

11.01.2023
Sl. No.5(DL)
srm

W.P.A. No. 28508 of 2022

Mostafa Sk.

Vs.

The State of West Bengal & Ors.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty

....for the Petitioner.

Mr. Shibasis Chatterjee

...for the Respondent No.9.

Despite service, none appears on behalf of the State-respondents. Affidavit-of-service is taken on record.

The prayer of the petitioner for being allowed to run the Iliyaspur-Kalabagh ferry ghat upon cancellation of the lease agreement with the respondent No.9, cannot be directed by the court as rules do not permit.

A public auction was called by the Executive Officer, Raghunathgunj-II Panchayat Samitui. According to the notification, a public auction for settlement of the ferry ghat was held. Such auction was held on May 18, 2022. The respondent No.9 who was the successful bidder quoted an amount of Rs.1,77,50,000/-.

The petitioner approached this Court by filing WPA No.14874 of 2022, *inter alia*, on the grounds that although

50% of the bid amount was to be deposited within three days from the date of the bid, only an amount of Rs.66,200/- had been deposited on the date of the auction by the respondent No.9. He prayed for cancellation of the agreement with the respondent No.9.

The court found the contention of the petitioner to be correct. A prayer had been made by the respondent No.9 for an extension of time to pay the remaining of the 50% of the bid amount. Such prayer was allowed by the authority. Thereafter, several reminders were sent to the respondent No.9 by the concerned panchayat samiti, but the respondent No.9 did not pay the amount. The petitioner prayed for directions upon the authorities for cancellation of the tender and grant of lease in his favour.

The writ petition being WPA 14874 of 2022 was disposed of by this Court with a direction upon the Block Development Officer, who is the Executive Officer, Raghunathgunj-II Panchayat Samiti, to dispose of the representation of the petitioner dated June 30, 2022.

A reasoned order has been passed by the Executive Officer, Raghunathgunj-II Development Block, Murshidabad on November 14, 2022. The lease agreement with the respondent No.9 was cancelled and the respondent No.9 was directed to vacate the ferry ghat and

hand over possession. The Inspector-in-Charge, Raghunathgunj Police Station was directed to comply with the order.

The prayer of the petitioner for grant of lease as per clause 2 of the auction notice was rejected by the order impugned. The ground for such rejection was that neither the rules nor the auction notice permitted the unsuccessful bidder to be granted the settlement after expiry of a period of five months from the earlier auction, in the event the settlement granted to the successful bidder was subsequently cancelled for non-compliance. The Sabhapati, Raghunathgunj Panchayat Samiti was directed to hold fresh auction in accordance with law. The petitioner also alleges delay in holding the auction and non-action of the authorities in taking over vacant possession. It is contended that the authorities have been showing preference to the respondent No.9 by not taking over possession.

The Court does not find any illegality in the aforementioned order which is the subject matter of dispute in this writ petition. There is no provision either in the notice nor in the rules permitting the other bidders to continue the operation of the ferry under circumstances narrated hereinabove.

The respondent No.9 has not yet handed over possession of the said ferry ghat, as directed by the authority. The Superintendent of Police, Murshidabad through the Inspector-in-Charge, Raghunathgunj Police Station shall ensure that the same is vacated within a period of seven days from the date of communication of this order. Possession of the ferry ghat shall be handed over to the Raghunathgunj-II Panchayat Samiti, by the respondent No.9 through the police authorities. The Block Development Officer, who is the Executive Officer of Raghunathgunj-II Panchayat Samiti shall make a separate arrangement to operate the ferry service, till the fresh auction is held and the ferry ghat is settled accordingly.

The Sabhaphati, Raghunathgunj-II Panchayat Samiti is directed to take steps to hold the public auction as per law, within a period of four weeks from date.

What has shocked the conscience of the Court is how the bid amount was allowed to go up to Rs.1,77,50,000/- against the base price of Rs.1,62,000/- without the authorities finding the same to be unreasonably and abnormally high. Even if maximization of revenue is the ultimate target of the authority, the authorities are expected to decide the matter judiciously and with intelligence. The bid went up to Rs.1,77,50,000/-.

The highest bidder was settled the ferry ghat, but the authorities failed to do their homework and ascertain whether the highest bidder had made a genuine bid and was financially capable of paying the amount.

It, *prima facie*, appears to the Court that in order to settle the ferry ghat to the respondent No.9, the bid went up to Rs.1,77,50,000/- only to exclude others, but the understanding was that the respondent No.9 could continue without payment and be granted extensions. Such non-payment has gone on since May, 2022 till the present date.

The proportionate payment for running the ferry service from May, 2022 till the date of handing over possession shall be made by the respondent No.9 within seven days from the receipt of the calculation. Such calculation shall be made by the Sabhapati, Raghunathgunj-II Panchayat Samiti and handed over to the respondent No.9, within seven days from communication of the order. If the respondent No.9 fails to make such payment, the same shall be recovered as per law.

The Court finds it difficult to comprehend how the authorities could extend the time when such enabling power had not been provided in the auction notice. Such

indulgence was given to the defaulting bidder at the cost of the public exchequer. Often, it has surfaced that similar exorbitant bids are quoted and the ferry ghats are settled to such bidders. Thereafter, the bidders commit default in payment, but they continue with the blessings of the panchayat samitis. The panchayat samitis have also failed to claim such money through proper legal process. Such practice cannot be allowed and it is high time that the State authorities take appropriate steps to put an end to such unhealthy and improper practice. Diligent and honest bidders are kept out of such fair competition.

The Secretary to the Government of West Bengal, Panchayats and Rural Development Department, shall cause an enquiry with regard to the incident and take immediate remedial measures to ensure that under the garb of maximization of revenue, few chosen persons of the samitis are not allowed to quote exorbitant amounts in order to rule out fair play and fair competition and thereafter be allowed to continue without payment of the amount in terms of the auction notice.

If any foul play is detected, penal laws shall be set in motion. The state exchequer cannot be allowed to run dry, on account of maladministration by the panchayat samiti. The Secretary will also consider the question of blacklisting

such defaulting bidders through proper procedure. The decision of the Secretary shall be taken and communicated to all the interested parties within a period of three months from the date of communication of this order.

The petitioner is directed to serve a copy of the writ petition along with a server copy of this order upon the Block Development Officer, Sabhapati of the panchayat samiti and also upon the Secretary to the Government of West Bengal, Panchayats and Rural Development Department.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)