

09. 30.08.2023
Court No.6
Tanmoy Ghosh

FMA 652 of 2023

**Pramanik and Roy Construction & Anr.
-Versus-
Purba Medinipur Zilla Parishad & Ors.**

**With
IA No: CAN/1/2023**

Mr. Debabrata Saha Roy, Adv.,
Mr. Neil Basu, Adv.,
Mr. Subhankar Das, Adv.

...for the appellants/
writ petitioners.

Mr. Uttam Kr. Bhattacharya, Adv.

...for the respondents.

Leave is granted to learned Advocate-on-Record for the appellants to add the District Magistrate, Purba Medinipur and the Executive Engineer, Purba Medinipur, as the party-respondent nos. 7 and 8 respectively.

Let learned Advocate-on-Record for the appellants carry out necessary amendment to the cause title of the Memorandum of Appeal and the stay petition.

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated May 16, 2023, whereby the appellants' writ petition being WPA No. 5507 of 2023 was disposed of by a learned Single Judge

of this Court, is under challenge in this appeal at the instance of the writ petitioners.

The appellants/writ petitioners approached the learned Single Judge challenging the cancellation of the technical bid of the writ petitioners submitted in connection with NIT-27 of 2022-23, dated January 18, 2023. The date for opening of the technical bid was February 6, 2023. After evaluation of the technical bid, the writ petitioners were informed that their technical bid had been rejected. The decision rejecting the technical bid was uploaded on the website of the Purba Medinipur *Zilla Parishad* on February 15, 2023.

The contention of the writ petitioners before the learned Single Judge was that the decision of the *Zilla Parishad* to cancel the technical bid of the writ petitioners was predetermined. A similar work that was done previously by the writ petitioners was completed in early 2022. On February 9, 2023, a fresh inspection of such earlier work was held behind the back of the writ petitioners. Thereafter, on February 13, 2023, the purported decision was taken rejecting the technical bid of the writ petitioners. It was submitted that the fresh inspection of work that had been completed on February 17, 2022, was held only with oblique motive of rejecting the technical bid of the writ petitioners.

The learned Judge noted the entire submission made on behalf of the writ petitioners. The learned

Judge observed that the Committee for evaluating the technical bid should always look into the past performance of a bidder. Even if the bidder relies on a satisfactory completion certificate, still, the Committee can look into the records pertaining to the past performance of a bidder. In the present case, the Committee found that at least five letters had to be written to the writ petitioners pointing out that they were using low-quality material for the work and that there was inordinate delay on their part. The Committee also noticed that the local people had made complaints regarding the quality of the work that the writ petitioners had done on the previous occasion. Further, a Public Interest Litigation is pending in this Court, concerning the work executed by the writ petitioners. Then, considering the entire facts and circumstances of the case, the learned Judge came to the conclusion that the decision of the Committee to reject the technical bid of the writ petitioners was not influenced by the report of inspection held on February 9, 2023 or by the withdrawal of the satisfactory completion certificate on February 23, 2023. The learned Judge accordingly did not interfere. The learned Judge also referred to Rule 91(5) of the West Bengal *Panchayat (Zilla Parishad and Panchayat Samiti)* Accounts and Finance Rules, 2003, which mandates that a tender selection committee comprising of five to seven members should evaluate the

tender papers including the specifications, materials, services etc. and also the antecedents and past records of the tenderers. Their financial status, experience, standard and quality of earlier job performance must be looked into by the Committee. Accordingly, the learned Judge observed that the tender selection committee was within its powers to decide on the basis of the numerous letters written to the writ petitioners and on the basis of the letters received from the public at large including the factum of pendency of the Public Interest Litigation against the agency, and decide to reject the technical bid of the petitioners for unsatisfactory past performance.

The learned Judge also referred to a decision of the Hon'ble Supreme Court in the case of ***Raunaq International Ltd. – Vs. – I.V.R. Construction Ltd.,*** reported in ***(1999) 1 SCC 492***, wherein at paragraph 16 the Hon'ble Supreme Court observed as follows:-

“16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work – which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee.”

The learned Judge concluded that there was no illegality in the decision of the *Zilla Parishad* to cancel the technical bid of the writ petitioners. Finally, the learned Judge noted that the successful bidder had already been issued the work order and the work has been completed.

As regards the complaint of the writ petitioners that Rs.40 lakh has been arbitrarily and without any reason deducted from their earlier bills, the learned Judge granted liberty to the writ petitioners to challenge the same in an appropriate proceeding.

Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard Mr. Saha Roy, learned Advocate for the appellants at length. Mr. Saha Roy fairly admits that since the work has been completed by the successful bidder, no question of awarding the work to the appellants can arise any further.

However, as regards the deduction of Rs.40 lakh from the pending bills of the appellants, Mr. Saha Roy took us through several documents annexed to the stay petition to try and demonstrate that the deduction was made arbitrarily and with the oblique motive of disqualifying the appellants in the tender process which is the subject-matter of the present proceedings.

After hearing Mr. Saha Roy, we find that factual disputes are involved in the matter. The writ Court cannot conveniently go into such questions.

However, the appellants will be at liberty to make a comprehensive representation with all supporting documents to the Executive Officer of the concerned *Zilla Parishad* being the District Magistrate, Purba Medinipur, ventilating their grievance regarding deduction of Rs.40 lakh from their pending bills. The appellants, in such representation, may also ventilate their grievance that they are not being permitted to participate in the current tender processes although there is no order of blacklisting against them.

If such representation is made within three weeks from date, the same will be disposed of by the District Magistrate, Purba Medinipur, being the added respondent no.7, by passing a reasoned order, in accordance with law, within a period of six weeks from the date of receipt of the representation, after affording sufficient opportunity of hearing to the appellants or their authorized representatives. The appellants will be entitled to rely on all documents and even case laws, if they are so advised at the hearing.

The order under appeal stands modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being FMA 652 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)