

(2023) 08 CAL CK 0091
In the Calcutta High Court
Case No : Criminal Revision No. 96 Of 2020

Puskar Sarkar

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 406, 408, 420

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 438, 482

Citation : (2023) 08 CAL CK 0091

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Milon Mukherjee, Dattatraya Dutta, Ranabir Roy Chowdhury, Arijit Ganguly

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of proceedings being G.R. Case No.4031 of 2019 which arose out of Berhampore Police Station Case No.1176 dated 14.09.2019 under Sections 420/406/408 of the Indian Penal Code, pending before the Court of the learned Chief Judicial Magistrate, Murshidabad.

2. The petitioner's case is that Berhampore Police Station Case No.1176 dated 14.09.2019 under Sections 420/406/408 of the Indian Penal Code was registered for investigation pursuant to the receipt of a letter of complaint dated 12.09.2019 addressed to the Officer-in-Charge, Berhampore Police Station from the Executive Officer, Berhampore Municipality.

3. The said letter of complaint was inter alia, filed as per instructions of Badri Narayan Kar, WBCS(Exe), State Missions Director, AMRUT, vide Memo No.462/MA/Amrut/E-74/2019 dated 5.8.2019 to lodge a First Information Report against the

petitioner for corruption to tender process of various development works of Berhampore Municipality.

4. It is submitted that the petitioner is innocent and in no way connected with the alleged offences. The contents of the complaint are vague and misconceived.

5. The petitioner was granted reliefs as provided under Section 438 of the Code of Criminal Procedure by this Hon'ble Court vide order dated 01.10.2019 passed in C.R.M. No.9243 of 2019.

6. The petitioner being a Civil Engineer having requisite qualification and also being a Bachelor of Technology was found eligible for the post of 'Urban Infrastructure Expert' under AMRUT and was appointed on 9th November, 2016 by the Berhampore Municipality. The terms and conditions for such engagement inter alia, are as follows:-

i) The engagement is purely temporary in nature for a period of one year.

ii) The engagement may be terminated with at least one month's notice from both the respondent no.1 and the incumbent.

iii) The candidate was eligible for a monthly consolidated remuneration of Rs.50,000/-

7. It is further submitted that it will be apparent from the monthly certificates issued by the Chairman/Executive Officer to the State Mission Directorate, AMRUT, West Bengal that the petitioner's performance was and/or worked satisfactorily as per his assignment assigned to him as Urban Infrastructure Expert under AMRUT.

8. That the State Mission Directorate, AMRUT, West Bengal as well as the Berhampore Municipality, being satisfied with the performance of the petitioner, vide Memo No.81/AMRUT/17/B.M/KUSP dated 6.11.2017 and Memo No.178/AMRUT/IS/KUSP/BM dated 12.10.2018, extended his engagement on the same terms and conditions of Memo No.1235/BM/2016 dated 9.11.2016 and Memo No.115(8)/MA/AMRUT/E-11/2016 dated 6.3.2018 for a further period of one year from 9th November, 2017 to 9th November, 2018 vide another Memo No.178/AMRUT/IS/KUSP/BM dated 12.10.2018. The engagement of the petitioner was extended for a further period of twelve months with effect from 9th November, 2018.

9. As the third tenure of the petitioner was coming to an end on 8th November, 2019, the Executive Officer, Berhampore Municipality in absence of the Chairman, Berhampore Municipality issued a performance report of the petitioner, by appreciating his valuable and technical inputs for implementation of various projects under AMRUT and other infrastructural programmes by his Memo No.219/AMRUT/19/BM dated 10.07.2019.

10. That though the engagement of the petitioner was extended till 8th November, 2019 and was terminable with at least one month's notice from the

Berhampore Municipality or by the petitioner, he was shocked and surprised upon receipt of a Memo being Memo No.1119/2019/BM dated 29.08.2019 inter alia, terminating his engagement vide memo No.462/MA/AMRUT/E-74/2019 dated 5.08.2019 and note sheet order dated 22.08.2019 dated 29.08.2019.

