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wt 14. 29.09.2022
Ct. No.6
Tanmoy

M.A.T. 1623 of 2022

Rabin Majhi
-Versus-
The State of West Bengal & Ors.
With
IA No: C.A.N. 1 of 2022

With

M.A.T. 1625 of 2022

The Domkal Panchayat Samity & Anr.
-Versus-
Rabin Majhi & Ors.
With
IA No: C.A.N. 1 of 2022

Mr. Saptansu Basu, Ld. Sr. Adv.,
Mr. Mrityunjay Chatterjee, Adv.,
Mr. Amanul Islam, Adv.

...for the appellant
in M.A.T. 1623 of 2022 &

...for the respondent no.1
in M.A.T. 1625 of 2022.

Mr. Md. Sarwar Jahan, Adv.,
Mr. Jayanta Samanta, Adv.,
Mr. Gaurav Das, Adv.,
Mr. Maidul Islam Kayal, Adv.

...for the appellants
in M.A.T. 1625 of 2022 &

...for the Panchayat Samity
in M.A.T. 1623 of 2022.

Mr. Samrat Sen, Ld. AAAG,
Mr. Nilotpal Chatterjee, Adv.,
Mr. Manali Ali, Adv.

...for the State.

Mr. S.N. Biswas, Adv.

...for the respondent no.7.

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

These two appeals have been preferred against the same *interim* order dated September 26, 2022, passed in W.P.A. No. 22046 of 2022. Accordingly these two appeals and the connected applications have been taken up for hearing together by consent of the parties.

The disputes arise in relation to nineteen (19) Ferry Ghats under the Domkal *Panchayat Samity*. Five (5) out of those nineteen (19) Ferry Ghats are operated by the appellant in M.A.T. 1623 of 2022, who is the writ petitioner before the learned Single Judge.

The short grievance with which the writ petitioner approached the learned Single Judge is that the Executive Officer of the *Panchayat Samity* as contemplated in Rule 84 of the West Bengal *Panchayat (Panchayat Samity Administration)* Rules, 2008 (hereinafter referred to as the 'said Rules'), without being authorized to do so by the *Samity* and acting on his own, initiated a tender process in respect of the 19 Ferry Ghats and settled the Ghats in favour of the successful bidder who is the private respondent no.7 before the learned Single Judge. The learned Single Judge noted that the tender process has been completed, the writ petitioner did not participate in the tender process; the successful bidder has deposited Rs.30 lakhs with the Executive Officer of the *Samity* who is the concerned Block Development Officer (BDO).

Accordingly, the learned Judge passed the order impugned before us, the operative portion whereof reads as follows:-

“Under such circumstances, as third party rights have been created, a contract has been executed and the person has allegedly deposited Rs.30 lakhs, the said leaseholder must be added as a respondent here and now. Liberty must be given to the successful bidder to file an affidavit in opposition. A copy of the writ petition along with a server copy of this order be served upon the said respondent.

Affidavit of service to be filed on the next date.

An affidavit-in-opposition shall be filed by the Block Development Officer explaining the reasons as to how he could have acted on behalf of the panchayat samiti when the panchayat samiti denies to have instructed him to act in terms of Rule 84 of the said Rules. The District Magistrate and the District Panchayats and Rural Development Officer, will also file separate sets of affidavit-in-opposition indicating the procedure which should have been followed by the authority in terms of Rule 31 of the said Rules. Two separate affidavits are required to be filed in this case.

Let affidavit-in-opposition be filed within two weeks from the date of reopening of the court after the ensuing puja vacation. Reply thereto, if any, be filed within one week thereafter.

Let the matter be listed on December 2, 2022 under the heading ‘Hearing’.

All actions taken shall abide by the result of this writ petition.”

Being aggrieved, the writ petitioner has preferred M.A.T. 1623 of 2022 and the Domkal Panchayat Samity has preferred M.A.T. 1625 of 2022 against the said order.

Appearing for the appellants, Mr. Saptansu Basu, learned Senior Advocate (M.A.T. 1623 of 2022) and Mr. Md. Sarwar Jahan, learned Advocate (M.A.T. 1625 of 2022), submitted that the initiation of the tender process by the

BDO, acting as the Executive Officer of the *Panchayat Samity*, without being authorized by the *Panchayat Samity*, is bad in law. The BDO had no authority to issue the tender notice. The entire process is illegal and *non-est* in the eye of law. The tender process must be set aside.

Our attention was drawn to Rules 31 and 84 of the said Rules in support of the submission that the Executive Officer can only implement the decisions taken by the *Panchayat Samity*. He does not have any authority or power to take any decision on his own, far less with regard to conducting a tender process for settling Ferry Ghats.

