

15.09.2022
Sl. No.14& 15(DL)
srm

W.P.A. No. 19708 of 2022
Saddam Sk.
Versus
The State of West Bengal & ors.

With
W.P.A. No. 20697 of 2022
Saddam Sk.
Versus
The State of West Bengal & ors.

Mr. Probal Kumar Mukherjee,
Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha

....for the Petitioner in both
the writ petitions.

Mr. Susovan Sengupta,
Mr. Subir Pal

...for the State-respondents in
WPA 19708 of 2022.

Mr. Debjit Mukherjee,
Mrs. Rupsa Chakraborty

...for the State-respondents in
WPA 20697 of 2022.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal

...for the Respondent No.7
in both the writ petitions.

Affidavit in Opposition is filed by the respondent
No.7, and taken on record.

The writ petition being WPA 19708 of 2022 has been
filed challenging an order dated July 25, 2022 by which the
Block Development Officer, Murshidabad-Jiaganj
Development Block and Executive Officer, Murshidabad-

Jiaganj Panchayat Samity had directed that Jakir Hasan/the respondent No.7 must deposit the amount of Rs.8,21,000/- for grant of lease of Hulaspur Ferry Ghat in terms of the order of this Court dated July 13, 2022 passed in WPA No.12016 of 2022.

The writ petition being WPA 20967 of 2022 has been filed by the same writ petitioner as in WPA 19708 of 2022, challenging the order of the Block Development Officer, Murshidabad-Jiaganj Development Block and Executive Officer, Murshidabad-Jiaganj Panchayat Samity dated August 25, 2022, by which the petitioner was informed by the authority that Jakir Hasan/the respondent No.7 in WPA 19708 of 2022 was the highest bidder, and would be granted the lease. The petitioner was further directed to supply his bank account number so that the amount deposited by the petitioner could be returned on prorata basis after deducting the lease rent for the period when the Hulaspur Ferry Ghat was being operated by the petitioner.

Initially, the petitioner was the successful bidder, who was granted lease for operation of the ferry ghat. Such lease was granted to the petitioner by the Murshidabad-Jiaganj Panchayat Samity. The highest bidder had quoted an abnormally high amount of Rs.15,00,000/-, but withdrew from the bidding process. The petitioner was the

second highest bidder. The Block Development Officer did not permit the other bidders to quote an amount lower than Rs.15,00,000/-. The Block Development Officer informed the other participants that only if they would quote an amount higher than Rs.15,00,000/-, they would be allowed to continue in the auction process. Apart from the petitioner, who quoted a sum of Rs.4,81,000/- and the other bidder who quoted Rs.15,00,000/-, none of the participants could offer their bids in view of the denial by the Block Development Officer. They were not allowed to offer their individual prices below Rs.15,00,000/-. As the bidder who quoted Rs.15,00,000/- withdrew from the bidding process, the petitioner being the second highest bidder was automatically declared to be the successful bidder and the deed of lease was executed between the authority and the petitioner on the very same day. The petitioner had also started the operation. On the same day of the bid, the respondent No.7 wrote a letter to the Sabhapati of Murshidabad-Jiaganj Panchayat Samity, to the effect that the said respondent would quote Rs.3,00,000/- more than the petitioner.

It has been submitted by Mr. Roy, learned Advocate appearing on behalf of the respondent No.7, that the said letter was submitted immediately after the bid was over

and before the lease deed was executed, between the authority and the petitioner.

As the authorities allowed the petitioner to continue to operate the ferry ghat, the respondent No.7 filed WPA No.12016 of 2022. A co-ordinate Bench of this Court after recording the background of the bidding process, arrived at the conclusion that although auction is held by the government to generate maximum revenue, the action of the Block Development Officer in not allowing the other bidders to quote a sum less than Rs.15,00,000/-, had resulted in loss of revenue. The second highest bidder/petitioner, automatically became successful when the bidder who quoted Rs.15,00,000/- withdrew from the bidding process. Her Lordship observed that the auction ought not to have been held in such a manner. The participants who were interested to submit their bids should not have been prevented from putting in their bids only because one of the participants had quoted an exorbitant amount. Her Lordship also observed that it was not unknown in an auction process for a person who quotes an exorbitant amount to subsequently withdraw only to frustrate the bidding process or for other obvious reasons.

