

M/L 9
04.7.2022
Court No.24
SD

WPA 8615 of 2022
With
CAN 1 of 2022

Sri Krishna Pada Mahato & Anr.
Vs.
State of West Bengal & Ors.

Mr. Joytosh Majumder
Mr. Partha Pratim Roy
Mr. Sougata Mitra
Ms. Ankita Dey

...for the Petitioners.

Mr. Jaharlal De
Mr. Shamim ul Bari

...for the State.

Affidavit of service filed by the petitioners in Court today be kept with the records.

The petitioners are aggrieved by the publication of the notice inviting tender being NIT No.01/2022/23/SGP dated April 20, 2022, NIT No.02/2022/23/SGP dated April 20, 2022 and NIT No.03/2022/23/SGP dated April 20, 2022 published by the Pradhan, Sirkabad Gram Panchayat, District Purulia.

According to the petitioners, the said tender notice was not published in accordance with the notification being No.2254-F(Y) dated April 24, 2014 issued by the Finance Department, Audit Branch, Government of West Bengal.

The further contention of the petitioners is that the Prodhan does not have the jurisdiction to publish such notice inviting tender.

In support of the submission of the petitioners, the learned advocate relies upon the aforesaid notification dated April 24, 2014 and Rule 17(5) of the West Bengal (Accounts, Audit and Budget) Rules, 2007 (hereinafter referred to as 'the Rules of 2007').

The notification dated April 24, 2014 was issued in exercise of the power conferred by Clause (3) of Article 166 of the Constitution of India. According to the said notification, tender notice shall always be given due publication through the leading dailies in English, Hindi and Bengali. Open tender for execution of works worth of Rs.1,00,000/- or more shall be invited by publication of work on the notice board and on the website of the administrative department, if maintained and also brief referral advertisement in one daily newspaper.

As per Rule 17(5) of the Rules of 2007, *Artha O Parikalpana Upa-Samiti* is the appropriate body to invite tenders for execution of work estimated value of which is above Rs.1,00,000/- but not exceeding Rs.5,00,000/-.

The petitioners submit that the impugned tender notice was issued by the Prodhan who does not have the jurisdiction to publish such tender notice of the work value exceeding Rs.1,00,000/- or below Rs.5,00,000/-.

Publication of the said tender was not made in the leading daily newspaper. The notice inviting tender was displayed in the office board of the Sub-Divisional Officer, Purulia Sadar Sub-Division, BDO, Arsha Block, Dুরonto

Varta Daily newspaper, Gram Panchayat notice board and the Tattha Mitra Kendra.

Learned advocate for the petitioners relies upon an unreported order dated January 7, 2020 passed in WP No.16462(W) of 2019 in the matter of *Sajahan Mondal vs. The State of West Bengal & Ors.* wherein the Court was pleased to set aside the impugned tender notice as the same was issued in violation of Rule 17(5) of the Rules of 2007.

The petitioners also rely upon the unreported order dated November 28, 2017 passed in WP No.26894(W) of 2017 in the matter of *Sk. Farijul vs. The State of West Bengal & Ors.* wherein the Court was pleased to set aside the entire tender process initiated by Gram Panchayat and was pleased to grant liberty to the Gram Panchayat to undertake fresh tender.

Reliance has also been placed on the unreported order dated January 24, 2019 passed in W.P. No.24287 (W) of 2018 in the matter of *Amit Bhowmik vs. The State of West Bengal & Ors.* wherein the Court was pleased to pass interim order as the Court was prima facie satisfied that the notice inviting tender was issued without following the notification dated April 24, 2014.

The petitioners pray for setting aside the entire tender process.

Learned senior counsel representing the State-respondent submits, upon instruction that, one of the work orders which was issued pursuant to the notice inviting

tender no.03 dated April 20, 2022 is already complete and bills have been submitted by the contractor for payment in June 2022.

It has also been pointed out that the scope of the writ petition as pleaded in the averments and grounds is only limited to the inaction on the part of the Panchayat to issue the tender forms in favour of the petitioners and for non-consideration of their representations.

On perusal of the documents annexed to the writ petition it appears that the representation which was filed by the petitioners on May 5, 2022 does not raise any issue with regard to the jurisdiction of the Prodhan to issue the notice inviting tender.

The last date of submission of the tender documents is long over. The petitioners have filed the writ petition before this Court on May 10, 2022. In accordance with the terms and conditions of the notice inviting tender, the work ought to have been completed within a period of 30 days. By the time the matter is taken up for consideration by the Court, the work which was to be done in terms of the Work Order issued in favour of the successful tenderer is already over. Bills have been raised by the successful contractor for releasing the dues.

At this stage, no useful purpose will be served by entering into the issue of jurisdiction that has been raised by the petitioners from the Bar at the time of making

submission. The same is not a ground as mentioned in the writ petition.

Fact remains that according to the Rules of 2007 and the notification published on April 24, 2014, the concerned authority of the Panchayat ought to have given due publication of the notice inviting tender in the leading newspapers so that there is maximum amount of participation and a better bid is received so there can be maximization of revenue.

According to the Rules of 2007, it is the Artha O Parikalpana Upa-Samiti which ought to issue the tender.

The Court accordingly directs the District Magistrate of all the Districts to draw the attention of the Panchayats to strictly follow the Rules that are required to be followed at the time of inviting tenders by the Panchayat authorities, failing which the entire tender process becomes vitiated and the work for which the tender has been issued becomes jeopardized. The same cases loss to the Government.

The Registrar General of this Court is directed to communicate this order to all the District Magistrates of the districts for proper publication.

No further order can be passed in the present writ petition.

The writ petition along with the connected application is disposed of.

The instruction given by the Gram Panchayat through the learned Advocate for the State respondents be retained with the records.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)