

18.04.2023
Item No.22
gd/ssd

WPA(P)/403/2022
CAN/1/2023

TARUNJYOTI TEWARI
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Nilanjan Bhattacharjee,
Mr. Dipanjan Sinha Roy,
Mr. Arpan Guha,
Mr. Abhilash Chatterjee
..for the Petitioner.

Mr. S.N. Mukherjee, learned Advocate General,
Mr. Yash Singhi
..for the State.

Mr. Subir Sanyal,
Mr. Sankar Halder
..for the Respondent Nos.3 to 5.

Mr. Manishankar Chattopadhyay
..for the Respondent No.7.

1. By this public interest litigation the petitioner seeks for issuance of a writ of declaration to declare the agreement dated 22nd July, 2022 executed between the respondent nos.3, 4, 5 and 7 as illegal and nonest in the eye of law, rescind the agreement and direct the officers to set aside the decision taken by the respondent nos.3, 4 and 5 to grant exemption from payment of licence fee by the private respondent for the advertisements which they have been permitted to erect.

2. The issue involved in the present writ petition lies in a very narrow campus.

3. The Chairman of the Krishnanagar Municipality decided to beautify the Municipal area and thought fit to do the same vide an agreement dated 22nd July, 2022 with the 7th respondent. The agreement was for the purpose of beautifications of the area in question, installation of fountain lightings and illumination at the cost of the 7th respondent. The 3rd and 8th respondent/Municipality thought fit to grant exemption of licence fees of the 7th respondent for erection and installation of hoardings, pole kiosks etc.

4. The petitioner's case is that the exemption granted in favour of the 7th respondent exempting payment of the licence fee exceeds more than Rs.50 lakhs and if that be so without following the e-tender process in terms of the various notifications issued by the Government of West Bengal, the work could not have been allotted to the 7th respondent. By way of illustration the notice inviting expression of interest dated 14.09.2021 issued by the Burdwan Municipality, notice of e-tender dated 12.05.2022 issued by the Kolkata Municipal Development Authority and another Notification calling for expression of interest issued by Eastern Railway, Howrah Division dated 16.02.2022 were referred to stating that all these notifications concerns beautification, maintenance, installation of

lights and modern electrical fittings and all the work was allotted by inviting tenders. Therefore, it is submitted that without inviting e-Tender in terms of the Memorandum of the Government of West Bengal dated 29th August, 2013, 11th June, 2014, 15th September, 2016, the work could not have been allotted to the 7th respondent by private negotiation.

5. The stand taken by the respondent Municipality is by referring to Section 63(3)(k) and (l) and Section 66 of the West Bengal Municipal Act, 1993. It is submitted that in terms of Section 66 of the Act the Municipality is empowered to transfer by contract or otherwise with the prior approval of the State Government any function or functions of the Municipality under the Act to any individual or organisation including a government organization in such manner under such terms and conditions as may be determined by the Board of Councillors and approved by the State Government. It is submitted that Section 63 deals with obligatory functions and clause (k) and (l) in sub-clause (3) of Section 63 though being an obligatory function but in terms of Section 66 the municipality can transfer such function by way of contract or otherwise to any third person. Therefore, it is submitted that Section 66 enables the Municipality to transfer the obligatory functions and there is nothing illegal about the award of contract in favour of the 7th

respondent. The 7th respondent takes a stand that on account of the interim order granted in this writ petition though the 7th respondent has made substantial investment they are unable to erect a single hording, as a result of which, the 7th respondent is put to prejudice.

6. After we have elaborately heard the learned Advocates for the parties and carefully perused the materials placed on record as well as the statutory provisions, we are of the clear view that the action of the respondent Municipality is wholly illegal and deserves to be out rightly set aside. We support such conclusion with the following reasons: it is no doubt true that under Section 63(3)(k) and (l) preservation of monuments and places of historical, artistic and other importance and measures for beautification of the township are obligatory functions. Admittedly, the work allotted to the 7th respondent does not speak of any monuments and places of historical, artistic and other importance but deals with beautification of the township. The respondent Municipality seeks to validate their action by referring to Section 66. The plea raised by the Municipality is thoroughly misconceived. Firstly, Section 66 starts with the non-obstanti clause and it states that notwithstanding anything contained in this Act or in any other law for the time being in force, the Municipality may, if it is of

