

08.02.2023
Sl. No.23(DL)
srm

W.P.A. No. 2487 of 2023

**Pappu Choudhury
Versus
The State of West Bengal & Ors.**

Mr. Timir Baran Saha

...for the Petitioner.

Mr. Jahar Lal De,
Mr. Rudranil De

...for the State-respondents.

Mr. Debrup Bhattacharjee

...for the Respondent Nos.3, 4 & 5.

Affidavit-of-service is taken on record.

The petitioner was interested to participate in the e-auction process to be held by the Sonamukhi Panchayat Samiti, Bankura for settlement of the ferry ghat and ferry service from Bhaglui to Bora. The e-auction was notified on December 30, 2022. The notification was uploaded in the website of the panchayat samiti, but wide publication in three daily newspapers was not done.

The petitioner approached this Court for a direction upon the Sonamukhi Panchayat Samiti to allow the petitioner to participate in the tender process, which was notified on December 30, 2022. According to the petitioner, failure to publish the notification in daily newspapers in

the locality was a procedural irregularity. The petitioner was deprived from participating as he did not have knowledge of the same.

The learned Advocate for the Sonamukhi Panchayat Samiti has handed over a document which shows that the factum of e-auction with the start date and end date was published in a newspaper named "*Amritadhara*" on January 7, 2022.

Such publication in the newspaper "*Amritadhara*" was made when the e-auction had already commenced. According to the Court, this was not a proper procedure. The publication in local newspapers should have been made as per the governing circulars simultaneously, that is, on the same date when the notification was uploaded in the website of the panchayat samiti. "*Amritadhara*" is also not a widely known daily newspaper. The e-auction of the concerned ferry ghat involved a base price of more than 19,00,000/-. Thus the newspaper publication ought to have been made as per the guidelines issued by the state government from time to time.

It is specifically submitted by the learned Advocate for the panchayat samiti that although the bidding process is complete, the result of such bidding has not been published.

Under such circumstances, the e-auction and the process with regard to the settlement of the ferry ghat from Bhaglui to Bora, is set aside and quashed.

The court as the guardian of fundamental rights of the people has a duty to ensure that all actions of the authorities are in accordance with the procedure established by law. The authorities had a duty to act fairly. Belated paper publication in a local paper which is practically unknown and after the tender process had started, is arbitrary and an attempt to cover up the initial non-compliance.

The Hon'ble Apex court in the matter Ram and Shyam Co. vs. State of Haryana reported in (1985) 3 SCC 267 observed as follows:

"The law is well settled that contracts by the State, its corporations, instrumentalities, and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details.... The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned."

Fresh auction notice be issued in respect of the concerned ferry ghat. The said notice shall be published in

three widely circulated newspapers of the locality, in Bengali, Hindi and English and also uploaded in the website and notice board of the samiti office. Other rules and procedure shall be followed. The candidates who had participated in the earlier tender process in respect of the said ferry ghat Bhaglui to Bora shall be intimated of this order. The order of this court shall be made known to all the interested parties. Payment, if any, made in the earlier tender process shall be refunded and those candidates shall be allowed to participate once again.

No work has yet been awarded and the name of successful bidder has not been published. The financial bids of the participants are not in the public domain and not known to each other.

It is directed that the fresh e-auction for settlement of the ferry ghat from Bhaglui to Bora shall be conducted in accordance with law and in accordance with the Rules, Procedure and Notifications governing the field.

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.)