

Court No. 9
(265711)

WPA 15920 of 2024

21.08.2024

(A 62)

(S. Banerjee)

Geocon India & Anr.
Vs.
State of West Bengal & Ors.

Mr. Ramanuj Banerjee
Mr. Gautam Mitra

...for the petitioners

Mr. Sirsanya Bandyopadhyay
Mr. Ritesh Kumar Ganguly

...for the State

The petitioners complain of illegal activities of public servants and pray for various reliefs against such officials.

The allegations are that the tender committees of various departments of the government have been floating tenders, with difficult terms and conditions resulting in the inability of the petitioners to participate.

The tendering authority must not proceed to issue tender notices which preclude the participation of small businessmen. The very condition that only persons experienced in executing substantial works can participate in the bidding process is violative of the right to equality guaranteed by the Constitution. Thus, the petitioners pray for a Mandamus upon the departments, i.e., Public Health and Engineering,

Public Works Department etc., restraining them from publishing tender notices until the issues raised by the petitioners are decided.

The petitioners submit that the Constitution would prevail over the action of the Executives. Learned advocate for the petitioners further submits that the public servants have been acting contrary to the Constitution of India. He also refers to the observations of Dr. B. R. Ambedkar. He submits that Dr. Ambedkar had observed that if the Constitution was misused, he (Dr. Ambedkar) would 'burn' the Constitution. Reference is further made to another observation of Dr. Ambedkar i.e., "However good a constitution may be, if those who are implementing it are not good, it will prove to be bad." The quotations have been supplied by and relied upon by the petitioners to substantiate that the public servants who are not following the Constitution and are indulging in corruption and in denial of fundamental rights of the petitioners, are guilty of criminal breach of trust. Allegation is that Articles 38 and 39 of the Constitution of India, i.e., the 'Directive principles of State policy' are also being violated. It is submitted that equal opportunity of income should be provided by the State to all, thereby, removing the disparity between the 'Have(s)' and 'Have not(s)'. He submits

that inequality of income and economic status should be eliminated. To achieve such purpose, the Writ Court's primary duty would be to strike out all those tender notices which had been floated earlier, declaring them to be unconstitutional. The small players must be allowed to participate.

It is the further submission of the petitioners that the '*Sabka sath Sabka Vikas*' and '*Sabka sath Sabka Biswas*' drive, as publicly demonstrated by the Hon'ble Prime Minister of India, is not being followed. The Hon'ble Prime Minister, of the country, was only supporting the rich business class. It is also his submission that 40% of the wealth is concentrated within 1% of the citizens of India.

The prayers made by the petitioners cannot be allowed as the works to be executed pursuant to the tender notices are public works and the works are going on. A Writ Court cannot issue an injunction upon the Government, restraining it from proceeding with tenders. The petitioners have not been able to satisfy this Court that the authorities had acted arbitrarily and illegally.

The tendering authorities are experts in the field. They have the wisdom to frame the terms and conditions of a tender. The eligibility criteria and the

requirements to be fulfilled by a participant/bidder, are exclusively within the domain of the tendering authorities. Whether small works should be included as a part of the main work or should be segregated, are again within the discretion of the authorities.

The petitioners have to demonstrate with specific instances as to how the authorities had violated any of their fundamental rights. A tendering process can only be challenged on the limited ground of arbitrariness, mala fide or favoritism. No such pleading is available in this petition. The fact that the petitioners are not being able to participate in the tenders as the eligibility criteria are too stringent, cannot be a ground to issue a blanket injunction restraining all authorities from proceeding with the works which have been undertaken, in the interest of the public. The question whether the country should frame a policy to implement Articles 38 and 39 of the Constitution of India (Directive principles of State policy), cannot be decided in this proceeding. A writ petition is maintainable when a fundamental or legal or statutory right of a person is infringed by the State. Article 21 of the Constitution of India gives a right to livelihood, but inability of the petitioners to participate in any tender process on account of non-fulfilment of the eligibility criteria, cannot be a denial

of livelihood. Equal opportunity in the matter of public employment under Article 16 of the Constitution of India, does not deal with tenders. In any event, every employment is by open competition and a tender process is also by open bidding. Had the petitioners come up with any specific example, when the petitioners were denied the opportunity to submit their bid on the ground that the contract was either tailor-made or contained conditions only to favour particular persons, in that event, the Writ Court could have interfered. Here, the petitioners talk about several tenders floated by several authorities. The eligibility criteria did not permit participation.

The issues of poverty, people living below the poverty-line, the non-availability of jobs and denial of equality, are matters which do not cover the pleadings in this writ petition. In any event, a Writ Court in exercise of power under Article 226 of the Constitution of India, cannot frame any policy in this regard. The avenue of the petitioners would be elsewhere and they are at liberty to ventilate such grievances in other proceedings.

Under such circumstances, the writ petition is dismissed.

(Shampa Sarkar, J.)