opinion that it is necessary so to do in the public interest transfer by contract or otherwise with prior approval of the State Government, any function or functions of the Municipality under the Act to any individual or organization. Thus, the important aspect to be noted is that the public interest should be involved to take a decision to transfer by way of contract and such transfer has to be done with the prior approval of the State Government. Admittedly, a process of beautification cannot be put under the straight jacket formula of public interest but maintenance of hygiene and upkeep of the Municipal area is undoubtedly a public interest. The work allotted to the 7th respondent speaks of beautification and maintenance of the Municipal area and it is not for cleaning the Municipal area or upkeep. That apart the action of the Municipality by awarding a contract to the 7th respondent by private negotiation by compromising with the Municipal Fund for a period of 10 years only for the sake of beautification of the municipal area cannot be said to be in the public interest. Therefore, the contract awarded to the 7th respondent cannot be construed to be in public interest. Rather, it may be that the work, if completed, may be pleasing in the eyes of the local public but whether it is in public interest is a larger question which has to be left open. In any event there is no prior approval of the Government for

transfer of such obligatory function. Above all, the Municipality is the guardian of public finances and substantial income of the Municipality is from taxes and licence fee collected from the property owners and other licencees including vehicles which may pass through the Municipal area and had been parked to load and unload goods set off and set in passengers etc. Thus, if the funds of the Municipality are public fund, the question would be as to how the Municipality would be entitled to expand those funds. In terms of the provisions of the Act the Municipality is bound by the directions issued by the State Government in terms of Section 429B of the Act. Further, Chapter VII of the Act deals with finance and Section 67 defines what is a Municipal fund, Section 68 says about the custody of Municipal fund, Section 69 states how the Municipal fund is to be applied etc. All moneys realized or realizable under the 1993 Act and all moneys otherwise received by the Municipality shall be credited to the Municipal Fund as contemplated under Section 67. Section 123 of the Act provides for levy of Licence Fee on advertisement by the Municipality. Therefore, amounts realized or realisable in terms of Section 123 is an important source of the Municipal Fund. In terms of sub-section (1) of Section 69 all moneys credited to the Municipal Fund from time to time shall be applied for payment of all sums, charges and costs necessary

for carrying out the purposes of this Act and the rules and the regulations made thereunder or for payment of any sums payable out of the Municipal Fund under any other law for the time being in force. Sub-section (2) places an embargo that no payment of any sum shall normally be made out of the Municipal Fund unless such expenditure is covered by a current budgetary grant and a sufficient balance of such budgetary grant is available for the purpose. No doubt the Act will also provide for emergency expenditure. Undoubtedly, beautification of the town, installaing of fountains is not a work to be completed on emergent basis. The Municipality is bound by the directions issued by the State Government more particularly with regard to the manner in which the funds of the Municipality have to be expended. There is a clear embargo to award any work or contract without inviting e-tenders or tenders above the minimum value of Rs.5 lakhs. Thus, the respondent Municipality has clearly flouted the Government Order and consequently the award of the work in favour of the 7th respondent is held to be illegal and accordingly all actions initiated by the Municipality in awarding the work to the 7th respondent including entering into the Memorandum of Agreement dated 22nd July, 2022 are quashed. The respondent Municipality is directed to call for e-tenders and invite fresh proposals and carry out the entire exercise in a

transparent manner. The 7th respondent will be entitled to participate in the said tender as and when it is notified.

7. The learned Advocate appearing for the petitioner submitted that even after the interim orders granted in this writ petition the 7th respondent has not removed the hoardings.

8. The learned Advocate appearing for the 7th respondent submitted that after the interim order they have not displayed the hoardings. In any event we have allowed the writ petition. Therefore, if the hoardings are remaining they shall be dismantled by the 7th respondent within ten days from the date of receipt of server copy of this order failing which the respondent Municipality shall remove the same at the risk and cost of the 7th respondent.

9. With the above direction, the writ petition is allowed.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)