

19.08.2024

Item No. 09

Ct. no.2

b.r.

WPA 19606 of 2024

***Aryan Construction, represented by
its Proprietor Mr. Jahangir Alam.***

-Vs.

The State of West Bengal & Ors.

Mr. Niladri Sekhar Ghosh

Mr. M. Nazar Chowdhury

Mr. Sourav Mondal

Ms. Souparna Chatterjee

Mr. M. Ahamed Salik

... For the Petitioner

Mr. Tushar Sinha Mahapatra

Ms. Dipanwita Ganguly

.... For the State-respondents.

On the urgency pleaded on behalf of the petitioner and in view of the determination being assigned before this Court this writ petition has been taken up for consideration by publishing the same in the daily cause list.

Mr. Niladri Sekhar Ghosh, learned counsel, appears for the petitioner.

Mr. Tushar Sinha Mahapatra, learned State counsel appears for the respondent nos. 1 to 7.

The **respondent no.4** had issued a notice inviting tender dated **August 9, 2023, annexure p-1 at page-19** to the writ petition inviting tender for construction of a public road mentioned in **Serial No.1** under the **Table-1**. The petitioner participated and became a successful

bidder. After compliance of all directions and conditions of the tender, work order dated **November 10, 2023, annexure p-2 at page-30** to the writ petition, was issued in favour of the petitioner for construction of the subject road.

Mr. Niladri Sekhar Ghosh, learned counsel appearing for the petitioner submits that the petitioner has carried out the relevant work even then a show-cause notice dated **June 20, 2024 at page-31** to the writ petition was issued upon the petitioner. The petitioner by its letter dated **July 9, 2024** has replied to the show-cause **annexure p-3 at page-32** to the writ petition. Learned counsel for the petitioner referring to a further second notice inviting tender dated **July 19, 2024 annexure p-4 at page-33** to the writ petition, submits that, without terminating the work order of the petitioner and without deciding the charges levelled against the petitioner in the said show-cause notice dated **July 20, 2024**, the respondents proceeded to issue the said second tender notice in respect of the construction of the self-same road, hence this writ petition.

Mr. Tushar Sinha Mahapatra, learned counsel appearing for the State-respondents places a communication dated **July 8, 2024** issued by the **respondent no.6** and submits that the work order of the petitioner dated **November 10, 2023** has already

been cancelled. A copy of the communication dated **July 8, 2024**, is taken on record. He further referring to the pleading made in **paragraph-9** to the writ petition, submits that, the petitioner had due knowledge of the said cancellation of his work order but has deliberately suppressed the said document dated **July 8, 2024** in this writ petition. He further submits that even prior to the said show-cause notice, the respondents had issued several communication pointing out the breach on the part of the petitioner to commence the tender work and to complete the same within the time frame.

On instruction from his client, Mr. Santanu Mitra, learned counsel appearing for the State-respondents submits that, in respect of the said second tender notice dated **July 19, 2024**, the last date of submission of bid is **August 14, 2024**. The date fixed for opening the technical bid is **August 16, 2024**. The date fixed for opening of the financial bid is **August 21, 2024**. The probable date for issuance of work order under the said second tender is fixed on **August 25, 2024**.

Learned counsel appearing for the petitioner has denied and disputed the submissions made by the learned State counsel as recorded above. He submits that the said notice of termination dated **July 8, 2024** has never been served upon the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record, it

appears to this Court that, the tender process relates to construction of a public road which is an infrastructural project. The law is trite that this Constitutional Court in exercise of its authority and jurisdiction under Article 226 of the Constitution of India shall be very slow to interfere with such infrastructural projects. This Court is also not the expert and equipped with the technical knowledge in respect of such infrastructural project. By way of passing an interim injunction may ultimately prejudice the public purpose involved in the said infrastructural project.

In the facts of the instant case, from the submissions made from the Bar by the learned State advocate, though it appears that, by the said communication dated **July 8, 2024**, the work order issued in favour of the petitioner dated **November 10, 2023** was cancelled, equally such fact is denied on behalf of the petitioner and the petitioner further submits that no such termination notice was issued upon the petitioner and received by the petitioner.

Be that as it may, this Court has been informed by the learned State Counsel that **August 25, 2024** is the probable date for issuance of work order in favour of the successful bidder under the second tender notice dated **July 19, 2024**. The record does not reveal that the respondent authority has dealt with the reply of the petitioner dated **July 9, 2024** to the said show-cause

notice dated **June 19, 2024** neither learned State counsel could produce any evidence that a decision has been taken on the said show-cause notice.

In view of the above, this Court thinks it fit to sub-serve justice at this stage, to direct and accordingly the **respondent no.6** is directed to give an opportunity of hearing to the petitioner through its duly authorized representatives and then to pass a reasoned decision in its show-cause notice dated **June 20, 2024** with reference to the reply thereto dated **July 9, 2024** and to communicate the reasoned decision to the petitioner immediately thereafter.

By consent of the parties, the hearing shall take place on **August 21 and August 22, 2024 at 12 noon** at the office of the **respondent no.6** when the petitioner shall be heard by the **respondent no.6**. The **respondent no.6** then shall pass its reasoned decision and communicate the same to the petitioner positively on or before **August 23, 2024 not later than 4 p.m.**

It is made clear that, the petitioner if is found otherwise to be eligible and qualified to participate in the second tender process under the said notice inviting tender dated **July 19, 2024**, the petitioner shall be at liberty to participate therein without prejudice to its rights and contentions when the petitioner's participation and its eligibility shall be decided in accordance with law on its own merit.

It is made clear that, this order shall not create any right or equity in favour of the petitioner in so far as its participation and evaluation in the said second tender process is concerned under the notice inviting tender dated **July 19, 2024**.

It is further made clear that the respondent authority shall be at liberty to proceed with the said second tender process under the second notice inviting tender dated **July 19, 2024** without any fetter but in accordance with law.

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

With the above observations and directions this writ petition, **WPA 19606 of 2024** stands **disposed of**, without any order as to costs.

In view of the urgency involved in this matter, the learned advocates appearing for the parties shall communicate the gist of this order to their respective clients for taking further steps in the matter.

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

(Aniruddha Roy, J.)