Her Lordship was of the view that had the Block Development Officer permitted the respondent No.7 to quote an amount, in that case, the respondent No.7 could have become the highest bidder and the government would have generated more revenue. Under such circumstances, the writ petition was disposed of with the following order:

“In view of the above, the instant writ petition is disposed of by directing the Executive Officer, Murshidabad Jiaganj Panchayat Samity to consider the representation filed by the petitioner on 14th June, 2022 and 16th June, 2022 keeping in mind that any participant who is agreeable to pay an amount more than the tender price quoted by the second highest bidder at the time of open bidding on 14th June, 2022, may be considered as the successful tenderer.

The decision shall be taken by the Executive Officer after giving reasonable opportunity of hearing to all the necessary parties at the earliest, but positively within a period of ten days from the date of communication of this order. The Executive Officer shall pass a reasoned order and communicate the same to all the parties immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.”

Mr. Mukherjee, learned Senior Advocate who appears on behalf of the petitioner, has assailed the order passed by the Block Development Officer, Murshidabad-Jiaganj Development Block and Executive Officer, Murshidabad-Jiaganj Panchayat Samity dated July 25,

2022. According to Mr. Mukherjee, the order impugned was not passed in compliance of the directions of Her Lordship. The petitioner was neither heard nor allowed to put in his bid. It is submitted that the petitioner could have matched up the amount offered by the respondent no. 7 or quoted a higher amount than the respondent No.7, had he been given an opportunity to do so. It is further submitted that proper compliance of the order of Her Lordship would be to hold a fresh auction. Mr. Mukherjee prays that this Court must set aside the earlier process and the orders passed by the authority and direct rebidding. He submits that it was never the intention of the Court to direct that only the respondent No.7 could submit a fresh quote and the other interested parties would not be allowed to participate in the process.

The petitioner assails both the orders of the authority on three grounds:-

- (a) No opportunity was given to the petitioner to match the bid of the respondent No.7.
- (b) Both the orders were passed without considering that equity was in favour of the petitioner as the petitioner had invested a huge amount of money and that the authority could not rescind from a concluded contract.

(c) A co-ordinate Bench had directed that all the interested parties must be heard which clearly indicated that the Block Development Officer ought to have granted an opportunity to the petitioner to quote a higher amount than Rs.4,81,000/-. For all practical purposes, fresh auction should have been held.

The learned Advocate for the State-respondents submits that clause 10 of the contract entered into between the petitioner and the authority clearly provides that the lease which was granted could be revoked at any time in compliance of an order of a court of law. Mr. Sengupta submits that the contention of the petitioner that the petitioner had acquired a right on the basis of a concluded contract/lease agreement and the same could not be taken away by the subsequent order dated July 25, 2022, and August 25, 2022. A copy of such contract has been submitted. He further submits on instruction, that the petitioner did not offer any bid to match Rs.8,21,000/- which was offered by the respondent No.7. The petitioner was repeatedly called upon to do so by the Block Development officer at the hearing on July 25, 2022.

Mr. Roy, learned Advocate appearing on behalf of the respondent No.7, categorically submits that at the time of hearing, the petitioner was not willing to submit any further bid. The same statement has been reiterated by the Block Development Officer through his learned Advocate. Thus, according to Mr. Roy, there is no scope for judicial review of the orders impugned before this Court. Such fact has been categorically averred in the affidavit-in-opposition. Mr. Roy submits that the order of Her Lordship was unambiguous and there is no scope for interference by this Court as all actions were taken as per the direction of Her Lordship. The order of Her Lordship had not been interfered with in appeal.

Mr. Mukherjee, learned Senior Advocate, argues that the orders passed by the authority dated July 25, 2022 and August 25, 2022 were independent orders passed by the authority. Even if those orders were passed on the basis of the direction of the Court and the order of Her Lordship had attained finality, the orders impugned have given rise to fresh causes of action and this Court sitting in judicial review has the jurisdiction to entertain the writ petitions and pass necessary orders by cancelling the orders impugned.

