

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 2046 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

CAN 3 of 2024

Shri Buddhi Pal

vs.

Rajendra Kumar Shaw & Ors.

With

M.A.T. 2060 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

The Chairman, Kalna Municipality

Dangapara & Ors.

Vs.

Rajendra Kumar Shaw & Ors.

**For the Appellant
in M.A.T. 2046 of 2024**

**: Mr. Subir Sanyal, Sr. Adv.,
Mr. Anindya Ghosh**

**For the Appellants
in M.A.T. 2060 of 2024**

**: Mr. D. N. Ray, Sr. Adv.,
Mr. Atanu Biswas**

**For the Added Private
respondent**

: Mr. Subir Sanyal, Sr. Adv.,

Mr. Anindya Ghosh

For the Kalna Municipality

: Mr. D. N. Ray, Sr. Adv.,
Mr. Atanu Biswas

For the Writ Petitioner/

Respondent No. 1

: Mr. Partha Sarathi Bhattacharya, Sr. Adv.,
Mr. Shahan Shah

For the State

: Mr. Amal Kumar Sen, A.G.P.,
Mr. Shamim Ul Bari

Heard on

: January 8, 2025

Judgment on

: January 8, 2025

DEBANGSU BASAK, J.:-

1. Two appeals directed against the order dated September 9, 2024 passed in W.P.A. 21832 of 2024 are taken up for analogous hearing as they involve the same issues.

2. M.A.T. 2046 of 2024 is at the behest of a person who is not a party to such writ petition. Leave to the appellant in M.A.T. 2046 of 2024 to prefer an appeal from the impugned order was granted on December 10, 2021.

3. Appellant in M.A.T. 2046 of 2024 is the successful bidder in an e-auction. Such appellant for the sake of convenience is hereinafter referred to as a successful bidder.

4. Appeal being M.A.T. 2060 of 2024 is at the behest of the Kalna Municipality and its functionaries.

5. By consent of the parties, both the appeals are taken up for final hearing.

6. Learned Senior Advocate appearing for the successful bidder submits that, his client participated in an e-auction process initiated by Kalna Municipality and became the successful bidder in respect thereof. He submits that, a work order was issued in favour of his client. His client is presently executing such work order.

7. Learned Senior Advocate appearing for the successful bidder submits that, without his client being made a party respondent in a writ petition, the entire e-auction process was set aside. Kalna Municipality was directed to undertake a fresh e-auction. He submits that, at the very basic minimum, his client is both a necessary and proper party in the writ petition. The learned Single Judge erred in passing an order adverse to his client without hearing his client.

8. Learned Senior Advocate appearing for the successful bidder submits that the e-auction was undertaken by NIC. Apparently, NIC sent an e-mail which claimed that the writ petitioner was disqualified from participating in the e-auction. He refers to the clarification issued by the NIC subsequently. He submits that, NIC stated that such e-mail was issued by mistake. Moreover, NIC also clarified that the status of a participant should be checked by the participant in the auction portal to find out his status. According to NIC, the candidature of the writ petitioner was not rejected.

9. Learned senior advocate appearing for the successful bidder draws the attention of the Court to the schedule of the e-auction process. He submits that, the candidature of the writ petitioner stood rejected prior to the commencement of the e-auction. The so-called disqualification was communicated by an e-mail dated August 24, 2024 while the e-auction was held on August 28, 2024.

10. Learned senior advocate appearing for the successful bidder submits that, the records of the municipality be called for. It may so happen that the candidature of the writ petitioner was rejected on other grounds by the municipality itself. Therefore, the writ petitioner cannot be considered as the valid participant in the selection process. The selection process should not be set aside on the basis of the writ petition filed by a candidate who was found to be disqualified in the selection process.

11. In support of his contentions, learned senior advocate appearing for the successful bidder relies upon **(2010) 10 SCC 408 (State of Assam vs. Union of India & Ors.)**.

12. Learned senior advocate appearing for Kalna Municipality submits that, his client also preferred an appeal against the same impugned order of the learned Single Judge. He submits that, the candidature of the writ petitioner was rejected on the ground of improper credential and the writ petitioner being a defaulter in respect of another tender process. The factum

of rejection of the candidature of the writ petitioner was uploaded in the e-auction portal. Decision to reject the candidature of the writ petitioner was taken on August 23, 2024.

13. Learned senior advocate appearing for the Kalna Municipality submits that, the NIC authorities issued the first e-mail mistakenly. He also submits that the second e-mail by which the bid of the writ petitioner was claimed to be accepted, was also issued by mistake by the NIC.

14. Learned senior advocate appearing for the Kalna Municipality submits that undertaking a fresh selection process is cumbersome, time consuming and also requires lot of expenditure on the part of the municipality. He submits that, there was no material irregularity in the selection process requiring it to be set aside as done by the impugned order.

15. Learned senior advocate appearing for the writ petitioner submits that all papers used before the learned Single Judge are not included in the paper book submitted by the successful bidder. Nonetheless, he submits that there was a second writ petition in which an order dated October 7, 2024 was passed. He points out that the successful bidder was a party respondent in the second writ petition being W.P.A. 25103 of 2024.

16. Learned senior advocate appearing for the writ petitioner submits, on instructions, that his client is ready and willing to put in the entire bid amount of the successful bidder with the Kalna Municipality within 10 days

from date. He submits that, his client should be afforded one opportunity to participate in the selection process. He submits, on instructions, that his client is ready and willing to bid at least Rs.10 lakhs in excess amount received by Kalna Municipal through the present e-auction.

17. In response, learned senior advocate appearing for the Kalna Municipality submits that, an appeal was preferred by Kalna Municipality directed against the order dated October 7, 2024 passed in W.P.A. 25103 of 2024 and such appeal is pending.

