

Item No.2  
20.03.2023  
Court. No. 19  
GB

WPA 6533 of 2023

Masibul Saikh  
Vs  
The State of West Bengal & Ors.

*Mr. Sattwik Bhattacharyya,  
Mr. Aashutosh Bhattacharyya*

*...for the Petitioner.*

*Mr. Lalit Mohan Mahata,  
Mr. Prasanta Behari Mahata*

*...for the State.*

*Mr. Usuf Ali Dewan,  
Mr. Asif Dewan*

*...for the Respondent Nos.6 to 9.*

The petitioner is one of the members of Artho-O-Parikalpana Upa Samity of Gobardhandanga Gram Panchayat and the Sanchalak of Krishi-O-Bon Daptar.

According to the petitioner, the tenders under the 15<sup>th</sup> CFC were floated without following the proper procedure. The provisions of the Procurement Manual, 2014 had not been followed.

A meeting of the Artho-O-Parikalpana Upa Samity should have preceded any decision to publish the notice inviting tender. In this case, the Pradhan of the concerned gram panchayat unilaterally floated the tenders without following the due process. Further allegation is that Chapter-XIV, Table 7 of the Manual which prescribes the list of documents to be kept in a separate file, had also been violated. The petitioner submits that there was lack of transparency in the action of issuing the notices inviting tender. Further submission is that the Nirman Sahayak who

is the technical expert had also not been allowed to participate in the process to analyse and vet the rates etc.

The petitioner prays that the four tender notices being **(a)** No.003/GGP/15<sup>th</sup> C.F.C/2022/23 and Memo NO.135/GGP/15<sup>th</sup> CFC/(9)/2022-23 dated 06.03.2023, **(b)** No.004/GGP/15<sup>th</sup> C.F.C/2022/23 and Memo No.136/GGP/15<sup>th</sup> CFC/(9)/2022-23 dated 06.03.2023, **(c)** No.005/GGP/15<sup>th</sup> C.F.C/2022/23 and Memo No.137/GGP/15<sup>th</sup> CFC/(9)/2022-23 dated 06.03.2023 **(d)** No. No.006/GGP/4<sup>th</sup> S.F.C/2022/23 and Memo No.138/GGP/4<sup>th</sup> SFC/(9)/2022-23 dated 06.03.2023, be set aside and cancelled.

Although, the petitioner is a member of the Artho-O-Parikalpana Upa Samity, the petitioner is not a participant in the tender process nor is the petitioner a willing participant who had been denied the opportunity to participate in the tender. The only allegation is that the Chapter-VI of the Manual of 2014 with regard to the actions to be taken by the gram panchayat at the pre-tendering stages, had not been followed.

The Block Development Officer has prepared a paragraph wise comment on the allegations made by the petitioner. A sequence of events along with supporting documents have been filed before the Court. The sequence of events are as follows:-

| Sl No | Sequence of events                                                                                                                                                       | Date of Occurrence | Annexure |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------|
| 1     | Notice for meeting of Artho-O-Parikalmana Upa-samity scheduled on 6/12/2022 at 12.30 PM was issued on 29/11/2022 vide memo No:054/(10)/GGP Dated:29/11/2022 for e-tender | 29/11/2022         | Annex-IV |

|    |                                                                                                                                                                                                                                                                                                                                                                                         |            |                        |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------|
| 2  | The complainants, Bodruddin Sarkar and Masibul Saikh being the members of Artho-O-Parikalpana Upa-samity were served the notice on the same date i.e. on 29/11/2022                                                                                                                                                                                                                     | 29/11/2022 | Annex-V                |
| 3  | Meeting of the Artho-O-Parikalpana Upa-samity was held on 6/12/2022 at 12.30 PM. But both the complainants did not attend the meeting                                                                                                                                                                                                                                                   | 6/12/2022  | Annex-VI               |
| 4  | Notice for General body meeting scheduled on 6/12/2022 at 1.30 PM was issued on 29/11/2022 vide memo No:055/(26)/GGP Dated:29/11/2022 for e-tender                                                                                                                                                                                                                                      | 6/12/2022  | Annex-VI               |
| 5  | All the General body members of the Panchayat, <b>including the Seven complainants</b> were served the notice vide No:055/(26)/GGP Dated:29/11/2022                                                                                                                                                                                                                                     | 29/11/2022 | Annex-VII              |
| 6  | On 6/12/2022, Only Teblu Saikh out of seven complainants attended the meeting.                                                                                                                                                                                                                                                                                                          | 6/12/2022  | Annex-IX               |
| 7  | On 6/12/2022 General body took a decision for 12 nos of work for e-tender.                                                                                                                                                                                                                                                                                                              | 6/12/2022  | Annex-IX               |
| 8  | On 9.1.2023, notices for Artho-O-Parikalpana Upa-samity and General body meeing were issued Vide Memo Nos: 01/(10)/GGP Dated:9/01/2023 and 02/(26)/GGP Dated: 9/01/2023 respectively, for e-tender under several schemes.                                                                                                                                                               | 9.1.2023   | Annex-X & XI           |
| 9  | All members of the respective bodies including all the complainants were duly served the said notice                                                                                                                                                                                                                                                                                    | 9.1.2023   | Annex-XII & XIII       |
| 10 | On 16/01/2013, the complainants did not attend the meeting of Artho-O-Parikalpana Upa-samity                                                                                                                                                                                                                                                                                            | 16/01/2023 | Annex-XIV              |
| 11 | Also, in the General body meeing scheduled on 16/01/2023 at 1.30 PM, the complainants did not attend.                                                                                                                                                                                                                                                                                   | 16/01/2023 | Annex-XV               |
| 12 | On 16/01/2023, General body took a decision to initiate tenders.                                                                                                                                                                                                                                                                                                                        | 16/01/2023 | Annex-XIV & XV         |
| 13 | On this basis, e-tenders were called Vide No: <b>003/GGP/15<sup>th</sup> CFC/2022-23 Dated:06/03/2023 (12 nos Work), 004/GGP/15<sup>th</sup> CFC 2022-23 Dated: 06/03/2023 (11 Nos of work), 005/GGP/15<sup>th</sup> CFC/2022-23 Dated:06/03/2023(5 Nos of work), 006/GGP/4<sup>th</sup> SFC/2022-23 Dated:06/03/2023 (1 No of work) by the Pradhan, Gobardhandanga Gram Panchayat.</b> | 06/03/2023 | Annex-XVI to Annex-XIX |
| 14 | e-tender notices were widely published by the Gram Panchayat in Bengali Newspaper (Ekdin) and English Newspaper (Darpan of India) and also sent to the District Sub-division, Block Offices and all Gram panchayat offices under Sagardighi block, for information.                                                                                                                     | 10/03/2023 | Annex-XX               |

