

24.04.2025
Sl. No. 84.
D/L.
Mithun
Ct.No.39.

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

WPA 6034 of 2025

Sariful Karikar & Ors.

Vs.

The State of West Bengal & Ors.

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

..for the petitioners

Mr. Shahan Shah,
Sk. Abumusa,
Mr. Soumen Barman,
Mr. U.M. Khan

...for respondent no.10.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. Prasanta Behari Mahata

...for the State.

Affidavits-of-service filed on behalf of the
petitioners is taken on record.

The writ petition has been filed alleging of
arbitrary rejection of the technical bid of the petitioners
in respect of notice inviting e-Tender being
No.008/SGP/15TH C.F.C.(Tide)/2024-25.

The petitioners contend that they participated in
the said bid and have submitted the required documents
as per the notice inviting e-Tender. However, their
technical bids were rejected citing the reason that they
could not complete the government works within a
stipulated period. The above ground is not a condition
precedent as per the notice inviting e-Tender. Several

representations were made by the respective petitioners on 27th February, 2025 alleging of such fact before the respondent no.8, Block Development Officer, Nowda Development Block, However, no steps has been taken. Hence, this writ petition.

Md. Sarwar Jahan, learned Advocate for the petitioners submit that arbitrarily the technical bid of the petitioners has been rejected. No ground whatsoever has been informed to the petitioners for such rejection, although the petitioners submitted all the required documents and were qualified for participating in the financial bid. The reason for rejecting the technical bids of the petitioners that they could not complete government works is baseless, since such circumstance can only ensue after issuance of work order and not prior to it. Representations were made before the appropriate authority alleging of such arbitrary action of the Pradhan, Sarbangapur Gram Panchayat, however, no effective steps have been taken. He seeks for appropriate direction upon the respondent no.8, Block Development Officer, Nowda Development Block to cause enquiry with regard to the allegations raised by way of representations by the petitioners vide their letters dated 27th February, 2025.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader submits in the resolution of the Gram Panchayat, Nirman Sahayak and Secretary

mentioned that the petitioners satisfied the technical requirement as per their documents and have qualified for participating in financial bid, however, records show that their technical bids were rejected. He also submits that an enquiry be directed to be caused by the Block Development Officer in respect of the allegations made in the representations of the petitioners.

Opposing such prayer of the petitioners, learned Advocate appearing for respondent no.10, Pradhan, Sarbangapur Gram Panchayat submits that the work order has already been issued in respect of the notice inviting e-Tender. 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 participated in the notice inviting e-Tender being No.008/SGP/15TH C.F.C. (Tied)/2024-25. The resolutions annexed to the writ petition at Page 69 to 81 shows that the technical bid of the petitioners were rejected on the ground that they are unable to complete the work within a time frame.

Excepting the above no other cogent reasons could be placed before this Court by the learned Advocate representing respondent no.10, Pradhan, Sarbangapur Gram Panchayat of such rejection. Copy of resolutions of the Gram Panchayat annexed to the writ petition shows that Nirman Sahayak and Secretary have raised objection in the meeting regarding such rejection. By letter dated 27th February, 2025 the petitioners also informed the Block Development Officer that the Nirman Sahayak and the Secretary during meeting has opined that the technical requirement of the petitioners are correct and they are qualified for financial bids which is also appearing in the resolution annexed to the writ petition. Thus primarily it appears that the rejection of the technical bids is short of reasonableness. Such being the position, the allegations raised by the petitioners in their representations dated 27th February, 2025 requires to be enquired into by the appropriate authorities.

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 is based solely on the ground as noted hereinabove that the petitioners could not complete government works within time and not 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 short of reasonableness, 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 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 the 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 6034 of 2025** stands disposed of.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

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 this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)