18. Learned senior advocate appearing for the writ petitioner submits on instructions that the order dated October 7, 2024 followed the impugned order. In the event, the impugned order is set aside, then the subsequent order dated October 7, 2024 passed in W.P.A. 25103 of 2024 will also lose its significance.

19. Kalna Municipality issued an auction notice dated July 23, 2024 inviting bids for e-auction for grant of Ferry Ghat lease, through online mode of bidding in the Government e- auction system on the terms and conditions specified therein.

20. The auction notice dated July 23, 2024 prescribes two tier selection process. First tier being evaluation of the technical bid. On candidates successfully completing the technical bid scrutiny stage such candidates are

allowed to participate in bidding process. Participants were also required to make Earnest Money Deposit.

21. Number of participants participated in such e-auction process. Participants include the successful bidder before us as also the writ petitioner.

22. Materials produced in Court suggest that, the candidature of the writ petitioner in the selection process was considered by the Municipality at the technical bid scrutiny stage and rejected on the ground of the writ petitioner being with improper credential and being a defaulter. Rejection of such candidature was uploaded in the e-auction portal.

23. Auction notice dated July 23, 2024 also prescribes the schedule of the e-Auction. Relevant schedules in the facts and circumstances of the present cases are the document approval start date being August 17, 2024, document approval date being August 24, 2024, auction start date being August 28, 2024 at 10 a.m. Auction end date being August 28, 2024 up to 4 p.m.

24. Writ petitioner received an e-mail from NIC dated August 24, 2024 stating that the earnest money deposit payment of the writ petitioner was rejected and therefore, the writ petitioner can not participate in the e-auction on the scheduled date.

25. Communication dated August 24, 2024 of NIC rejecting the candidature of the writ petitioner is at variance with the ground of rejection stated by the Municipality. Municipality rejected the candidature of the writ petitioner on the ground of improper credential being a defaulter while NIC communicated rejection on the ground of Earnest Money Deposit (EMD) payment being rejected.

26. Writ petitioner made a representation with regard to rejection of its candidature. No response was given. E-auction opened on August 24, 2024 at 10 a.m. Writ petitioner did not participate therein. Writ petitioner however received another e-mail dated August 28, 2024 at 18:30 hrs stating that the bid of the writ petitioner was accepted during evaluation by the duly constituted Committee.

27. Writ petitioner approached the Writ Court challenging the e-auction process in which the impugned order was passed.

28. Learned Single Judge sought clarification from NIC. Clarification issued by NIC is noted in the impugned order. NIC claims that there was a mis-configuration in the system that caused the e-mails to be sent.

29. The authority which hosted the e-auction accepts that there was a mis-configuration in the system governing the e-auction process. Plausible view is that the writ petitioner was prevented from

participating in the e-auction process due to the accepted mis-configuration of the e-auction system. In any event, the second e-mail dated August 18, 2024 declared the writ petitioner as successful without the writ petitioners participating in the e-auction process.

30. The writ petitioner before us is not only ready and willing to secure the bid amount put in by the successful bidder but also is ready and willing to increase the bid amount by at least a sum of Rs.10 Lakh if a fresh e-auction is held.

31. There is a subsequent order passed by the learned Single Judge dated October 7, 2024 passed in WPA 25103 of 2024 which directs the Municipality to undertake a fresh e-auction process. Court is informed that the Municipality preferred an appeal directed against such order dated October 7, 2024 and such appeal is pending.

32. In our view, the revenue of the Municipality stands secured by the stand taken by the writ petitioner. Kalna Municipality is assured with the minimum bid amount of Rs.1.25 Crores which it received through the e-Auction process. It is also assured of an increase of Rs.10 Lakh thereon at the behest of the writ petitioner.

33. In *State of Assam (supra)* Supreme Court noticed the High Court passing adverse order without impleading the necessary

party and without undertaking requisite exercise before saddling the authority with financial burden.

34. In the facts and circumstances of the present case, Kalna Municipality will not suffer any revenue loss on the setting aside of the e-auction process. On the contrary, it stands to benefit out of the mechanism that we propose to put in place. Moreover, the e-auction undertaken stands initiated. NIC acknowledges mis-configuration. The two e-mails of NIC issued to the writ petitioner allows a view that the quality of the e-auction is not beyond reproach.

35. E-auction undertaken on the basis of the Auction notice dated July 23, 2024 is set aside as done by the learned Single Judge. Successful bidder will continue to operate the Ferry Ghat till such time the fresh e-auction results in identifying a successful bidder. The present successful bidder will receive proportionate value of the bid amount it already put in with Kalna Municipality, in the event, it is not the successful bidder in the subsequent e-auction.

36. Kalna Municipality will issue a fresh notice of e-auction of the same Ferry Ghat within 10 days from date. It will endeavour to complete the entire process within six weeks from date.

37. Writ petitioner will deposit a sum of Rs.1.25 Crores with Kalna Municipality within ten days from date as prayed for. On

receipt of such sum, Kalna Municipality will keep such sum in a fixed deposit accruing interest with any nationalized bank of its choice. In the event, writ petitioner is successful in the fresh e-auction, needless to state, writ petitioner will be entitled to the adjustment of the sum deposited pursuant to this order. In the event of default of deposit of sum of Rs.1.25 Crores, or in the event of default of increasing the bid amount in the fresh selection process by a minimum of Rs.10 Lakh by the writ petitioner, this order will stand vacated.

38. We clarify that, we did not pronounce the candidature of any of the candidates who participated in the earlier selection process. Their candidatures are to be evaluated in accordance with law in fresh selection process.

39. **MAT 2046 of 2024** and **MAT 2060 of 2024** along with all connected applications are **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)

40. I agree.

(Md. Shabbar Rashidi, J.)

S.D./CHC.