

16.11.2022
Sl. No.10
sn

W.P.A. No. 22780 of 2022

Tipu Sultan Molla & Anr.

Vs.

The State of West Bengal & Ors.

Md. Salahuddin
Md. Ahsanuzzaman

....for the Petitioners.

Mr. Jahar Lal De
Mr. Supratim Dhar

...for the State-respondents.

This writ petition has been filed seeking a Mandamus upon the respondents to float a fresh tender on the basis of an order dated September 21, 2022 passed in MAT 1360 of 2022. Further prayer has been made for cancellation of the tender notice dated May 24, 2022.

The petitioners contend that the Hon'ble Division Bench had directed that the petitioners may participate in any tender process to be floated by the authorities. It is submitted that the purport of such direction of the Hon'ble Division Bench is that the second tender notice which was floated on May 24, 2022 ought to be cancelled and a fresh tender ought to be floated to enable the petitioners to participate in the same.

The petitioners allege that the tender process initiated by Bikrampur Gram Panchayat pursuant to the advertisement in the 'Ananda Bazar Patrika' dated March 6, 2022 being NIT No. BIK-0191-31) and BIK-02(1-18) of 2021-22 dated 25.02.2022 had been illegally cancelled on the ground that wide publication had not been made. The petitioners allege that during the pendency of the earlier challenge to the cancellation of the tender notice dated February 25, 2022, a fresh tendering process could not be initiated by the concerned gram panchayat.

The cancellation was challenged in WPA 5559 of 2022.

WPA 5559 of 2022 was dismissed on the ground that the cancellation of the earlier tender process was not erroneous.

With a similar prayer for withdrawal/cancellation of the second tender notice dated May 24, 2022, WPA 11956 of 2022 was filed before this Court.

In WPA11956 of 2022, a Co-ordinate Bench of this Court came to a finding that pursuant to the fresh tender which had been floated in May, 2022, twelve bidders participated, but the tender process could not be finalized due to pendency of the writ petition.

The petitioners did not participate in the tender process. The learned Court was of the view that as there were no plausible reasons as to why the petitioners did not participate in the subsequent process, cancellation of the tender notice dated May 24, 2022, could not be directed.

Aggrieved by the order dated August 17, 2022 passed in WPA 5559 of 2022, the petitioners preferred an appeal. The appeal was disposed of by the Hon'ble Division Bench of this Court by an order dated September 21, 2022.

The Hon'ble Division Bench was of the view that nobody had a vested right to insist that a Notice Inviting Tender must be carried forward. The authorities in the instant case had considered the issue and decided to cancel the tender notice dated February 25, 2022, as wide circulation and publication of the notice had not been done.

The Hon'ble Division Bench did not find any irregularity or arbitrariness in the action of the authorities in cancelling the earlier tender process which was published in the Ananda Bazar Patrika dated March 6, 2022. The issuance of the subsequent tender notice dated May 24, 2022 was also not interfered with.

Their Lordships observed that the order under appeal did not call for any interference. However, it

was clarified that the order of Their Lordships dated September 21, 2022 passed in MAT 1360 of 2022, would not prevent the petitioners from participating in any fresh tender that may be floated by the concerned authorities.

Such observation/liberty of the Hon'ble Division Bench did not amount to a direction on the authorities to cancel the second tender process and float a fresh tender thereby allowing the petitioners to participate.

The writ petition cannot be sustained in law, for the following reasons :-

- a) The first tender process had been cancelled by the Artha-o-Parikatham Upa-Samity as well as the Tender Selection Committee of the Gram Panchayat in a meeting dated March 10, 2022. Challenge to such cancellation was rejected by a Co-ordinate Bench of this Court by an order dated August 17, 2022, in WPA 5559 of 2022.
- b) The tender documents contain a clause which permits the authorities to cancel a tender at any time, without assigning any reasons.
- c) The co-ordinate Court found that the reason for cancellation i.e. lack of wide publication and denial of wide participation to the

people to be a reasonable one. The Hon'ble Division Bench upheld the order of the learned Single Judge.

- d) The subsequent tender process floated on May 22, 2022 was challenged in WPA 11956 of 2022. As the petitioners did not participate in the second tender process despite having knowledge of the same, a Co-ordinate Bench dismissed such writ petition on the ground that there were no plausible reasons as to why the petitioners did not participate in the process. The writ petition failed.
- e) The order dated August 27, 2022 passed in WPA 5559 of 2022 was challenged before the Hon'ble Division Bench vide MAT 1360 of 2022. Their Lordships dismissed the appeal, inter alia, holding that the tender of Artha-o- Parikathammo had the right to cancel the tender for the reasons mentioned therein and nobody had a vested the right to insist that the tender process once initiated, must be reached to its logical conclusion.
- f) Finally, the Division Bench observed that dismissal of the appeal would not prevent the petitioners from participating in any

fresh tender that may be floated by the concerned authorities.

g) Such observation/liberty with due respect, does not indicate that the tender process which had been initiated in May 2022 and the challenge to which had been turned down by the Co-ordinate Bench was directed to be either revoked or cancelled so as to allow the petitioners to participate. Their Lordships did not intend the liberty to be retrospective. The liberty is prospectively operative.

If a fresh tender is called by the authorities in future, the petitioners would have the liberty to participate in the same, subject to fulfilment of the eligibility criteria.

Under such circumstances, no order need be passed. The tender process which was upheld by the learned Single Bench and the Hon'ble Division Bench cannot be cancelled for reasons mentioned.

The writ petition is dismissed.

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

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

(Shampa Sarkar, J.)