

04.04.2023
Ct.19/sl.3
sn

W.P.A.5627 of 2023

M/s. Das Enterprise & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Pradip Kumar Tarafder

Mr. Sambuddha Dutta

..for the petitioner

Mr. Raja Saha

Mr. Prantik Garai

..for the State

Mr. Kaushik Chatterjee

Mr. Nilanjan Adhikari

Mr. Ran Chowdhury

Ms. Puja Dutta

.for the respondent no.5

Mr. Atis Kumar Biswas

Ms. Jyati Agarwal

..for the panchayat samiti

The petitioners participated in an e-tender process, which was floated by the Executive Officer, Nakashipara Panchayat Samiti bearing Tender no.24/EO/NAKASHIPARA/2022-23 dated January 20, 2023. The petitioners were unsuccessful. They are aggrieved by the award of some of the works in favour of the respondent no.5.

The grounds of challenge of the decision of the panchayat samiti are as follows:-

A) The respondent no.5 did not participate in her own capacity but as a partner of an unregistered partnership firm which had dissolved on the death of the other partner.

B) The bid documents were submitted by “Rakhi Paul” as a partner of the said firm. Such participation was illegal and contrary to the provisions of the Notice Inviting Tender.

C) That the eligibility criteria of past experience of having executed similar e-work had not been satisfied by Rakhi Paul. She did not have any work experience in her own capacity and could not use the credibility of the partnership firm.

D) A registered partnership deed was to be filed with the bid documents, but such requirement could not have satisfied by the partnership firm, as there was no partnership firm in the eye of law.

E) Allotment of 9 out of 19 works to the non-existing partnership firm and in the name of a dead person ‘Buddhadeb Paul’ was illegal, arbitrary and liable to be set aside.

Mr. Tarafder, learned advocate for the petitioners submitted that in the decisions of **Mohammad Laiquiddin & Anr. Vs. Kamala Devi Misra(Dead) BY LRS. & Ors. with Kamala Devi Misra(Dead) BY LRS. & Ors. Vs. Mohammad Laiquiddin & Anr., reported in (2010) 2 SCC 407**, the Hon’ble Apex Court held that if two partners constituted a partnership firm, on the death of one of them, the firm was deemed to have dissolved despite existence of a clause which may say otherwise.

Taking support from this decision, Mr. Tarafder urged the Court to set aside the decision of the Executive Officer, Nakashipara Panchayat Samiti in allotting 9 out of 19 works in favour of the respondent no.5, who had participated as a partner of a non-existing partnership which had dissolved on the death of Buddhadeb Paul.

Further contention is that the technical bid evaluation was made after the financial bid and such illegal action was only in order to favour the respondent no.5. The e-tender process was already fixed and the participation of the other bidders was only a cover up.

Learned advocate for the State respondents has submitted a completion certificate granted to the agency named as “Buddhadeb Paul” and signed by Junior Engineer(WRDD/RWP/RWS) Nakashipara Development Block, Bethuadahari, Nadia, as also the Executive Officer, Nakashipara Panchayat Samiti, Bethuadahari, Nadia. It appears therefrom that the agency was named and styled as “Buddhadeb Paul”. The agency had been executing similar contracts since 2018. Rakhi Paul has been recognized as the proprietor. The State respondents have further submitted that the agency was named and styled as Buddhadeb Paul but the proprietor of the agency was

Rakhi Paul. The said fact was available from the records.

Thus, countering the arguments of Mr. Tarafdar, it has been specifically contended by the Block Development Officer, who is also the Executive Officer of Nakashipara Panchayat Samiti, that Rakhi Paul participated in the e-tender process as a proprietor of the agency M/s. Buddhadeb Paul.

Learned advocate for the panchayat samiti has handed over a document, namely, the registration certificate of the agency "Buddhadeb Paul". The said registration was issued in the name of Rakhi Paul, as the proprietor. Similar registrations on and from 2020 have been produced before this Court. The documents with regard to execution of similar nature of work which had been allotted to M/s Buddhadeb Paul with Rakhi Paul as the proprietor, have been produced by the panchayat samiti to show that Rakhi Paul as the proprietor of agency "Buddhadeb Paul" had executed similar types of works in the past.

Learned advocate for the State respondents and the Panchayat Samity submit that the works are near completion.

Learned advocate for the respondent no.5 has also handed over documents to show that several work orders had been allotted to Buddhadeb Paul

with proprietor, Rakhi Paul. The original copies of such allotment have been submitted. All the originals with regard to the acceptance of Rakhi Paul as the proprietor of the agency Buddhadeb Paul have been produced in order to show that Rakhi Paul was always the proprietor of M/s Buddhadeb Paul. The business was not run by a partnership firm.

Having heard the learned advocates for the respective parties, this Court comes to the following conclusions:-

a) M/s. Buddhadeb Paul is a proprietorship business. The name of the proprietor is Rakhi Paul. Trade licence and registration have been given in the name of the agency Buddhadeb Paul indicating Rakhi Paul as the proprietor. The GST registration certificate also indicates that the trade name of the business is M/s. Buddhadeb Paul. The business is in the nature of a proprietorship and the legal name is Rakhi Paul. The trade registration issued by the panchayat authorities indicates the same. The trade licence granted under Section 12(1) of the Contract Labour(Regulation and Abolition) Act, 1970 also indicates that the Buddhadeb Paul is the trade name and Rakhi Paul is the proprietor.

b) Various documents have been produced by the State respondents, the panchayat samiti and Rakhi Paul, which indicate that license and

registrations were issued in the name of M/s Buddhadeb Paul. The nature of the business was proprietorship and Rakhi Paul was the proprietor.

c) The allegations that the works had been allotted to a deceased person and to a non-existing partnership firm, are not correct in view of the above factual findings.

d) The eligibility of the respondent no.5 with regard to the past work experience has already been explained by the panchayat samiti, through various documents which have been submitted before the court. Such documents indicate that Rakhi Paul as the proprietor of M/s Budddhadeb Paul had executed similar nature of work earlier. Rakhi Paul also produced some documents before this Court.

e) Thus, the Court does not hesitate to accept the contention of the tendering authority that the work was issued in favour of Rakhi Paul as the proprietor of Buddhadeb Paul, the agency. Buddhadeb Paul's demise did not in any way take away the right of the proprietor to continue the agency, in the name of her late husband. The registration, trade license and GST registration etc. indicate that the proprietorship business was being carried on in the name of the agency Buddhadeb Paul, and the proprietor of the firm is Rakhi Paul.

f) With regard to the allegation of the technical bid being opened after the financial bid, this Court finds from the tender summary report dated February 20, 2023 that the technical bid opening summary was updated on February 6, 2023 at 12-25. The technical evaluation was done and updated on February 18, 2023 at 3-15 p.m. The financial bid was opened and updated on February 18, 2023 at 4-17 p.m.

The works are maintenance of roads, installation of tube wells etc. They are beneficial projects for the public. 80% of the works have already been completed. No patent illegality and/or irregularity is found in the decision of the authority, which would warrant interference by this Court in judicial review. The decision is neither arbitrary nor biased.

In the matter of ***Tata Cellular v. Union of India***, reported in ***(1994) 6 SCC 651***, the Hon'ble Apex Court laid down the following principles with regard to judicial review of administrative action:-

“(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

Under such circumstances, this writ petition is dismissed.

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

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

(Shampa Sarkar, J.)