

19.
14-09-2023
(Ct. no.06)
debajyoti

(Assigned)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1297 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Tinku Kumar Singh
Vs.
Purba Medinipore Zilla Parishad & Ors.**

Mr. Varun Kothari,
Ms. Tamoghna Saha

... For the Appellant.

Mr. Uttam Kr. Bhattacharyya

... For the Respondents.

CAN 2 of 2023 is an application for condonation of delay of 8 days, as per report of the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 2 of 2023 is, thus, allowed.

Re : MAT/1297/2023 & CAN/1/2023

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

The appellant has come up against an interim order dated May 22, 2023 passed by a learned Single Judge of this Court in the appellant's writ petition being WPA 10806 of 2023.

The appellant participated in a tender process initiated by issuance of NIT dated January 06, 2023,

for construction of Community Drinking Water Plants in the district of Purba Medinipur. The said NIT mentioned four items of work. The appellant says that he was declared to be the successful bidder (L-1) in respect of all four items. Work Orders were issued to him. Subsequently, the Work Orders were cancelled alleging that there was undue delay on his part to start the work. He has challenged the cancellation of the work relating to serial no.4 in the NIT in the present writ petition.

The learned Single Judge noted that after cancellation of the Work Orders, the Zilla Parishad has issued fresh NIT dated April 27, 2023, for completing the works which remained incomplete.

The learned Judge, after considering the facts of the case, passed the following interim order:-

“ i) The petitioner shall be allowed to submit his bid in respect of the items of work specifically mentioned in the notice inviting e-tender dated 27th April, 2023, is concerned not later than 11 a.m. on 23rd May, 2023.

ii) The authorities are directed to open the e-portal to enable the petitioner to submit his bid along with the documents. In the event, the authorities are of the view that the opening of e-portal for such purpose cannot be done, the authorities shall permit the petitioner to submit his bid physically within the time mentioned hereinbefore. The learned advocate for the respondents/Zilla Parishad

is directed to intimate the learned advocate-on-record of the petitioner as to whether the petitioner will be allowed to submit his bid online or through physical mode on or before 4 p.m. today.

iii) As suggested by the learned advocate for the respective parties, the date for joint measurement in so far as item nos.1 and 4 of the notice inviting tender dated January 6, 2023 is concerned, is fixed on May 29, 2023 at 12 noon. Since the date and time is fixed by this Court in presence of the learned advocate for the respective parties, no further notice is required to be served upon the petitioner.

iv) The authorities of the Zilla Parishad will be free to fix the date and time for opening of the technical bid at any time after the date and time fixed for submission of the bid by the petitioner herein.

Since the cancellation of the tender is under challenge, the respondents will be at liberty to file their affidavit-in-opposition on or before June 16, 2023; reply thereto, if any, be filed by the petitioner on or before June 23, 2023. Liberty is given to the parties to pray for enlistment of the writ petition immediately after expiry of the time fixed for exchange of affidavit is over. ”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Learned advocate for the appellant/writ petitioner submitted that the cancellation of the Work Order, which is in issue in this writ petition, was

wrongful. The work site was handed over to the appellant more than a month after issuance of the Work Order. Show-cause notices were issued, one after the other, with oblique motive, even before the appellant could start the work. The appellant replied to the show-cause notices saying that he would complete the work within the stipulated contractual period. Nonetheless, the Work Order was cancelled. Learned advocate would have us set aside the cancellation order.

We see that the writ petition is pending. The learned Single Judge has directed exchange of affidavits. The time period for filing Affidavit-in-Opposition is long over. To our query as to why the Zilla Parishad has not filed its affidavit, learned advocate says that the concerned Law Officer was so busy that he could not find time to prepare the affidavit or instruct counsel to prepare the affidavit. We find this explanation to be completely unacceptable. It is the inefficiency or the reluctance to work diligently on the part of these officers that put the Zilla Parishads in trouble.

Be that as it may, we are of the view that we should leave it to the learned Single Judge to decide the writ petition on merits after exchange of affidavits. We extend the time for the Zilla Parishad to file Affidavit-in-Opposition to the writ petition by two weeks from date. This extension is peremptory. Reply thereto, if any, be filed by the writ petitioner within a week thereafter. The parties will be at liberty to mention the matter for hearing before the learned Single Judge upon completion of affidavits or upon expiry of the time granted for filing of affidavits. We make it clear that we have not gone into the merits of the case. The writ petitioner may make a prayer for

early hearing of the writ petition and we request the learned Judge to consider such prayer to the extent the business of the Court may permit.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)