Heard the parties. A co-ordinate Bench of this Court had come to the conclusion that the procedure followed in the bidding process by which the petitioner had become the successful bidder, was flawed. Specific directions were given to the Block Development Officer, Murshidabad-Jiaganj Development Block and Executive Officer, Murshidabad-Jiaganj Panchayat Samity, to allow all such persons, who wish to bid at a rate higher than the second highest bidder/petitioner, to put in their bids with a further direction that the interested parties should be heard. Accordingly, the petitioner and the respondent No.7 participated at the hearing. The petitioner has not been able to show any document indicating that the petitioner had, at all, offered any bid at the hearing.

It has been specifically denied by the learned Advocate for the State-respondents and by the learned Advocate for the respondent No.7 that the petitioner did not offer any bid at the hearing. The writ petitions do not show any indication that such offer was made even prior to the hearing. The petitioner wrote a letter, asking the authority not to take any coercive steps as the petitioner had invested Rs.11,00,000/-.

Scope of judicial review of an administrative order, is limited. Unless there is blatant illegality or irregularity in

the procedure adopted by the authority, the Writ Court cannot interfere with the bidding process. A co-ordinate Bench of this Court had specifically directed the Block Development Officer, Murshidabad-Jiaganj Development Block and Executive Officer, Murshidabad-Jiaganj Panchayat Samity to consider the representation of the respondent No.7, keeping in mind that any person who was agreeable to pay an amount more than the tender price quoted by the second highest bidder/petitioner, may be considered as the successful bidder. All parties were directed to be given a reasonable opportunity of hearing. The Executive Officer was directed to pass a reasoned order and communicate the same to the parties.

There is no doubt that the Court found the bidding process to be irregular. The Court found the withdrawal of the highest bidder who had quoted Rs.15,00,000/- also to be contrary to law. Thus, the automatic success of the second highest tenderer who quoted Rs.4,81,000/- was also not only found to be improper but also to have caused loss of income for the government. Her Lordship had observed thus:

“Had the Block Development Officer permitted the petitioner to quote the amount that he is agreeable to pay, then possibly the petitioner would have been the second highest bidder and the tender could have been settled in his favour. There may have been

other participants willing to deposit higher amounts.”

Thus, sitting in judicial review, this Court does not find any irregularity either in the decision making process or in the order passed by the Executive Officer. The Executive Officer called the interested parties for a hearing. The petitioner and the respondent No.7 attended the hearing. There is not a single piece of paper to indicate that at the time of hearing, the petitioner had offered any amount either to match up the price offered by the respondent No.7 or had quoted an amount higher than the one quoted by the respondent No.7. The letter, which has been relied upon by Mr. Mukherjee, indicates that as the petitioner had been invested Rs.11,00,000/-, the petitioner requested the authorities not to take coercive steps against the petitioner. A subsequent representation made after the decision was taken by the authority would not make the process defective. Moreover, the authorities followed the direction of the Court. The petitioner had also challenged the order of Her Lordship before the Hon'ble Division Bench and had assailed the order on several grounds. The Appeal Court did not interfere with the order passed by Her Lordship. The Appeal Court also did interfere after being specifically informed that the order of Her Lordship

had been carried out by the authority on the basis of the direction of the learned Single Judge.

The Appeal Court granted liberty to the petitioner to move the learned co-ordinate Bench in accordance with law. It is informed that the petitioner has already moved the learned co-ordinate Bench by filing an application for review. The other questions, which have been raised by Mr. Mukherjee with regard to the questions of revocation or cancellation of a concluded agreement, denial of the vested right of the petitioner which had crystallised upon execution of the contract and the balance of equity, are to be decided in the review. These points were available to the petitioner, when Her Lordship had passed the order but the petitioner did not appear when the matter was disposed of. The orders impugned before this Court are consequential orders passed in compliance of the order passed by Her Lordship. The order of Her Lordship continues to hold the field. It attained finality after the dismissal of the appeal. A co-ordinate Court can neither interfere with the same nor clarify the same. Neither can a co-ordinate Bench interpret the order. Whether the order of Her Lordship was to allow a rebidding or a fresh auction, can be only clarified by Her Lordship.

This Court cannot interfere with the orders passed by the authority. It is also not on record that the petitioner had offered a bid higher than Rs.8,21,000/-. The lease deed between the respondent No.7 and the authorities has been executed and possession has also taken over by the respondent No.7. The pleadings and the documents in the affidavit-in-opposition indicate such.

Under such circumstances, the writ petitions are disposed of without any orders.

The other remedies of the petitioner, are kept open.

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.)