Learned Advocate for the successful bidder, who is the private respondent no.7 before us (M.A.T. 1625 of 2022), draws our attention to a Resolution dated July 18, 2022 adopted by the Artho Sanstha Unnayan o Parikalpana *Sthayee Samity* of the *Panchayat Samity* (page 30 of the stay petition in M.A.T. 1625 of 2022), to contend that the *Sthayee Samity* in fact authorized the Executive Officer to conduct an auction by issuing tender notice. It was on the basis of such Resolution that the Executive Officer issued the tender notice and carried the tender process to its logical conclusion, culminating in execution of contract in favour of the private respondent no.7. The said respondent is out of pocket by Rs.30 lakhs. No order should be passed which would interfere with the said respondent's contractual right under the contract of settlement of Ferry Ghats in his favour.

Learned Advocate for the State seems to be supporting the private respondent no.7. He says that the State will suffer huge financial loss if any interdiction is ordered by us. The writ petition is pending before the learned Single Judge and that should be allowed to be decided upon exchange of affidavits.

We do not see how the State has any *locus standi* in the matter. The concerned ferries are not Government ferries or public ferries within the meaning of Bengal Ferries Act, 1885. The money that the private respondent has deposited is with the BDO who has accepted it in his capacity as the Executive Officer of the *Panchayat Samity* although the *Samity* says that he was not authorized to do so. Hence, we fail to appreciate how the State will be prejudiced if we pass an order of *interim* arrangement as we propose to do.

The issue raised by the appellants goes to the root of the matter. If there was no Resolution of the *Samity* authorizing the Executive Officer to initiate a tender process, the entire tender process must be held to be bad from the very inception. But that is a question which we request the learned Single Judge to decide after exchange of affidavits.

Since we find that the appellants have a *prima facie* arguable case, we are of the view that *status quo* as of date with regard to the Ferry Ghats in question should continue till the learned Single Judge disposes of the writ

application. This would necessarily mean that the appellant in M.A.T. 1623 of 2022 will be permitted to operate the five Ferry Ghats which he is presently operating, even beyond September 30, 2022 when his contract expires. However, equities must be balanced. The said appellant cannot continue to operate the concerned Ferry Ghats without showing the colour of money. The *Sthayee Samity* of the *Panchayat Samity* shall immediately take a decision as to what amount of money the appellant in M.A.T. 1623 of 2022 should deposit with the *Sthayee Samity* in order to carry on operating the concerned Ferry Ghats. It should be a reasonable sum since this is only an *ad hoc interim* arrangement which will abide by the final decision of the learned Single Judge in the writ petition.

The appellants in M.A.T. 1625 of 2022 say that the *ad hoc interim* arrangement that this Court has directed in respect of the five (5) Ferry Ghats, which are operated by the appellant in M.A.T. 1623 of 2022, should also be followed in respect of the other fourteen (14) Ferry Ghats. Since the validity and legality of the entire tender process is in question, we think that the suggestion given by the *Samity* is reasonable and we allow the *Samity* to follow that course of action.

We appreciate that the private respondent no.7 would suffer some degree of inconvenience by reason of the *interim* arrangement but the same is unavoidable in the present fact scenario where, according to us, the

appellants have made out an arguable case. The money that the Executive Officer collected from the private respondent no.7 and which we are told is presently lying with the *Samity*, shall be invested in a short-term fixed deposit account with a scheduled Bank which will offer the highest rate of interest, in the name of the *Sabhapati* of the *Panchayat Samity*. The concerned Bank and the *Sabhapati* are directed to keep the fixed deposit renewed and alive and the same will abide by the direction of the learned Single Judge in the writ petition.

We make it clear that we have not considered the merits of the case at all. All observations made herein are *prima facie* and only for the purpose of disposal of these two appeals. The learned Single Judge is requested to decide the writ petition without being influenced by any observation in this order, on an early date, to the extent the business of the Court may permit. The learned Judge has already directed exchange of affidavits. We make it clear that affidavits must be filed within the time period prescribed by the learned Single Judge and no extension of time shall be sought for by any of the parties.

Since we have not called for affidavits, the allegations made in the stay petitions shall be deemed not to have been admitted by the respondents.

The appeals being M.A.T. 1623 of 2022 and M.A.T. 1625 of 2022 along with the connected applications being IA No: C.A.N. 1 of 2022 and IA No: C.A.N. 1 of 2022 are

accordingly disposed of. However, there will be no order as to costs.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)