

15.05.2023
Court No. 19
Item 21
CP

WPA No. 10775 of 2023

M/s. SK Enterprise
Vs
The State of West Bengal & Ors.

Mr. Kushal Chatterjee
Mr. Shibjit Mitra
Mr. Oishik Chatterjee
....for the petitioner.

Mr. Arup Kundu
....for the respondent no.2.

The petitioner submits that the entire bid amount had been deposited in the office of the Madanmohanpur Gram Panchayat pursuant to the petitioner's selection as the successful bidder in an e-auction process. The work order has not been issued as yet, despite the deposit of the entire amount.

Learned advocate for the gram panchayat submits that several irregularities had cropped up in the entire process and an opinion was sought for from the Block Development Officer, Kotulpur, Bankura.

By a letter dated May 3, 2023 the Block Development Officer indicated the irregularities and gave the clarifications. It appears therefrom that there were irregularities due to non-publication of the advertisement in three news papers which was in

contravention to the directions issued by the government. The prescribed procedure for online receipt and refund of EMD, tender fees etc were also not followed. The pradhan submits that the clarifications given by the Block Development Officer had compelled the gram panchayat to take a decision to cancel the entire e-auction process. The meeting of the gram panchayat is scheduled to be held shortly.

Under such circumstances, in view of the irregularities pointed out and in view of the decision of the gram panchayat to proceed on the basis of the clarifications given, the court cannot direct the authorities to issue the work order in favour of the petitioner.

In the matter of ***South Delhi Municipal Corporation vs. Ravinder Kumar & Anr.*** reported in ***(2015) 15 SCC 545***, the Hon'ble Apex Court held as follows:-

"18.6. Further, the High Court has failed to consider another important fact that the Government being guardian of public finance it has right to refuse the lowest or any other tender bid or bids submitted by the bidders to it provided its decision is neither arbitrary nor unreasonable as it amounts to violation of Article 14 of the Constitution of India. The appellant Corporation's decision in cancelling its earlier tender is not in violation of Article 14 of the Constitution of India, as the High Court did not find any malafide intention on the part of the appellant Corporation to favour someone in taking such decision. The appellant Corporation's decision in cancelling the earlier tender notice vide corrigendum dated 30.11.2012 and then issuing a subsequent

tender notice dated 13.12.2012 inviting fresh bids from eligible persons for the same works was with a bonafide intention to get better and reasonable rates from the bidders for the execution of the works and not to show favouritism in favour of any bidder."

In ***Maa Binda Express Carrier v. North-East***

Frontier Railway, reported in **(2014) 3 SCC 760** the

Hon'ble Apex Court held as follows:-

"12. As pointed out in the earlier part of this order, the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. Inasmuch as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order [Maa Binda Express Carrier v. Union of India, WP (C) No. 4668 of 2011, order dated 4-2-2012 (Gau)] passed by the Single Judge and dismissing the writ petition."

It was held that the authorities always reserve the right to cancel a process in case irregularities or errors in the procedure are detected. The e-auction notice also provides for the same.

However, the petitioner cannot suffer for the lapses or mistakes committed by the gram panchayat. The entire money deposited by the petitioner sometime in April 18/19, 2023, shall be

refunded within two weeks from the date of communication of this order.

The earnest money deposited by all the participants, shall also be refunded with expedition.

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.)