

25.04.2025
Sl. No.84(DL)
Ct. No.39
srm

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

W.P.A. No. 3409 of 2025

Simarul Sekh & Anr.

Versus

The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Asraf Mandal,
Mr. Asif Mehdi

...for the Petitioners.

Mr. Santanu Chatterjee,
Mr. Amrita Lal Chatterjee

...for the State-respondents.

Mr. Shahan Shah,
Sk. Abumusa,
Mr. Soumen Barman,
Md. Shahjahan,
Mr. Umenun Khan

...for the Respondent No.11.

Affidavit of service filed on behalf of the
petitioners is taken on record.

This writ petition has been filed seeking for
quashing/setting aside of the Notice Inviting e-Tender
No.07/Raipur GP/2024-25 under Memo
No.425/RGP/2024-25 dated 30th December, 2024 of
Raipur Gram Panchayat.

The petitioners contend that they participated in
the e-tender and submitted their bids. The bid of the
petitioner No.1 was rejected citing mismatch in the
date of affidavit and that of petitioner No.2 was rejected
on the ground of lack in building credentials. Both the
petitioners have complied with the eligibility criteria, as

required under the notice inviting e-tender. The Pradhan, Raipur Gram Panchayat has arbitrarily rejected the bids of the petitioners. Hence, this writ petition.

Md. Sarwar Jahan, learned Advocate appearing for the petitioners submit that as per Procurement Manual, 2014, the acceptance or rejection of a bid is to be done by a Committee authorised by the *Artha O Parikalpana Upa-Samiti* consisting of Executive Assistant, Gram Panchayat Secretary (in the event of the post of executive assistance remaining vacant), Nirman Sahayak and one member of Opposition. However, the documents of acceptance and rejection of bids has the signatures of only Pradhan, Upa-Pradhan and Sanchalak. There is no signature of Executive Assistant, Nirman Sahayak or member of the opposition. He also indicates that the petitioner No.2 has submitted the building credentials including his experience in construction of drain. However, his bid has been cancelled arbitrarily without considering such documents. Both the petitioners made representation raising such issues before the Block Development Officer, Nowda Development Block, Murshidabad on 26th January, 2025 and 27th January, 2025 respectively. However, no steps have been taken till date. He seeks that the matter may be relegated to the Block Development Officer, Nowda Development

Block, respondent No.8 for causing specific enquiry with regard to issues raised by the petitioners before it.

Mr. Santanu Chatterjee, learned Advocate for the State submits that the Block Development Officer pursuant to such complaint by the petitioners have sought for relevant documents from the Pradhan, Raipur Gram Panchayat on 19th February, 2025, but the same has not yet been forwarded by the Pradhan of the concerned Gram Panchayat.

On the contrary, Mr. Shahan Shah, learned Advocate for the respondent No.11, Pradhan, Raipur Gram Panchayat submits that there is mismatch in the date of the affidavit submitted by the petitioners. Further, as regards petitioner No.2, there is lack in the work credentials submitted by him and therefore the rejection of the bids of the petitioners by the Raipur Gram Panchayat has been correctly made. Referring to a decision of the Hon'ble Supreme Court passed in ***M/s. N.G. Projects Limited versus M/s. Vinod Kumar Jain & Ors.*** reported in ***2022 LiveLaw (SC) 302***, he submits that even if there is arbitrariness or mala fide on the part of the authorities, still the Court should refrain from interfering in the grant of tender since there is a requirement of the necessary expertise to adjudicate upon such issues. The petitioners if aggrieved can claim damages before the Civil Court. He seeks for dismissal of the writ petition.

