

09 12.03.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 7057 of 2024

Tumpa Khatun
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Mridul Kanti Sasmal.
...for the petitioner.

Mr. Sirsanya Bandopadhyay,
Mr. Ritesh Ganguly.
...for the State.

Leave is granted to the advocate on record of the petitioner to implead the District Magistrate, Purba Medinipur as party respondent in the instant writ petition.

Affidavit of service filed in Court today be kept with the record.

This petitioner claims to be the Upa-Pradhan of Amalhandra Gram Panchayat. A notice inviting e-tender was published by the Pradhan of the Gram Panchayat on 31st January, 2024 in respect of seven works to be executed. The tentative period of completion of work is 30 days.

One 'Das Enterprise' emerged as successful bidder in respect of works under serial numbers 2 to 7 of the notice inviting e-tender. Work order has been issued in favour of the said Das Enterprise on 27th February, 2024.

The petitioner raised objection with regard to the eligibility of the said Das Enterprise in the tender process. The

objection of the petitioner was taken note of in the meeting held by the Tender Committee but despite the objection raised, work order has been issued.

The petitioner has raised further objection before the District Magistrate with a copy to the Block Development Officer.

It appears that 'Das Enterprise' i.e. the successful tenderer, for the reason best known to the petitioner, has not been impleaded as party respondent in the instant writ petition. In the absence of the successful tenderer, it will not be possible for the Court to adjudicate as to whether the said person had the eligibility to contest the tender process or not.

Learned counsel representing the State respondents submits, upon instruction from the Block Development Officer, that the complaint of the petitioner was duly taken care of. The same is reflected in the Resolution Book. The Block Development Officer has mentioned that he enquired into the matter and, prima facie, no malpractice was found.

It has been submitted that out of the seven works put to tender, two works have been completed and payment has been made through RTGS mode. Four works are running and one work not started yet.

The first and final bill raised by the said 'Das Enterprise' in respect of the work of execution of Solar Street Light near Janatirtha Sangha at Mohisgote indicating that the measurement of the work was done on 6th January, 2024 and the total bill amount is Rs.25,000/- (Rupees Twenty Five

Thousand only) was relied upon by the said Das Enterprise in support of its credential in performing similar nature of work.

Specific contention of the petitioner is that the aforesaid 'Das Enterprise' does not have the credential of performing similar nature of work in the last three years having magnitude of 60% of the amount put to tender.

From the documents forwarded by the Block Development Officer, it does not appear that the aforesaid objection raised by the petitioner was taken care of.

The documents forwarded by the Block Development Officer in respect of 'Das Enterprise' is of works allegedly performed after the tender was floated on 31st January, 2024. Any work conducted after the cut off date ought not to be taken into consideration for the purpose of selecting the best candidate in terms of the subject notice inviting e-tender.

As it appears that the Block Development Officer has already formed a prima facie opinion that no malpractice was found, accordingly, passing any direction upon the same officer to decide the issue, would be a futile exercise.

A representation appears to have been made before the District Magistrate, Purba Medinipur.

In view of the above, the Court thinks it fit to direct the District Magistrate, Purba Medinipur to cause enquiry to ascertain as to whether the tender process was conducted in a proper manner in accordance with the conditions mentioned in the notice inviting e-tender dated 31st January, 2024.

The District Magistrate may depute a competent person to cause the enquiry and for collection of documents and data

in support of the credentials of the participants in the tender process. Thereafter, the District Magistrate shall form an opinion as to whether the tender has been issued in favour of the proper candidate or not.

A decision shall be taken in the matter at the earliest but positively within a period of two weeks from the date of communication of this order.

If it appears to the District Magistrate that there is any irregularity in the tender process, then necessary remedial measures shall be taken. An opportunity of hearing shall be provided to the petitioner, the representative of the Gram Panchayat and the representative of 'Das Enterprise' prior to passing any final order in the matter.

The final order shall be passed and communicated to the petitioner, the Gram Panchayat and to the representative of 'Das Enterprise'.

The petitioner is directed to serve a copy of the writ petition upon the District Magistrate at the time of communicating this order.

The writ petition stands disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)