

WPA 13622 OF 2023

Debaprasad Ghoshal

Vs.

The State of West Bengal & Ors.

Mr. Gazi F. Hossain

Ms. Varsha Roy.

.... For the Petitioner

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

None appears for the respondents, despite notice, including the concerned Panchayat and its Prodhan.

Mr. Gazi F. Hossain, learned counsel appearing for the petitioner submits that, pursuant to a tender notice dated **February 13, 2023, Annexure-P1 at page 12** to the writ petition, issued by the concerned Panchayat Samity, the petitioner participated in the tender process for construction of **Swarupkati Bazar, Kapor Hat and Sabji Hat** (serial no. 13 in the tender notice). The petitioner deposited the lease money for a sum of **Rs.7,500/-** on **February 27, 2023, Annexure-P2 at page 15** to the writ petition. Suddenly, the petitioner received the impugned memo dated **June 2, 2023, Annexure-P3 at page 16** to the writ petition, issued by the concerned Panchayat Samity wherefrom the petitioner, for the first time, discovered that, such work

under tender was decided and announced as totally illegal and, accordingly, the Panchayat Samity decided to refund the said sum of **Rs.7,500/-** to the petitioner within ***seven days***.

Being aggrieved by the said decision of the Panchayat Samity, the petitioner has assailed the said cancellation memo dated **June 2, 2023** through this writ petition.

Drawing attention to the averments made in the writ petition and more specifically the averments from ***paragraphs 7 and 11*** from the writ petition, learned counsel for the petitioner submits that, the petitioner has commenced the work and invested a substantial amount. The petitioner submits the cancellation of the tender process, insofar as the petitioner is concerned, is totally illegal, arbitrary and wrongful. The work has been stopped in terms of the said cancellation memo dated **June 2, 2023**. The petitioner prays mandamus not to give any effect to the said impugned cancellation memo and to allow the petitioner to act as a lease-holder of the market (Hat).

After considering the submissions made on behalf of the petitioner and on a meaningful reading of the averments made in the writ petition, it appears to this Court that, the writ petition is totally silent as to whether any work order was issued in favour of the petitioner permitting the petitioner to carry out the subject work

under the said tender process. Save and except the money receipt being **Annexure-P2 at page 15** to the writ petition, there is no other acknowledgement issued on behalf of the Zilla Parishad acknowledging the petitioner to become a successful tenderer, if at all, in the tender process. There is no evidence in the writ petition that, the petitioner has commenced the work under the subject tender. Other than a bare statement made in **paragraph 11** to the writ petition, there is no evidence disclosed as to whether the petitioner has expended or invested any amount in carrying out the tender work and whether the petitioner has suffered any loss or damages due to the said cancellation notice dated **June 2, 2023**.

Furthermore, the cancellation notice suggests that, the subject work under the tender, alleged to have been allotted to the petitioner, was found to be totally and grossly illegal and, as a result, the cancellation notice was issued and decision was taken by the Panchayat Samity to refund the lease-money for a sum of **Rs.7,500/-** deposited by the petitioner.

On an issue arising out of a tender dispute this Constitutional Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, has a limited authority to intervene. The writ petitioner has to establish unimpeachably that, there is a gross illegality or an arbitrary action existing on the part of the tendering State authority. In the event, ultimately the petitioner

succeeds to establish that the decision for cancellation of the tender work which was allegedly allotted to the petitioner was illegal, arbitrary or wrongful then, the remedy of the petitioner shall be in damages.

In the facts and circumstances of the instant case as discussed above, this Court is of the view that, even if there is any illegality or arbitrary action involved in issuing the said cancellation notice dated **June 2, 2023** on the part of the Panchayat Samity, the same needs to be proved by causing a detailed fact finding inquiry and, if necessary, by leading evidence by the parties. This is not the job of a Writ Court.

The petitioner, in view of the above, shall be at liberty to proceed with his cause of action before the appropriate jurisdictional forum strictly in accordance with law.

In the event the petitioner applies for withdrawal of the said sum of Rs.7500/-, the authority shall refund the same within **two weeks**, without prejudice to the rights and contentions of the petitioner.

For the foregoing reasons and discussions this writ petition, **WPA 13622 of 2023** stands dismissed, without any order as to costs.

(Aniruddha Roy, J.)