

April 25, 2023
Sl. No.16
Court No.19
s.biswas

WPA 8518 of 2023

Asit Mondal

vs.

The State of West Bengal and others

Mr. Jayanta Samanta,
Mr. Asif Mehedi, Advocate

... for the petitioner

Mr. Samrat Sen, Sr. Adv.
Mr. Amitaa Mitra, Advocates

... for the State

Perused the report filed by the Executive Officer,
Tehatta-I Panchayat Samity.

From the report, it appears that a manual auction notice was floated on March 22, 2023, for grant of lease of Chanderghat ferry ghat. The base price was Rs.26,56,000/-. The last date and time for submission of the bids was March 28, 2023 upto 2 p.m., and the date for opening the bids was 28.03.2023 at 3 p.m.

Notices were duly served in terms of the Rules. Four persons participated in the auction. The petitioner was the highest bidder. After scrutinising the documents filed by the bidders, it was found that the petitioner had submitted a cheque bearing No.078406, instead of a bank draft, thereby violating one of the conditions of the notice inviting tender. Secondly, the signatory in the cheque was one Aparna Mandal. The cheque was also undated. The bid of the petitioner was not accepted and the second highest bidder was found to be eligible. The

second highest bidder has already deposited the money and the lease has been granted in his favour.

The allegations of the petitioner are as follows:

- a) When the base price was above Rs.26 lakhs, e-auction should have been held.
- b) The cheque should have been accepted as the same was issued by none other than the petitioner's daughter.
- c) The authorities acted contrary to the rules of the Government, by holding manual auction.

The reasons for not granting any relief to the petitioner, by this court, are hereunder:

- a) The petitioner had participated in the auction on the basis of the notice inviting manual auction. He did not raise any objection at the relevant time. The petitioner has not suffered any prejudice because of the manual auction.
- b) The petitioner was one of the four participants in the manual auction and submitted his bids and document.
- c) The petitioner violated the terms and conditions of the notice inviting tender. The notice mandated that a demand draft drawn on a nationalised bank, in favour of the Executive Officer, Tehatta-I Panchayat Samity, should be deposited. Instead, the

petitioner submitted an undated cheque, signed by one Aparna Mandal, who was neither a bidder nor a business partner of the petitioner.

- d) The authorities, who invited tenders, fixed their terms and conditions. The petitioner participated with an undated cheque bearing the signature of an unknown person.
- e) The tendering authorities have complete independence to decide eligibility of the bidders.
- f) The petitioner cannot approbate and reprobate. He participated in the manual auction process and cannot turn around and pray for cancellation of the auction as e-auction should have been invited.
- g) Third party rights have been created and at this stage it would not be proper to pass any directions.

Reliance is placed on the decisions of the Apex Court in justification of the finding that there is very little scope for interference in this proceeding.

In *Ramana Dayaram Shetty vs. International Airport Authority of India* reported in (1979) 3 SCC 489, the Apex Court held that the terms of NIT cannot be ignored as being redundant or superfluous. The

requirement for payment by bank draft drawn on a centralized bank was a condition in the tender notice and the court cannot rewrite the same, by allowing undated cheques as an alternative mode of payment. As pointed out in *Tata Cellular vs. Union of India* reported in (1994) 6 SCC 651 there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision making process cannot be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone. The petitioner did not deposit the demand draft as per the requirement in the tender notice and hence rejection of his bid cannot be termed as irrational.

In *Galaxy transport Agencies vs. New J.K. Roadways* reported in (2021) 16 SCC 808, a three Judges Bench again reiterated that the authority who authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court, in judicial review proceedings.

However, this Court is of the view that the direction of the Finance Department, Government of West Bengal, Audit Branch dated July 27, 2022, that in all case where the tender value is Rs.1 lakh and

above, e-tendering through the centralized e-tender portal should be held, shall also apply even in case of auction of ferry ghats. This will ensure transparency, fair competition and larger participation.

It also appears that additional Chief Secretary to the Government of West Bengal, Department of Finance, Audit Branch had categorically provided that such direction would be applicable to all the State Government offices and State Public Sector Undertakings/Urban Local Bodies /Rural Local Bodies /Boards /Councils /Statutory Bodies/ Development Authorities etc. under the administrative control of the State Government Departments.

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 server copy of this order.

(Shampa Sarkar, J.)