

17.01.2022
Court No. 19
Item no.5
sn

WPA 19074 of 2021

Minhajul Shaikh
Vs.
The State of West Bengal & ors.

Md. Sarwar Jahan
Md. Ashraful Huq .for the petitioner

Mr. Samrat Sen
Mr. Supratim Dhar ..for the State

Mr. Mritunjoy Chatterjee ..for the respdt.no.8

The petitioner claims to be an intending participant in the tender process initiated by the Pradhan of Manigram Gram Panchayat vide e- tender notices dated November 12, 2021 inviting for tenders of 36 works under the special notice no.08/Mani/2021-22 and notice no. 09/Mani/2021-22.

It is the contention of the petitioner that the concerned authorities published a e-tender notice with an additional clause, namely, clause 11 under the eligibility criteria in order to favour three participants. The specific charge against the Pradhan of the concerned Gram Panchayat is that the West Bengal Gram Panchayat Procurement Manual did not empower the Pradhan to insert clauses which are not provided for in the said manual. According to the learned advocate for the

petitioner, the condition imposed on the participants of having a registration under the Building and Other Construction Workers' Regulation of Employment and Condition of Service Act, 1996 was not a valid requirement in the works covered by the two tender notices. Thus, the petitioner has claimed that an enquiry be made as to the procedure adopted by the Pradhan of the concerned Gram Panchayat by inserting irrelevant clauses in order to exclude eligible bidders.

Mr. Chatterjee, learned advocate appearing on behalf of the Pradhan submits that the tender notices were floated as per law and by proper publication on November 12, 2021. That the petitioner did not participate in the tender process. That the technical bid was opened on the date fixed, that is, November 22, 2021 and the financial bid was opened on November 25, 2021. During such period, the petitioner did not challenge the tender process. He further submits that the work order had already been issued to the eligible tenderers and the works are time bound public projects which cannot be stalled.

Mr. Samrat Sen, learned Assistant Additional Advocate General submits that the allegations are incorrect. That the petitioner did not ever intend to participate in the tender process. That even if the

petitioner was ineligible as per the clause inserted in the terms and conditions, the petitioner could have challenged the said clause after submitting the tender documents without the alleged registration. The petitioner did not show his bona fide intention to participate in the tender process.

Having considered the rival contentions of the parties and having considered the fact that the work order had already been issued and the project is of public interest, no order can be passed in the writ petition protecting the petitioner's right. Even if the petitioner's allegations are correct, the remedy of the petitioner, if successful in his challenge, would be to claim damages. Moreover, disputed questions of facts, which are involved in this case as per the allegations of the petitioner. Next, the petitioner admittedly did not submit his papers and did not challenge the clause at the correct time. It is also not a case that the bid of the petitioner was cancelled only on the ground of non-submission of the proposed document under clause 11 of the tender notice.

Under such circumstances, this writ petition is disposed of with a direction upon the respondent no.6, that is, the Block Development Officer, Sagardighi Development Block and Executive Officer, Sagardighi Panchayat Samity to dispose of the

complaint of the petitioner, being Annexure P/4 to the writ petition, in accordance with law upon hearing the petitioner, the Pradhan of the Manigram Gram Panchayat, any other officials who may be involved in the tendering process as also the successful tenderers. A reasoned order shall be passed and communicated to all concerned. On the basis of what transpires at the hearing and is reflected in the decision of the concerned Block Development Officer, the petitioner shall be at liberty to proceed in accordance with law.

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

This writ petition is thus disposed of.

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

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

(Shampa Sarkar, J.)