

07.05.2025

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Ct. no.39

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

W.P.A. 3421 of 2025

Mostafa Anowar Pasa

-Vs-

The State of West Bengal & ors.

Mr. Md. Sarwar Jahan

Mr. Asraf Mandal

Mr. Asif Mehdi

... for the petitioner

Ms. Sabnam De Bardhan, (through virtual mode)

Ms. Subhra Nag

... for the State-respondent

Mr. Shahan Shah

Mr. Sk. Abumusa

Mr. U. M. Khan

Mr. Md. Shajahan

... for the respondent no.11

This matter was heard on 1st May, 2025. However, for further clarification, the matter is listed under the heading '*To be mentioned*'.

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

The writ petition is filed for quashing and/or setting aside of e-tender notice being No.10/Raipur GP 2024-25 dated 2nd January, 2025.

The petitioner contends that he is the partner of *Pasa Enterprise*, an unregistered partnership firm running business as Government Contractor and General Order Suppliers having its office within Nowda Development Block, District Murshidabad. The petitioner

participated in the notice inviting e-tender being No.10/Raipur GP 2024-25 dated 2nd January, 2025 issued for construction of pathway of CC road from Ansar Sk. House to Monosha Mandir at Alampur under Raipur G.P. Activity I.D-89348097. The bid of the petitioner was rejected on the ground of non-submission of registered deed of partnership. Being aggrieved by such rejection, the petitioner has preferred the present writ petition.

Mr. Md. Sarwan Jahan, learned Advocate for the petitioner referring to Clause 6.7.1 of the Procurement Manual, 2014 submits that there is no requirement for submission of registered deed of partnership. As per the rule an individual, firm or company who intend to participate in the tender process for works contract against any particular programme or scheme should have the following basic requirement namely, a) Valid VAT registration Certificate; (b) PAN with last three years Income Tax Return, (c) Professional Tax Registration Certificate with current challan and (d) Trade Registration Certificate/Licence from local body. The manual never provides that the individual, firm or company has to submit registered partnership deed. He further indicates that the rejection of the bid has been made by authorities who are neither the Executive Officer or *Nirman Sahayak* as required under Rule 6.5 sub-clause (4) of the Procurement Manual and, therefore, the decision making process is short of legality. The issues raised as above

were represented before the Block Development Officer, Nowda Development Block being respondent no.8 on 27th January, 2025, however, no steps have been taken. He seeks that the matter may be relegated to the Block Development Officer, Nowda Development Block, respondent no.8 for causing enquiry with regard to issues raised by the petitioner hereinabove.

Ms. Sabnam De, Bandhan, learned Advocate for the State appearing through virtual mode submits that after receipt of the complaint from the petitioner, the Block Development Officer, Nowda Development Block has called for the records of the documents from the Pradhan, Raipur Gram Panchayat. However, such documents have not been placed till date. The Block Development Officer, Nowda Development Block has also directed the Pradhan, Raipur Gram Panchayat not to issue any work order or payment without prior approval of the Block Development Officer, Nowda Development Block. She also seeks that the matter may be relegated to the Block Development Officer, Nowda Development Block with a direction to cause specific enquiry regarding the allegation and/or issues raised by the petitioner. State files report of the Block Development Officer, Nowda Development Block dated 19.02.2025, which is taken on record.

On the contrary, Mr. Shahan Shah, learned Advocate for the respondent no.11, the Pradhan, Raipur Gram Panchayat submits that the petitioner participated

in the e-tender upon going through all the eligibility criteria. Only upon such rejection, the petitioner has raised the issue that requirement of submission of registered partnership deed as per notice inviting e-tender is not sustainable. The e-tender notification has not been challenged by the petitioner. Moreover, writ petition has not been filed by the partnership firm and as such the same is not maintainable. He seeks for dismissal of the writ petition.

Learned advocate for the petitioner was asked to clarify the legal proposition as to whether one partner of an unregistered partnership firm can maintain a writ petition.

In response, Mr. Jahan, learned Advocate for the petitioner relying on a decision of this Court in ***Ashutosh Chakraborty and anr. -versus- Union of India and ors.***, reported in ***LAWS(CAL)-2009-11-59*** as well as in ***Tarun Kumar Halder -versus- Bharat Petroleum Corporation Limited & ors.***, reported in ***2023 O Supreme(Cal) 523*** submits that one of the partner of an unregistered partnership firm can maintain the writ petition.

