

16.3.2023
Ct.19/sl..8
sn

W.P.A. 26974 of 2022

Smt. Jhuma Rani Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Alokesh Dalai

Mr. S. Nayak

..for the petitioner

Mr. L.M. Mahata

Mr. P.B. Mahata

..for the State

The petitioner was the Pradhan of No.1 Majhergram Gram Panchayat. During her tenure, the petitioner had invited tenders vide NIT-1 and NIT-2, both dated August 25, 2020. Allegedly, bidders participated in the process and paid earnest money, which were entered in the books of account.

The erstwhile Pradhan claims to have informed the Secretary of the Gram Panchayat about receipt of such earnest money.

The tenders were cancelled by the tendering committee vide a resolution but the money was not returned to the contractors as per the petitioner. The petitioner further contends that the contractors have been hounding and threatening her with dire consequences for non-refund of the earnest money. The petitioner was removed from her post of Pradhan, in the interim period.

A mandamus has been prayed for upon the respondents to refund the alleged earnest money

deposited by the contractors against NIT-1 and NIT-2, which were subsequently cancelled.

None of the contractors have ventilated their grievance either before the authorities or before the Court. The petitioner has attempted to espouse the cause of those invisible contractors.

The Block Development Officer, Nakashipara Development Block, had prepared a report and forwarded the same to the District Magistrate and Collector, Nadia.

The report reveals that no contractor had shown any interest to participate in NIT-1 and NIT-2, both dated August 25, 2020, which were invited by the petitioner. Consequently, tender papers had not supplied to any contractor. Thus, the question of deposition of earnest money, did not arise.

The Secretary of the gram panchayat, who was present at the relevant date, could not confirm the matter of deposition of the earnest money by the contractors which were consequently entered in the Ledger Book of Accounts of the gram panchayat.

The petitioner has not been able to show any document in support of such claim that the earnest money had been deposited and the receipt had been given to the contractors with an entry in the Ledger Book of Accounts. Moreover, the earnest money is normally deposited by demand drafts. The mode of

payment has also not been disclosed. The gram panchayat passed a resolution and thereafter cancelled the entire process.

The Executive Assistant of the gram panchayat pointed out that Rs.56,250/- and Rs.6,83,400/- had been collected by the erstwhile Pradhan and deposited in the own fund bank account, without maintaining any Ledger Book of Accounts. Such action was contrary to Rule 8(2) of the West Bengal Panchayat(Gram Panchayat Accounts, Aduit & Budget) Rules, 2007. Only an authorized employee of the gram panchayat could receive money in cash or cheque or bank draft etc. upon maintaining a Ledger Book of Accounts.

The petitioner as the Pradhan alone, could not have done such exercise. The specific contention of the Block Development Officer is that no earnest money had been received by the gram panchayat against NIT-1 and NIT-2, both dated August 25, 2020. No contractors have ever approached for refund of the alleged money.

By a notice dated September 21, 2020 issued by the concerned Block Development Officer, the petitioner was directed to show cause why legal action should not be taken for collection of money which was deposited without maintaining the rules.

The report which has been filed before this Court, prima facie, indicates that there have been irregularities on the part of the petitioner. The petitioner has also been asked to show cause, but no final decision has yet been taken.

The Court fails to understand why the petitioner prays for mandamus upon the respondents to return the alleged money collected and deposited irregularly, when the contractors themselves neither approached for refund of money nor are before this Court. The petitioner who was serving as a Pradhan was duty bound to implement the provisions of West Bengal Panchayat Act, 1973 and Rules. The prescribed authority has already called for an explanation from the petitioner in accordance with the provisions of the Act with regard to alleged acceptance of the money.

If the petitioner feels unsafe and anticipates violence and threat, the petitioner is at liberty to approach the police authority for her safety. However, no order can be passed with regard to the money deposited.

This writ petition, at the instance of the petitioner for refund of the earnest money allegedly deposited by the contractors, whose existence are in doubt, cannot be allowed.

The prescribed authority is entitled to proceed in accordance with law on the basis of the show-cause notice issued to the petitioner.

This writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)