

29.12.2023
Item No.4
Ct. No.7
Vacation Bench
CHC
(disposed of)

W.P.A.29065 of 2023

Mondal Construction
Vs.
The State of West Bengal & ors.

Mr. Kamalesh Bhattacharya,
Mr. Anit Dey
...for the petitioner

Mr. Lal Mohan Basu
...for the NBSTC
(respondent nos.2, 3 and 4)

Affidavit-of-service filed in Court today is
taken on record.

Mr. Kamalesh Bhattachaya, learned counsel
appears for the petitioner.

Mr. Lal Mohan Basu, learned counsel
appears for the respondent nos.2, 3 and 4.

Pursuant to a tender notice dated October
16, 2023, Annexure- 'P-1' at page 19 to the writ
petition for engagement of **Ticket Selling Agent in**
NBSTC Buses, the petitioner participated in the
tender process and ultimately became a successful
tenderer *inter alia* in respect of the route
Berhampore – Kharagpur – 1 (for short the said
route), Annexure- 'P-3' – 'P-4' at pages 65 and 66 to
the writ petition. Suddenly, the petitioner was
informed through a tender summary report dated

December 15, 2023, Annexure-‘P-4’ at page 66 to the writ petition that the grant of tender work in favour of the petitioner was cancelled due to **“Administrative reasons/issues”**.

Mr. Kamallesh Bhattacharya, learned counsel for the petitioner submits that such cancellation of the tender work already granted to the petitioner due to administrative reason is not tenable in law as before cancellation no opportunity of hearing was granted to the petitioner and no constructive reason was disclosed to the petitioner as to why such cancellation has happened. Such cancellation is impugned through this writ petition.

Mr. Lal Mohan Basu, learned counsel appearing for the respondent nos.2 to 4 referring to Clause 3.6 of the General Information and Conditions of the notice inviting the tender, Annexure-‘P-1’ at pages 19 and 20 to the writ petition submits that at all material point of time the right was reserved in favour of the tender inviting authority *inter alia* to reject the bid of any successful tenderer and terminate it without assigning any reason. He submits that in view of the said clause no reason was required to be assigned for rejection of the tender bid and accordingly, the petitioner’s bid was terminated/cancelled without assigning any reason

and there was no illegality or arbitrariness in the decision.

On a query of this Court as to the present status and stage of the second tender dated December 15, 2023, Annexure-‘P-7’ at page 70 to the writ petition which has already been issued after termination of the first tender under which petitioner was a successful bidder, the learned counsel for the respondent nos.2 to 4 could not appraise this Court.

Considering the rival submissions made on behalf of the parties and considering the materials on record, it appears to this Court that, though the said Clause 3.6 of the notice inviting tender dated October 16, 2023 mentioned for cancellation of bid no reason was required to be furnished by the tender inviting authority, but the reasons for cancellation as appearing from the termination communication dated December 15, 2023 Annexure-‘P-4’ at page 66 to the effect that cancellation was due to **administrative reasons/issues** is not convincing to this Court. The authority is supposed to give a constructive reason when it rejects the bid of the petitioner which was accepted by the authority after application of its mind.

In view of the foregoing reasons and discussions, the decision for terminating the offer of the petitioner dated December 15, 2023

Annexure-‘P4’ at pages 66 and 67 to the writ petition stands set aside and quashed.

To subserve justice, the respondent no.2 shall revisit the issue after granting an opportunity of hearing to the petitioner through its authorized representative by passing a reasoned order in accordance with law.

The respondent no.2 shall hold the hearing on January 3, 2024 at its office at Coochbehar at 11 a.m. as agreed by the parties represented before this Court and then after granting an opportunity of hearing shall pass its reasoned order and communicate the same to the petitioner forthwith.

The entire exercise shall be carried out and completed by the respondent no.2 positively within a period of 10 working days from January 3, 2024.

It is made clear that this Court has not gone into the merits of the case made out in the writ petition and that the respondent authority and the petitioner shall be at liberty to urge whatever points they wish to urge before the respondent no.2 by relying upon whatever documents and records they wish to rely upon.

It is also made clear that this order shall not create any right or equity in favour of the petitioner and the respondent no.2 shall be free to decide the

issue in accordance with law by applying its independent mind.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

Till the reasoned order is communicated to the petitioner as directed above, no further effect shall be given to the said second tender process pursuant to the notice inviting tender dated December 15, 2023 Annexure-‘P-7’ at page 70 to the writ petition.

If the reasoned order goes against the petitioner then the respondent authority shall be free to proceed with the second tender process under the notice inviting tender dated December 15, 2023 Annexure-‘P-7’ at page 70 to the writ petition immediately.

On the above terms this writ petition W.P.A.29065 of 2023 stands disposed of, without any order as to costs.

(Aniruddha Roy, J.)