

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

49 05.11.2024
Sc Ct. no.2

WPA 9426 OF 2024

Sukumar Banerjee

Vs.

The State of West Bengal & Ors.

Mr. Mir Anowar

.....For the Petitioner

Mr. Soumitra Bandyopadhyay

Mr. Priyabrata Batabyal.

....For the State

Mr. Sanjay Saha

....For the Respondent
No.5

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

Mr. Mir Anowar, learned advocate appears for the petitioner.

Mr. Soumitra Bandyopadhyay, learned advocate appears for the State respondents.

Mr. Sanjay Saha, learned advocate appears for the respondent no.5.

The excess sand for a particular quantity was put for auction by the State authority. The petitioner participated in the auction process for such fixed quantity of sand and deposited a sum of **Rs.9,61,371/-** on account of premium to participate in the auction process. Subsequently, the petitioner discovered that, the fixed quantity of sand which was put for auction was not the

actual quantity on the basis whereof the petitioner has paid the amount but is a lesser quantity.

The petitioner has submitted a representation before the State authority but the same has not been considered. The petitioner now claims before this Court that, the proportional quantity of sand can be released in favour of the petitioner which would be equivalent to the sum of **Rs.9,61,371/-** deposited by the petitioner.

Mr. Soumitra Bandyopadhyay, learned senior Government advocate appearing for the State respondents submits that the State authority has already initiated a criminal proceeding before the jurisdictional criminal Court against the petitioner and the trial is pending. The petitioner has been found allegedly to be guilty by the State authority for which the criminal proceeding has been initiated and the petitioner has been enlarged on bail.

Mr. Sanjay Saha, learned advocate appearing for the respondent no.5 submits that, the respondent no.3 is the appropriate authority to hold and finalise the auction. He further submits that, considering the nature of the criminal case pending against the petitioner, the fate of the auction process shall depend upon its final result.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, there are lot of disputed questions of facts which cannot be adjudicated by this Writ Court.

More so, the criminal trial is pending against the petitioner on the alleged charges concerning the selfsame tender process. If ultimately the petitioner is acquitted in the criminal trial, then only his fate in the tender process shall be decided in accordance with law.

However, if the respondent no.3 at its discretion thinks it fit that, the proportionate quantity of sand can be made over and delivered to the petitioner equivalent to the sum of **Rs.9,61,371/-** which has been deposited by the petitioner, the respondent no.3 shall be free to do so in accordance with law but such observation of this Court shall not have any mandate on the respondent no.3. The respondent no.3 shall exercise his discretion in accordance with law and if he thinks it fit then only he may proceed to deliver proportionate sand to the petitioner.

If the petitioner ultimately chooses and decides to recover his amount paid by him, the petitioner shall be at liberty to initiate appropriate civil action for recovery of his deposit from the State authority before the jurisdictional civil Court in accordance with law.

It is made clear that, this Court has not made any observation with regard to the merits of the alleged criminal charges levelled against the petitioner by the State authority on which the criminal trial is pending. This Court has not gone into the merits of the claim of the petitioner in any manner.

The jurisdictional criminal Court shall be free to proceed with the criminal trial without being influenced by any observation made by this Court. Similarly, if any civil action is initiated by the petitioner, the jurisdictional civil Court shall be free to proceed in accordance with law without being influenced by any observation made by this Court.

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

With the above observations and directions this writ petition, **WPA 9426 of 2024** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)