Admittedly, the petitioners have participated in e-Tender No.07/Raipur GP/2024-25. The bid of the petitioner No.1 was rejected on the ground of mismatch in the date of affidavit and that of petitioner No.2 on the ground of lack of building credentials. Needless to mention that the decision has been taken by the Pradhan, Upa-Pradhan and Sanchalak. As per Rule 6.5, Clause 4 of the Procurement Manual, 2014 placed before this Court by learned advocate for the petitioners, all tenders received in time shall be opened in presence of attending bidders at the time and place as stated in the notice, by a Committee of any two or more functionaries, members or employees of gram panchayat as may be authorised by the *Artha O Parikalpana Upa-Samiti*. It is mandatory that *Artha O Parikalpana Upa-Samiti* shall authorise *Executive Assistant, GP Secretary* (in the event of the post of EA remaining vacant), *Nirman Sahayak* and *one member of Opposition* for this purpose. It is palpable from the documents, namely, annexure P/3 at pages 36-37 of the writ petition that the acceptance and rejection of the bids is done by the Pradhan, Upa-Pradhan and Sanchalak. Therefore, it is primarily found that such acceptance or rejection of bid has not been done by a Committee authorised by *Artha O Parikalpana Upa-Samiti* as required under the aforesaid Rule and thus there is infraction of the existing rules by the concerned Gram Panchayat. Such aspects were raised

by the petitioners in their representations before the Block Development Officer, which has not been considered.

Accordingly, the issues raised by the petitioners require to be examined and enquired into by the appropriate authorities.

So far as the mismatch in the date of affidavit is concerned, the same shall also be examined by the concerned authority at the time of considering and enquiring into the issues raised by the petitioners.

In *M/s. N.G. Projects Limited (supra)*, the Road Construction Department of Jharkhand invited tenders on 07.06.2019 for reconstruction of Nagaruntari-Dhurki-Ambakhoriya Road. Respondent no.1 participated in the tender process and also submitted Bank Guarantee as bid security but such tender was cancelled on 20.08.2019 and fresh notice inviting tender was invited. The Tender Evaluation Committee held a meeting for technical evaluation of bids and 13 out of 15 bids were held to be non-responsive i.e. is not satisfying the tender conditions in terms of Standard Bidding documents including that of respondent no.1. It was not the case of the writ petitioner that action of Technical Evaluation Committee was actuated by extraneous consideration or was malafide. Whereas in the case at hand issue of arbitrariness and malafide has been raised. It is pertinent to note that the rejection has been made by a set of portfolio holders of

the concerned Gram Panchayat, who are not authorised under the Rule. Needless to mention that such rejection has not been made on the basis of any intricate technical issues.

In ***Tata Cellular versus Union of India*** reported in **(1994) 6 SCC 651**, the Hon'ble Supreme Court enunciated the following principles for judicial review in order to prevent arbitrariness or favouritism in exercise of contractual powers by Government bodies :-

"94. The principles deducible from the above are :

- (1) The modern trend points to judicial restraint in administrative action.*
 - (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
 - (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
 - (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
 - (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
 - (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*
- Based on these principles we will examine the facts of this case since they commend to us as the correct principles."*

Bearing in mind the aforesaid principles, as it is found that the rejection of the technical bids of the petitioners by Gram Panchayat appears to be infraction of existing rules, such action has to be examined. Judicial power of review is exercised to rein in any

unbridled executive functioning and examine the decision making process. Where the selection or rejection is arbitrary, certainly the Court can interfere. *[See Tata Cellular (supra)]*.

In view of the above, the respondent no.8, Block Development Officer, Nowda Development Block, Sarbangapur Gram Panchayat is directed to cause enquiry in respect of the representations dated 26th February, 2025 and 27th February, 2025 of the petitioners after giving opportunity of hearing to all the parties including the petitioners. Parties are at liberty to produce their respective documents before the authority concerned during enquiry. The enquiry should be concluded within a period of 2 months from date of communication of the order and, thereafter, if required, the Block Development Officer shall take appropriate steps in accordance with law.

Petitioners are directed to communicate this order to respondent no.8, Block Development Officer, Nowda Development Block for necessary compliance.

Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.

With the aforesaid directions, the writ petition being **WPA 3409 of 2025** is disposed of.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)