
(2009) 08 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 11782 (W) of 2009

Mahiuddin Sardar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Citation : (2009) 08 CAL CK 0059

Hon'ble Judges : Pranab Kumar Deb, J

Bench : Single Bench

Advocate : Bilwadal Bhattacharyya and Mr. Kalyan Kumar Bhattacharjee, for the Appellant; Mintu Kumar Goswami for Respondent No. 8, Mr. Bidyut Kumar Roy for Respondent No. 10, Mr. Sumitro Dasgupta and Ms. Sibani Bhagat for State, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Deb, J.—Alleging gross irregularity in issuance of work order in favour of the private respondent, Mr. Bilwadal Bhattacharyya, representing the writ petitioner, has submitted that under the West Bengal Financial Rules, tender notice is required to be given due publicity through leading dailies in English, Hindi and Bengali. Since work order was issued without such wide publication, the writ petitioner was deprived of submitting his quotation for execution of the work. Referring to Note I of Rule 47 of the West Bengal Financial Rules, it has been submitted that execution of work, the value whereof is upto Rs.20,000/-, can be given after inviting quotations from four to five reliable firms, manufacturers and direct selling agents. Since the execution of the work, in this case, involves financial expenditure far exceeding Rs.20,000/-, there ought to have been wide circulation of the notice of tender. That procedure not having been followed, the work order, issued in favour of the private respondent, is liable to be cancelled, as has been submitted by Mr. Bhattacharyya.

2. Referring to the case of Biren Biswas v. Dipti Narayan Biswas & Ors., reported in 2009 (2) CHN 699, Mr. Bhattacharyya has argued that in absence of wide

publication of the tender notice, the same is liable to be quashed.

3. Mr. Bidyut Kumar Roy, representing the private respondent No.10, has submitted that since the private respondent has already invested money for execution of the work, the work order issued in his favour should not be cancelled at this stage. Mr. Roy has cited the case of Charan Dass Chadha v. The State of Punjab & Anr., reported in 1980 (3) SLR 702 to impress upon the Court that Government is not entitled to take advantage of its own wrong. It is submitted that the writ petitioner cannot be made to suffer for the alleged irregularity made by the Government officials in issuance of the tender notice.

4. Mr. Sumitro Dasgupta, representing the State, has taken the stand that since work order has already been issued, nothing should be done to disturb the execution of the development project at this stage. Mr. Dasgupta has submitted that even if there be any irregularity, the writ petitioner will be entitled to claim compensation for the alleged loss and sufferings sustained by him.

5. As provided in the West Bengal Financial Rules, the tender notice is required to be given due publicity through local dailies in English, Hindi and Bengali. What has been done in the instant case was publication of the notice in the office of Panchayat, Post Officer and in the office of the Block Development Officer but no attempt seems to have been made to get the tender notice published in any newspaper. As highlighted in the case of Biren Biswas (supra) that public interested in participation can get the opportunity if there is wide publicity. One of such accepted method is publicity through print media. Advertisement is expected to be made in any Bengali Newspaper or local newspaper so that all intending bidders can participate.

6. In the case of Charan Dass Chadda (supra) the High Court has observed that Government cannot take advantage of its own wrong in not issuing promotion order. It has been highlighted that while conceding the claim of the promotee with retrospective effect, it cannot withhold dues in respect of pay and allowance. In the instant case, the fact is altogether different and the ruling cited by the learned counsel for the private respondent No.10 has no manner of application in the instant case.

7. Issuance of the work order having been issued in gross violation of the Rules, the issuance of work order is liable to be quashed. In the result, the writ petition is allowed quashing the work order issued in favour of the private respondents.

8. Liberty is, however, given to the Panchayat to float fresh tender and in doing so, care should be taken to see that there is wide publication of the tender notice. The private respondents would be entitled to get their dues for the work executed by them till the date of this order. Before issuance of such payment, the Block Development Officer, Mograhat-I will take stock of the situation by making total assessment of the work so far executed by taking physical measurement of the work executed by the private respondent.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties.