

17.04.2023
Sl. No.21(DL)
srm

W.P.A. No. 7611 of 2023

Rajikul Alam

Vs.

The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee,
Ms. Sima Ghosh,
Mr. Saptarshi Chakraborty,
Mr. Arghya Kumar Das

....for the Petitioner.

Mr. Malay Krishna De,
Mr. Arunava Maiti

...for the State-respondents.

Mr. Sakya Sen,
Mr. Sunil Gupta,
Mr. Hasibul Islam

...for the Murshidabad Zilla Parishad.

The writ petition has been filed with the following
prayers:

- (a) Refund of the earnest money and the additional
security deposit of Rs.1,94,648/-.
- (b) Payment of Rs.1,22,445/- towards cost of
materials and labour cost.
- (c) Cancellation of the notice dated July 14, 2022.
- (d) Issuance of fresh work order upon cancellation
of the notice dated July 14, 2022.

Mr. Mukherjee, learned Advocate appearing on behalf of the petitioner submits that the work could not be completed within time, in view of several disturbances at the site including threats of extortion. Such difficulties had been intimated to the Murshidabad Zilla Parishad, but the zilla parishad had failed and neglected to take steps. He further submits that the site was not handed over to the contractor, free from all encumbrances. It is further submitted by Mr. Mukherjee, that huge cost for materials and labour were incurred, for demolition of the existing structure at the site.

Subsequently, the petitioner was called for a hearing by the zilla parishad and an order was passed by the Additional Executive Officer of the Murshidabad Zilla Parishad communicating the decision to cancel the work order and also to blacklist the petitioner. According to Mr. Mukherjee, the work order should not have been cancelled without affording an opportunity to the petitioner to establish his reasons as to why the work could not be completed. That the decision to blacklist the petitioner was taken in violation of the principles of natural justice as no notice had been issued asking the petitioner to show cause as to why the petitioner shall not be blacklisted.

Alternative prayer had been made for refund of the earnest money and the additional security deposit as also for payment of the costs incurred during the initial stage, for execution of the work. Mr. Mukherjee contends that it was the duty of the zilla parishad to ensure that the contractor could execute the work, without any disturbance or obstacles. That the zilla parishad had failed to discharge its obligation to handover peaceful and vacant possession of the site and the petitioner cannot be made liable. The decision to blacklist the petitioner was completely contrary to the provisions of the West Bengal Panchayat (Zilla Parishad and Panchayat Samiti) Accounts and Finance Rules, 2003 (hereinafter referred to as the said Rules of 2003) and issued by an incompetent authority. Such decisions are to be taken by the Murshidabad Zilla Parishad and the Additional Executive Officer was not authorized by law to either cancel the tender or blacklist the petitioner.

Mr. Sen, learned Advocate for the Murshidabad Zilla Parishad submits that the question of blacklisting cannot be gone into by the writ court as there are neither any pleadings nor any prayers with regard to such decision of the authority to blacklist the petitioner.

Next, Mr. Sen submits that the Additional Executive Officer was acting on behalf of the zilla parishad and communicating the decision, of the zilla parishad. That without any specific challenge to the decision to blacklist the petitioner, this Court cannot go into the merits thereof. Mr. Sen denies the allegations of the petitioner and submits that there were no obstacles during the execution of the work. No complaint had been filed before the police authorities about any extortion or threat.

Mr. Mukherjee submits that at least an opportunity for resolution of the dispute by conciliation in terms of Rules 114 and 115 of the said Rules of 2003, ought to have been given to the petitioner. To this argument, Mr. Sen submits that it was the duty of the petitioner to approach the authority for conciliation and resolution of the disputes at the appropriate stage.

It appears to the Court that the dispute arose out of a contract. There are provisions for conciliation and resolution of disputes in terms of Rules 114 and 115 of the said Rules of 2003.

Under such circumstances, the petitioner is granted liberty to approach the competent authority for conciliation of the dispute and also question the decision to blacklist the petitioner. A proceeding in terms of the said

rules shall be initiated. The prayer for refund of the earnest money and payment of the interim expenditure which was allegedly incurred by the petitioner, shall also be considered.

The entire issue shall be decided and disposed of by the competent authority in terms of Rules 114 and 115 of the said Rules of 2003.

A reasoned order shall be passed and communicated. Till such order is passed and communicated, the decision to blacklist the petitioner shall be kept in abeyance and shall not be given effect to. Such decision shall be subject to the final outcome of the conciliation and dispute resolution proceedings.

The entire exercise shall be completed within a period of two months from the petitioner approaching the authority, for conciliation and resolution of the dispute.

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.)