11. Being aggrieved by and dissatisfied with the termination as aforesaid, the petitioner preferred a writ petition under Article 226 of the Constitution of India before this Hon'ble Court and the said application was registered as W.P. No.1761 (W) of 2019.

12. That in order to frustrate the petitioner's prayers in the aforesaid writ petition, the respondent authorities therein have initiated the present First Information Report on the 12th of September, 2019 and to create pressure upon him to merely coerce him into submission in order to circumvent the unlawful and illegal act of his termination and to thwart the writ petition filed by him, the respondent authorities therein in active connivance with the State Mission Directorate, AMRUT, have lodged a frivolous and untrue First Information Report against the petitioner before Berhampore Police Station on the ground of alleged corruption in processing tender document. The question of defalcation and/or misappropriation of fund cannot and does not arise as the petitioner has/had no access and/or authority at all to the tendering activities of the respondent authorities in the aforesaid writ petition.

13. It is submitted that the respondent authorities in the aforesaid writ petition are highly placed, powerful officials who can go to any extent to cover up their misdeeds by creating and/or lodging false and frivolous complaints against the petitioner, thereby indirectly threatening him and/or pressuring him to withdraw the present writ petition by maligning him in general.

14. It is submitted that the allegation of being involved in "corruption in tender process" is as vague as it is absurd since the petitioner was not a part of the Tender Committee constituted in terms of the Government Order No.46/MA/O/C-4/2M-11/2017 dated 15th January, 2018 comprising of the following members:-

- A. Chairman, Berhampore Municipality;
 - B. Finance Officer, Berhampore Municipality;
 - C. Executive Engineer of Murshidabad Division, Municipal
 - D. Assistant Engineer of Murshidabad Division, Municipal Engineering Directorate.
15. Vide a letter bearing Memo No.365/KUSP/18/BM dated 15th March, 2019, the Administrator, Berhampore Municipality addressed to the Joint Secretary, Government of West Bengal, Green City Mission, Department of Urban Development and Municipal Affairs, placed on record the following facts:-

- a. The petitioner did not have any stake to call upon tenders for the schemes mentioned in the said letter;

b. The tenders were called upon as per the instructions of the Chairman, Berhampore Municipality;

c. The tenders were called maintaining all financial and administrative guidelines of the Government of West Bengal;

d. The process of floating tenders was made for an emergency purpose (for the beautification of Berhampore Municipality) as there was information of the visit of the Hon'ble Chief Minister during October, 2018.

16. It is submitted that the absurdity of the allegation of "corruption in the tender process" is strengthened by the contents of Memo No.578(19)/MA/AMRUT/E-6/2015(Pt-IV) dated 24th September, 2018 issued by the Mission Director, AMRUT, West Bengal. In the said memo instructions have been given to the Chairman of Berhampore Municipality to initiate the tendering process in case of DPRs and to issue LoI/Work Order in case of tender immediately in vision of complete implementation of projects in stipulated time period.

17. The Kolkata Metropolitan Development Authority has issued a general certificate dated 14th November, 2018 certifying that upon verifying the E-tender process and E-tender documents those were found to have been issued, maintaining all such administrative guidelines of the Government of West Bengal without any irregularities.

18. Subsequent payment to various vendors on satisfactory completion of supply and laying of DI pipes within different wards of Berhampore Municipality under the water scheme were made under the instructions of the Administrator, Berhampore Municipality, after verifying the genuineness of the E-tendering process and E-tender documents.

19. The payment against the work done under the "Karmatirtho" Scheme was made to the selected vendors upon the instructions of the Chairman, Berhampore Municipality, after verifying the quality of the finished work and apropos recording his satisfaction of the E-tendering process and E-tender documents.

20. That each of the tenders passed in favour of SAMR Industries was after it was approved by the State Level Technical Committee and the certification given by the Chairman, Berhampore Municipality after re-evaluation and getting assured that SAMR Industries qualified technically and had won the tender by bidding the lowest. In such circumstances, there is no question of interference by the petitioner in the entire process and as such, the allegation against the petitioner cannot be sustained.

21. The Chairman of Berhampore Municipality vide letter dated 16.03.2017 clarified the position of the present petitioner that he does not have any stake to call, update and evaluate (Technical and Financial), preparation of BOQ (Bill of Quantity) Comparative Chart of any tender (Online, Offline and Quotation) of Berhampore Municipality.

