

S/L 8
18.05.2022
Court. No. 19
GB

WPA 8889 of 2022

Majibur Rahaman
VS
The State of West Bengal & Ors.

*Mr. Mrityunjoy Chatterjee,
Md. G.N. Imrohi,
Mr. Debapriya Majumder.*

...for the Petitioner.

*Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Haldar.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner is an unsuccessful tenderer. The allegation is that in the notice inviting e-tender dated April 6, 2022 tailor made eligibility criteria had been fixed by the authority, so that competition could be ruled out and only specific chosen persons of the Manigram Gram Panchayat, could participate.

As the tender notice, which is under challenge has already been given effect to and work orders have been issued, no interim order can be passed. In the decision of **N.G. Projects Limited versus Vinod Kumar Jain and Others** reported in **2022 SCC OnLine SC 336**, the Hon'ble Apex Court held that the courts should refrain from passing any order of injunction on any tendering process. Such restraint has been imposed on the courts for two reasons. First, public projects relating to infrastructural development should not be stalled as the same would cause hardship and injustice to the general public and secondly, any injunction,

stay or cancellation of a tendering process, would impose a heavy burden on the state exchequer. The Hon'ble Apex Court has gone on to add that even if arbitrariness and irregularities are detected, the remedy of the persons aggrieved would be by way of a suit for damages. The relevant portion is quoted below:-

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

In this case, the petitioner submits that the tendering authority at least must be warned and cautioned to ensure that free and fair competition is practiced and chances of favouritism, arbitrariness and nepotism etc. are eliminated. The eligibility conditions should not be tailor made or fixed in a way that participation would be restricted to a minority group.

In this case, as the work orders have already been issued, no protection can be granted to the petitioner in view of the decision, of the Hon'ble Apex Court.

The petitioner and other similarly situated contractors like the petitioner have filed a complaint before the Block Development Officer, Sagardighi. Such complaint dated April 11, 2022 shall be disposed of in accordance with law upon hearing the representative of the unsuccessful bidders/contractors, the gram panchayat authorities and all other interested persons.

The question to be determined would be whether the conditions which have been attached in the instant tender process only allowed participation of a very few persons. Whether the other panchayat authorities within the said block also imposed such restrictive and harsh conditions or allowed larger participation by framing the conditions of eligibility in a more liberal way.

This court has not decided the merits of the claim and counter claims of the parties.

The authority shall dispose of the said representation by passing a reasoned order, which shall be communicated to all concerned.

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

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)