that as such, the entire matter should be re-opened by this Court with a direction upon the panchayat authorities to proceed with the evaluation of the technical bids submitted by the petitioner and other participants. It is also submitted that three persons had participated in the e-Tender.

Mr. Ghosal, learned advocate appearing on behalf of the panchayat authorities submits that due to scarcity of the funds during the pandemic situation, the Artho O Parikalpana Upa Samity in their meeting held in the month of February 21 had instructed the panchayat authorities to cancel all pending tender processes. A copy of the report be taken on record. As per the report, all pending tenders before the Dahapara Gram Panchayat were cancelled by the Upa Samity in its meeting in view of the other activities which had to be undertaken.

The text messages on the basis of which the petitioner filed this writ petition do not contain any name of the sender. The text messages are dated February 18 and the time as per recording is 5-15 p.m.

The petitioner was aware of the text messages on the date the order was passed by the co-ordinate Bench of this Court. At this stage, it is not possible to re-open the entire issue in view of the order already passed by a co-ordinate Bench of this Court and in view of the cancellation of the tender. It is not the petitioner's case that due to extraneous considerations and to favour some persons, the tendering process was arbitrarily cancelled.

It is also a fact that the tender process was cancelled by the authorities on the basis of certain policy related issue which the Court does not find to be mala fide. Whether there were two participants or more than two participants is also not before this Court. Thus, at this stage, when the issue has reached a finality with the order dated March 9, 2021, orders as prayed for, cannot be passed.

Needless to mention, if the authorities once again decide to issue a tender notification in accordance with law, the petitioner shall be at liberty to participate, if he is otherwise eligible.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)