All the annexures mentioned in the table above are supporting documents in proof of the events which have been filed as a bunch before the Court today. Thus, copies of the entire records of the process which was followed by the

Artho-O-Parikalpana Upa Samity and by the Pradhan of the concerned gram panchayat, are before this Court.

The learned advocate for the gram panchayat has also filed the resolution taken for issuing the tender notices along with the notice which was sent to the petitioner. The documents indicate that the notice for the meeting of the Artho-O-Parikalpana Upa Samity scheduled to be held on December 6, 2022 at 12.30 p.m. was issued on November 29, 2022. The petitioner and another member, namely, Bodrudding Sarkar were notified. Prior to floating of the tender, a meeting was held by the Artho-O-Parikalpana Upa Samity on December 6, 2022. The petitioner did not attend the meeting. Another general body meeting was also scheduled to be held on December 6, 2022. Seven members of the gram panchayat had lodged their complaint who were all notified of the meeting. On December 6, 2022 apart from Teblu Saikh, the other complainant did not attend the general body meeting. The general body took a resolution also, to float the tender. On January 9, 2023 notices for meeting of the Artho-O-Parikalpana Upa Samity and the general body were issued. All the members were served with the notice. On January 16, 2023, the resolution was finally adopted for publication of NITs. The petitioner did not attend the meeting. On January 16, 2023, the meeting of the Artho-O-Parikalpana Upa Samity was held at 12.30 p.m. and the general body meeting was held at 1.30 p.m. E-tender notices were widely published in Bengali and English newspapers and sent to the District, Sub-Division, Block

offices and all gram panchayat offices under Sagardighi Block for information.

All such actions and instances are supported by documents, namely, resolution of the meetings, copies of notices, receipt copies etc.

It appears from the records that the notice sent to the petitioner was accepted by one Ayesha Bibi, allegedly the wife of the petitioner. From the documents supplied, it appears that the rate analysis, estimates, etc., were signed by the Nirman Sahayak for each of the work.

Thus, this Court is of the view that on the basis of the records, the Court cannot stall the tendering process only on the ground that the petitioner either may not have attended the meeting or there are conflicts between the petitioner and other members of the Artho-O-Parikalpana Upa Samity. The further contention of the petitioner is that on January 16, 2023, meetings were not held due to the visit of the Chief Minister. This disputed question of fact cannot be gone into by this Court.

The Court does not find any arbitrariness, irrationality, bias, mala fide and perversity in the action of the Pradhan. Participants have not come up before the Court with any allegation. It is not the case of the petitioner that due to lack of publicity or transparency, the public at large could not participate in the process which amounted to negation of free and fair competition. The only problem here, as it appears, is that the petitioners and the members of the Artho-O-Parikalpana Upa Samity as also the Pradhan were

not working in uniformity and as a team. The petitioner and one or two other members complain that the Pradhan had acted contrary to their interest by denying them their right to participate in the decision making process.

Under such circumstances, the writ petition is disposed of by allowing the tender process to continue but with the following directions:-

- a) Every step henceforth, shall be taken from the stage of acceptance of the tenders and issuance of work orders, as per the Procurement Manual, 2014.
- b) The Artho-O-Parikalpana Upa Samity which is the tender selection body, shall accept the tenders at a properly arranged meeting and the petitioner and all the members shall be notified accordingly, of the next steps.
- c) The other provisions of the Procurement Manual, 2014 with regard to the maintenance of documents, etc., shall be followed.
- d) Rule 11 of the West Bengal Panchayat (Gram Panchayats Accounts, Audits and Budget) Rules, 2007 shall be followed.
- e) All steps shall be taken in terms of the rules and regulations as also the Procurement Manual, 2014.

With regard to the allegation of the petitioner that there is lack of transparency in the process followed by the concerned Pradhan and the other members of the Artha-O-Parikalpana Upa Samity, the petitioner had already

approached the Block Development Officer, Sagardighi Block with his objections, by filing a representation dated March 14, 2022. The Block Development Officer shall dispose of the objection filed by the petitioner and other members dated March 14, 2022 in accordance with law and issue specific directives, if necessary.

If it is found that there is lack of cooperation between the members or lack of transparency in the proceedings of the gram panchayat, necessary remedial steps shall be taken. The question as to whether the meetings on January 16, 2023 had been held as per procedure and in presence of the other members, shall also be decided. All parties shall be heard. A reasoned order shall be passed and communicated to all. Corrective measures required to be taken, shall be reflected and suggested in the order.

The entire exercise shall be completed by the concerned Block Development Officer within a period of four weeks from date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

**(Shampa Sarkar, J.)**