

28.04.2023
Item No.5.
Court No.6.
AB

**M.A.T. 270 of 2023
With
I A CAN 1 of 2023**

**Abdul Majid Ansary
Vs
The State of West Bengal & Others**

Mr. Falguni Bandopadhyay,
Ms. Riya Ballav ...for the Appellant.

Mr. Jahar Lal De,
Mr. Shamim Ul Barifor the State.

By consent of the parties, the appeal and the application are taken up for hearing together.

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

A judgment and order dated February 7, 2023, whereby the appellant's writ petition, being WPA 25804 of 2022, was disposed of, is the subject matter of challenge in this appeal.

The Golamara Gram Panchayet issued a Notice Inviting Tender dated June 7, 2022, for supply of solar pumps. The appellant put in his offer. Several other local contractors also put in their bids. The last date for putting in bids was June 20, 2022.

It appears that the other contractors made a complaint to the Panchayet and also the concerned Block Development Officer that between June 7, 2022 and June 20, 2022, the appellant/writ petitioner was

nowhere near Golamara. He was out of West Bengal for treatment. He could not have personally submitted his bids nor did he authorize anybody to submit his offer on his behalf.

A member of the Gram Panchayet of Baghra-II Sansad made an enquiry. The concerned Block Development Officer filed a report on the basis of such enquiry. The allegation of the absence of the appellant were found to be somewhat true. Accordingly, the tender process was cancelled although the appellant had been found to be the L-1 tenderer. Being aggrieved, the appellant approached the learned Single Judge.

The learned Single Judge, by the impugned order, disposed of the writ petition by refusing to interfere with the cancellation of the tender process and by granting liberty to the appellant/writ petitioner to participate in any fresh tender process that may be initiated by the concerned Authority. Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the appellant and learned Counsel for the State.

The Panchayet is not represented in spite of service.

The appellant is aggrieved that without granting him an opportunity of hearing, the tender process has been cancelled on the basis that he was not physically

present in the State of West Bengal during the period of submission of bids.

We are of the view that the appellant may have some legitimate reason to be aggrieved. Principles of natural justice required the authorities to give him an opportunity of hearing before coming to a finding of fact, which would have adverse consequences for him.

Accordingly, without saying anything further, we direct the Artha-O-Parikalpana Upa Samiti of the concerned Panchayet to afford an opportunity of hearing to the appellant and any other concerned party and arrive at a fresh decision as regards the cancellation of the tender process in question. The Upa Samiti will take a reasoned decision in accordance with law within a period of four weeks from the date of communication of this order by the appellant.

We make it clear that we have not gone into the merits of the case at all. The Upa Samiti shall decide the issue afresh without being influenced by anything in this order.

If the Upa Samiti comes to a considered decision that indeed, there was irregularity on the part of the appellant and he could not have submitted the bid in question, the cancellation of the tender shall hold good. In that event, the concerned Authorities will be at liberty to initiate fresh tender process in which the appellant will also be entitled to participate.

Till a fresh decision is taken in the matter, no fresh tender will be issued. The appellant must extend full cooperation to the members of the Upa Samiti and must be personally present before the Upa Samiti as and when so required.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.270 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)