In the decision of *Ashutosh Chakraborty (supra)*, this Court observed as follows:-

“16. No doubt, Sec.69 of the Act bars partner(s) of an unregistered firm to initiate proceedings for enforcing a right arising from a contract or a right conferred by the Act. Though the present dispute may seem to be relatable to the contract between the parties but factually it is not so, if one considered the grounds on which the writ petition is based. Here, the petitioners do not seeks to impeach contractual obligations. The impugned action of demanding enhanced licence fees is based

on certain policy decision taken by the respondents. The petitioners, being partners and collectively carrying on business, have challenged the policy decision and the consequent demands because the same have been affecting their business interests by urging that the same are utterly arbitrary and unreasonable and in the teeth of Article 14 of the Constitution, which forbids arbitrariness and unreasonableness in State action. Challenge to a policy decision on the ground of affectation of a right guaranteed under Part III of the Constitution and invocation of writ jurisdiction seeking remedy therefore, in the present fact situation, cannot be eschewed by referring to Sec. 69 of the Act. This proceeding is not one for enforcement of any right arising out of a contract, particularly in the absence of a valid subsisting contract. Whether or not the petitioners would ultimately succeed in such a situation is altogether a different aspect. Sec. 69 of the Act would not bar the partners of an unregistered firm to seek remedy by way of a writ petition for enforcement of their fundamental rights dehors the contract, which once upon a time subsisted between the parties, if such remedy is legally available to them. The genesis of the dispute in the present case is the so-called arbitrary and unreasonable policy decision, which the petitioners seek to be quashed by invoking the writ jurisdiction in their capacity as partners. Question of enforcement of a contractual right not being an issue here, this Court holds the preliminary objection to be not well-founded and overrules the same.”

Further this Court in the decision of *Tarun Kumar Halder (supra)* observed as hereunder:-

“5. First, on the question of maintainability of this writ petition vis-à-vis the respondent’s contention about only one of the partners in the firm approaching this Court for a relief, it is held that an individual partner of a partnership firm can fairly vent his grievances before a Court of law in respect of infringement of his rights even if the same pertains to his engagement with the partnership firm, especially when it involves violation of the petitioner’s fundamental rights.”

Bearing in mind the aforesaid proposition, this Court finds substance in the submission of Mr. Jahan, learned Advocate for the petitioner that one of the partners of a partnership can maintain a writ petition in case of violation of fundamental rights.

Admittedly, the petitioner participated in the notice inviting e-tender being No.10/Raipur GP 2024-25 dated 2nd January, 2025. It is a fact that the eligibility criteria of the notice inviting e-tender requires that the partnership firm shall upload the registered partnership deed and the

company must furnish the Article of Association and Memorandum. The bid of the petitioner has been primarily rejected for the reason of non-submission of registered partnership deed. It is not in dispute that notice inviting e-tender has not been challenged. Be that as it may, it is to be examined whether such requirement is in consonance with the existing Rules of Procurement Manual.

As per clause 6.7.1 of the Procurement Manual, 2014 when an individual, firm or company intends to participate in a tender process for works against any particular programme or scheme, it should have the following basic requirement :

- a) Valid VAT registration Certificate;
- (b) PAN with last three years Income Tax Return,
- (c) Professional Tax Registration Certificate with current challan and
- (d) Trade Registration Certificate/Licence from local body.

Thus, it manifest that the aforesaid Rule does not provide for submission of any registered Partnership Deed in case of a firm. Now, the other aspect which is to be examined is whether the document of rejection bears the signature of persons, who are authorized to take decision. Clause 4 of Rule 6.5 of the Procurement Manual, 2014 provides that 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 the Gram Panchayat as may be authorized by the *Artha O Parikalpana* Upa-Samiti. It is mandatory that *Artha O Parikalpana* Upa-Samiti shall authorize Executive Assistant, G.P. Secretary (in the event of the post of E.A. remaining vacant) *Nirman Sahayak* and one Member of Opposition for this purpose. The documents annexed to the writ petition at page 30 shows that the document does not bear the signatures of the officers as required under the rule namely, *Nirman Sahayak* and Executive Assistant. Therefore, primarily it appears that the decision making process is short of legality.

From the report of the State it is found that the Block Development Officer, Nowda Development Block has already taken steps calling for the records from the Pradhan, Raipur Gram Panchayat.

In light of the above, this Court finds that the issue as raised by the petitioner in his representation dated 27th January, 2025 requires to be examined and enquired into by the concerned authority.

In view of the above, the respondent no.8, Block Development Officer, Nowda Development Block, is directed to cause enquiry in respect of the representation dated 27th January, 2025 of the petitioner after giving opportunity of hearing to all the parties including the petitioner. 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.

Petitioner is 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 3421 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.**)