

(2014) 11 TP CK 0025

In the Tripura High Court

Case No : Writ Petition (Civil) No. 267 of 2009

Nishit Chandra Saha VsThe State of Tripura

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 TP CK 0025

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : S.M. Chakraborty, Senior Advocate and P. Chakraborty, Advocate for the Appellant; T.D. Majumder, G.A, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—By means of this writ petition, the petitioner has laid challenge to the action of the respondents in cancelling the tender after accepting the highest bid of the petitioner.

2. Briefly stated the facts of the case are that the respondent No. 2 issued an Advertisement/Notice Inviting Tenders for auction of unserviceable Secondary Batteries etc. Sealed tenders were invited and the reserved price was fixed at Rs. 4,32,447/-. The petitioner submitted a tender offering a sum of Rs. 4,71,000/- for these materials. Vide communication dated 19.08.2009 the Superintendent of Police (Communication), Tripura, Agartala accepted the bid of the petitioner. The petitioner was asked to deposit the amount in cash by 21.08.2009. It is not disputed that the petitioner deposited the sum of Rs. 4,71,000/- on 21.08.2009 and thereafter on 02.09.2009 a communication was issued cancelling the tender process itself due to unavoidable circumstances. The relevant portion of the communication dated 02.09.2009 reads as follows:

"Dear Sir"s

Under the above reference, it is to inform you the tender for auction of unserviceable secondary batteries, Generator, PEG charger, Stabiliser, Inverter, Measuring instruments and Co-axial cables on "as is where is" basis vide this office No. 5644-53/F.14/COMN/AUC/2009 dated 16-07-2009 is hereby cancelled due to unavoidable circumstances.

You are hereby requested to collect your money amounting to Rs. 4,71,000/- (Rupees four lacs seventy one thousands) only deposited to this office against the tender for delivery of auctioned articles from the cashier of this office within three days after receipt of this letter. After the expiry of stipulated period the money will be deposited to the treasury as per Govt. rules."

3. In reply to the petition, it is stated on behalf of the State that some complaint was received from two other persons that they had submitted tenders for a much higher amount prior to the last date of close of tenders and on this ground the entire tender process was cancelled.

4. We had called for the records of the case and the noting file of the case does not support these averments. In the noting file before arriving at the decision to cancel the tender process there is no mention of any complaint or even the verification or any inquiry done with regard to the said complaints. The noting dated 02.09.2009 signed by the Superintendent of Police (Communication) reads as follows:

"As directed cancel the tender and do retender.

Sd/- 02.09.2009"

5. Before this note, there is no note even put up by a junior officer giving the reasons why the tender should be cancelled. Who gave the direction that the tender should be cancelled is not reflected in the noting or even in the order. Government files must speak for themselves. The entire noting should be maintained in such a fashion that the reasons for a particular decision can be derived either from the decision itself or from the notes preceding that decision which would indicate why that decision was taken. We cannot permit a decision to be taken without giving any reason whatsoever.

6. In this behalf, we must remember that first the Superintendent of Police (Communication) issued a notice inviting tenders. The tenders submitted by the parties were offers made by them. After the offer was accepted by the Superintendent of Police (Communication) by his communication dated 19.08.2009, there was a binding contract between the parties. Even a binding contract can be avoided but then reasons will have to be given and notice will also have to be given to the affected party to show cause why the contract between the parties should be cancelled. Without even issuing a show cause notice or giving the petitioner any opportunity to explain what was his case, the entire tender process has been cancelled. As noted above, no reasons have been given in the noting portion of the file. Therefore, we have no other option but to set aside the order of cancellation dated 02.09.2009.

7. We have been informed at the Bar that during the pendency of this writ petition, the amount has been returned to the petitioner but he has not encashed the cheque. Therefore, the amount is still lying with the respondents and as such they are directed to ensure that the material which is the subject matter of the

tender is supplied to the petitioner within 30 days of this order.

8. With these observations, the writ petition is disposed of. No costs.