

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

01.12.2022
Sl. No.8(DL)
srm

W.P.A. No. 3223 of 2022

V.N. Enterprise

Versus

The State of West Bengal & Ors.

Mr. Kalyan Kumar Chakraborty,
Mr. Ashok Halder

...for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Momenur Rahman

...for the State-respondents.

Mr. Raja Saha,
Ms. Badashruti Bose

...for the SJDA.

On June 8, 2019, a tender was floated by the Siliguri Jalpaiguri Development Authority inviting quotations from interested parties with regard to the display of advertisement on the unipole structures on the road divider at different locations at Sevok Road (from Makhan Bhog to Bhaktinagar Police Station). The petitioner participated in the said tender process. The petitioner was successful, being the highest bidder. The petitioner was issued an offer letter on July 9, 2019. The petitioner was asked to deposit Rs.8,88,806/- as the first instalment and to execute the agreement for finalization

of the work order. The petitioner deposited Rs.3,76,612/- + GST of Rs.67,791/- on July 10, 2019.

Due to administrative reasons, the notice inviting tender and the offer letter were cancelled. Such office order was issued on September 16, 2019. In December, 2020, the petitioner approached the authorities praying for permission to complete the project.

The specific contention of the petitioner was that around 34,00,000/- had been invested for such project, but the work could not be executed. The petitioner suffered huge loss. The investment of the petitioner and the structures which were installed, were wasted.

The petitioner moved this Court by filing WPA No.183 of 2022. By an order dated March 1, 2022, a co-ordinate Bench of this Court held that when the tender was cancelled way back in September, 2019 and fresh quotations had been invited, the question of directing the Siliguri Jalpaiguri Development Authority to allow the petitioner to complete the project would not arise. Her Lordship however came to the conclusion that the money which had been deposited by the petitioner, should be refunded with interest @ 10% per annum to be calculated on and from the date of deposit till the date of refund. Such payment was to be made

within 8 weeks from the date of communication of the order. Her Lordship further directed that if the amount along with interest was not refunded within the time limit fixed by the Court, an additional interest @ 2% over and above the 10%, would be payable.

Learned Advocate for the Siliguri Jalpaiguri Development Authority refers to the communication by the Chief Executive Officer to the petitioner in order to substantiate that as per the direction of the Court, the principal amount deposited along with interest, had been refunded.

It appears that the petitioner once again filed a representation before the Chairman, Siliguri Jalpaiguri Development Authority on November 10, 2022 praying for compensation for the loss suffered due to the investment already made prior to the cancellation of the tender and in the alternative for issuance of a further work order to display and/or advertise on those six unipoles which had not been allotted to the any party.

Mr. Raja Saha, learned Advocate for the Siliguri Jalpaiguri Development Authority, submits that the petitioner was duly compensated as per the direction of the Court because the interest on the amount deposited by the

petitioner, has been paid. He further submits that those unipoles which have not been allotted to any one, cannot be handed over to the petitioner without a tender process. A public authority, which is State under Article 12 of the Constitution of India, cannot allow private players to execute projects under the said authority, without a transparent tendering process.

Mr. Rahman, learned advocate appearing on behalf of the State respondents submits that the matter cannot be reopened once again on the basis of a subsequent representation filed by the petitioner, when the issues involved have already been decided by a co-ordinate Bench.

Heard the learned advocate for the respective parties.

The petitioner as the highest bidder deposited some amount of money before the execution of the formal agreement, pursuant to the offer letter given by the authority. After three months, the entire tender process was cancelled without any notice. The petitioner did not take any steps at the relevant point of time, but filed a writ petition one year after such cancellation. By that time, fresh quotations had already been invited from the eligible participants.

The co-ordinate Bench did not interfere with the cancellation of the tender in view of the delay and lapse of time. However, the co-ordinate Bench directed that the money deposited by the petitioner should be refunded with interest.

Now the petitioner has filed this writ petition claiming compensation for the investment and/or in the alternative, to be granted further works in respect of six unipoles which had not been allotted to any other contractor.

The issue which has been raised today, could have been raised before the learned Coordinate Bench when the petitioner had filed the writ petition challenging the cancellation of the tender and the action of the authority in inviting fresh applications.

In the opinion of the court, this issue is barred by the principles of constructive *res judicata*. It is also a settled principle of law that a public authority cannot grant contracts without initiation of a tendering process thereby allowing all interested parties to participate. There must be transparency, free and fair competition. Thus, it would not be proper for this Court to direct the Siliguri Jalpaiguri Development Authority to hand over the remaining six unipoles to the petitioner for the proposed project of

displaying advertisements on the road divider from Makhan Bhog to Bhaktinagar Police Station.

With regard to the contention that huge investment had been made by the petitioner and the petitioner is liable to be compensated, this court is of the view that without proper pleadings and quantification of the amount, such prayer cannot be permitted. Moreover, these are matters of evidence. Such issues are to be decided in a civil suit.

However, it is made clear that the Siliguri Jalpaiguri Development Authority shall not grant any work in respect of display of advertisements on the road divider from Makhan Bhog to Bhaktinagar Police Station without calling for a proper tender.

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.)