

May 1, 2023
Sl. No.A 40
Court No.19
s.biswas

WPA 9788 of 2023

J. B. Construction
vs.
The State of West Bengal and others

Ms. Shabana Hasin,
Mr. Mobaidur Hossain

... for the petitioner

Mr. Raja Saha,
Mr.shamim Ul Bari

... for the State

Mr. Anujit Mookherji

... for the respondent no.4

Mr. Ayan Kumar Boral,
Mr. Anisur Rahaman,

... for the respondent no.6

The ground for challenge in the writ petition is that the respondent no.6 did not have the technical qualification for being awarded the contract for construction of bituminous road.

Both the petitioner and the respondent no.6 had participated in an e-tender process, invited by the Executive Officer, Jalangi Panchayat Samity. The petitioner submits that the technical evaluation of the respondent no.6 was not done in accordance with the eligibility criteria. The annual turn over of the respondent no.6 for the last consecutive three years in executing 'similar nature of work' was neither equal to nor more than 60% of the total estimated amount put to tender.

Further reference is made to the column enumerating the eligibility criteria in the notice inviting tender to show that similar nature of work would mean bituminous road.

According to the petitioner, the respondent no.6 was bound to produce an average audited annual turn over from the business of construction of bituminous roads. Referring to the TDS certificates being Form 26AS, the petitioner submits that as per the said document, the respondent no.6 had not completed works of such high value. The TDS would reflect the values of the works.

Further allegation is that audited amounts were inflated only to secure works from the panchayat samity, but the TDS certificates did not match with the annual turnover.

On the last occasion, the Court had directed the parties to come back with necessary instructions. The Executive Officer, Jalangi Panchayat Samity has handed over some documents in support of his contention that the certificates granted under Form 26AS cannot be the only conclusive evidence of the entire work done by a particular contractor.

The contractor had also executed works relating to construction of roads under several schemes under the MGNREGS. The payment for such work is not made upon deduction of tax. The system of payment was otherwise. The bills were uploaded in the portal, and funds were released from the funds allotted under the Central Government scheme.

The Pradhan has also filed some documents in support of the contention that the works executed under MGNREG Scheme, had not been reflected in the TDS certificates.

Learned advocate for the respondent no.6 has filed two sets of documents which, inter alia, show that similar nature of work had been executed by the said respondent earlier, namely, construction of bituminous roads. The R.A. bills, completion certificate, tender notices, etc. have also been produced.

For the purpose of disposal of the writ petition challenging a tender process, the documents produced by the parties are sufficient. The authorities are experts who laid down terms and conditions in the tender as also the eligibility criteria.

The Writ Court cannot interfere unless there is blatant illegality, mala fide and favouritism. The experts, who constitute the tender selection committee, have the liberty and expertise to decide as to the eligibility of a particular contractor. The Court cannot give a restrictive meaning to the conditions. The authorities must be allowed some play in the joints.

The contention of the petitioner that all the documents and papers relating to execution of work

should have been uploaded, is not accepted. The terms and conditions only indicate that the audited balance-sheets have to be produced in support of the turn over for the last three financial years and the turn over should be authenticated by the chartered accountant. The same was done by the respondent No.6 and that is sufficient compliance.

Reference is made to the decision in the case of ***Tata Cellular v. Union of India***, reported in **(1994) 6 SCC 651**. The scope of interference by a writ court, in a tender process, had been discussed.

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, for the purpose of disposal of the writ petition, the Court is satisfied that the authorities have neither acted illegally nor with material irregularity by awarding the contract to the respondent no.6. The actions do not indicate arbitrariness, bias or procedural defect.

The petitioner can approach the Executive Officer of Khairamari Panchayat Panchayat for information or an explanation as to why such documents were accepted by the authorities. The documents produced in support of the eligibility of the respondent No.6 indicate that the technical evaluation was rightly done. However, the allegation of the petitioner that the works were not actually executed as the respondent No.6 was not capable of execution of such work, are matters of evidence and trial. The remedy of the petitioner would be before the appropriate civil court.

Accordingly, the writ petition is disposed of. The work shall be executed by the respondent No.6.

However, there will be no order as to costs.

If the petitioner approaches the civil court in future, the civil court should not be influenced by the order of this Court.

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

(Shampa Sarkar, J.)