

20.08.2024

Item No. 33

Ct. no.2

b.r.

WPA 20873 of 2024

Apil Kumar Sinha

-Vs-

The State of West Bengal & Ors.

Mr. Sumit Ray

Mrs. Sarda Sha

Mr. Sukanta Das

... For the Petitioner.

Mr. Sirsanya Bandopadhyay

Mr. Debopriyo Karan

..... for the State.

Md. Nauroz Rahbar

Mr. Muhammad Jawwad

.... For the respondent no.8.

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.

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

Mr. Sumit Kumar Ray, learned advocate, appears for the petitioner.

Md. Nauroz Rahber, learned advocate, appears for the respondent no.8, the Prodhan of the concerned Panchayat.

Mr. Debopriyo Karan, learned State advocate appears for the respondent nos. 1 to 6.

The petitioner submits that for the purpose of construction of road, the concerned Panchayat initially floated a tender on **July 16, 2024** which was then recalled. At the second stage, **two tenders** were floated, namely, **July 19, 2024 annexure p-4 at page-30 and July 22, 2024 at page-33** to the writ petition. The petitioner submits that there are **sixteen** more tenders floated by the Gram Panchayat for construction of its roads. All the tenders were e-tenders. The representation of the petitioner dated **August 9, 2024 at page-37** to the writ petition shows that the petitioners have participated and submitted its e-auction bid under the said tender. The bids submitted by the petitioner are awaiting their evaluation.

The petitioner at this juncture has challenged one of the tender terms, namely, **Serial no.4** under the heading **Terms and Condition of the Tender Document at page-34** to the writ petition which states, *inter alia*, that Bidder must upload Local Prodhan/Municipality Residential Certificate with Colour Passport Size Photo Copy to be attested by the Prodhan.

Learned counsel Mr. Ray appearing for the petitioner submits that, this clause is totally arbitrary, illegal for the reason that to submit a bid by a qualified bidder, the bidder has to depend

upon the whims of the Prodhan or Municipality whether they will certify or not the **Residential Certificate** of the bidder. He further submits that in the previous tender dated **July 16, 2024** such clause was not there whereas in the said subsequent tender this clause was inserted. The petitioner has challenged the insertion of the said clause under the Tender Terms. The petitioner prays for Mandamus to rescind and cancel the said notice inviting e-tender dated **July 19, 2024 and July 22, 2024** along with other consequential reliefs.

Relying upon **Rule 17, the West Bengal Panchayat (Gram Panchayat Accounts Audit and Budget) Rules, 2007 (for short, the said 2007 Rules)**, he submits that the said Rule deals with the procedure how a tender process shall be followed by the Panchayat. He submits that the insertion of the said clause is in violation of the said **2007 Rules** and accordingly, the writ petition should be allowed.

Learned counsel appearing for the respondent no.8 submits that, the tender process was opened on **July 19, 2024** and the petitioner immediately submitted his bid. Thereafter, on **August 9, 2024** the petitioner submitted the said representation at **page 38** to the writ petition. He submits that, the

said representation is totally result of an afterthought and frivolous. He further submits once the petitioner has participated in the said tender process, he has accepted the terms and consequently he cannot turn around and challenge the tender terms. He prays for dismissal of this writ petition *in limine*.

Learned State counsel appearing for the respondent nos. 1 to 6 adopts the submissions made on behalf of the respondent no.8 and prays for dismissal of this writ petition.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court at the outset reiterates that, the law is trite that when a tender is floated for some infrastructural works to be carried out as in the instant case, for construction of road, it is the sole domain of the technical persons who are within the tender committee to prepare the terms and conditions of the tender. Unless the terms and conditions of a tender is *ex facie* a result of *mala fide* or arbitrariness or in violation of any law, this Constitutional Court in exercise of its authority under Article 226 of the Constitution of India shall not interfere with the same.

Clause (4) of the tender terms, which is under challenge, on a meaningful reading shows, the

Residential Certificate has to be certified by the Pradhan of the concerned panchayat where the bidder is dwelling or the concerned municipality shall certify the same. The panchayat or the municipality are the authorities of the locale within whose jurisdiction a bidder resides and accordingly this Court is of the firm view that, there is no arbitrariness or *mala fide* on the part of the tender committee to fix the said tender terms that, the Residential Certificate will have to be certified by the concerned panchayat or the municipality. Insertion of Clause (4) on the face of it is also not illegal and arbitrary under the tender process.

Rule 17 of the said **2007 Rules** has no application at all in the facts of this case. The 2007 Rules deals with the account, audit and budget of a panchayat which would have an impact on such an infrastructural project.

Furthermore, the infrastructural project for construction of public road for which the tender has been floated is related to the public purpose for the public at large of the locale. A tender for infrastructural project involving public purpose, unless is found to be a result of *ex face mala fide* or arbitrariness or illegality, Writ Court shall not interfere with it.

In view of the foregoing reasons and discussions this Court is of the considered view that, this writ petition is totally harrasive, frivolous, vexatious and without any merit.

Resultantly, this writ petition, **WPA 20873 of 2024** stands **dismissed**, without any order as to costs.

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

(Aniruddha Roy, J.)