22. Mr. Milon Mukherjee learned senior counsel appearing for the petitioner has submitted that the impugned proceeding is a gross abuse of the process of court which if allowed to continue will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed for the ends of justice.

23. The impugned proceeding is vexatious, malafide and has been initiated with malafide intent just to harass and humiliate the petitioner, who is innocent and in no way connected with the alleged offences.

24. That the petitioner was not even a member of the Tender Committee which had the authority to pass the tenders and as such, had no role to play whatsoever in the entire process of passing the tenders. Moreover, the entire proceeding was made online (through internet) where no human intervention is possible in order to manipulate the outcome of the biddings and as such, the impugned proceedings is liable to be quashed.

25. That payment against the work done under the "Karmatirtho" Scheme was made to the selected vendors upon the instructions of the Chairman, Berhampore Municipality, after verifying the quality of the finished work and apropos recording his satisfaction of the E-tendering process and E-tender documents. The petitioner had no role to play in the entire aforesaid process of passing the E-tender and as such the proceeding impugned cannot be sustained in the eye of law and liable to be quashed.

26. That the complaint is made by a person having no technical expertise in understanding the entire procedure of passing E-tenders and has merely acted upon the advice of persons having malafide intentions against the petitioner and as such it is expedient in the interest of justice, to uphold the dignity of law that the impugned proceeding is quashed and/or set aside being bad in law.

27. Supplementary affidavit has been filed by the petitioner in respect of documents, from which it appears that the Executive Officer of Berhampore Municipality has filed the present complaint, against the sole accused, the petitioner on 12.09.2019, (FIR is dated 14.09.2019).

28. On the complaint of one Bimalendu Bose, to the office of the Chief Minister, against the petitioner for corruption in tender process, an enquiry was conducted by the DMDC, Murshidabad, Malay Sankar Chattopadhyay, who submitted his report, which was forwarded to the SDO, Berhampore. The SDO, Berhampore, forwarded the report to the District Magistrate recommending removal of the petitioner and initiation of vigilance enquiry. Then on the consent of the Principal Secretary, Urban Development and Municipal Affairs Department, the State Mission Director, AMRUT, West Bengal requested the Administrator of Berhampore Municipality to lodge a FIR against the petitioner.

29. Mr. Ranabir Roy Chowdhury, learned counsel for the State has placed the case diary along with a short notes of argument. Mr. Roy Chowdhury has

submitted that:-

- (i) No such Tender committee was formed during tender period.
- (ii) Petitioner was authorised to use the Digital Signatures of the authorities for E-Tendering process.
- (iii) The petitioner used the Digital Signature of Nirmalendu Mondal and others without their consent, as per statement recorded under Section 161 of the Code of the Criminal Procedure.
- (iv) During the investigation it transpired that one SAMR INDUSTRIES received the maximum tenders of Berhampore Municipality without proper verification. The petitioner passed all such tender process.
- (v) Audit Report of Berhampore Municipality clearly depicted the violation and irregularities in the tender process.

30. Charge sheet was submitted in the instant case against the petitioner under Sections 420/406/408 IPC.

31. From the materials on record including the case diary the following facts are before this court:-

A) One Bimalendu Bose sent a complaint to the Chief Minister's office, only against the petitioner, calling for an enquiry and vigilance inquiry against the petitioner, who was appointed as an URBAN INFRASTRUCTURE EXPERT on Contractual basis.

An example of such recruitment notice is as follow:-

"An Employment Notice No. R-AMRUT/1/15- 16 describe the requirement of an Urban Planner /Urban Infrastructure Specialist for recruitment in Department of Municipal Affairs (Titagarh Municipality) under AMRUT on Contract Basis *

Urban Planner /1 Post

Qualification: Post Graduate degree in Planning / Social Science/ Architecture / Civil Engineering having specialization / paper in urban development or planning or environment related subjects. c) Experience: Urban Planner / Management Expert, with strong background in project management with 3-5 yrs in a managerial position. Experience in working with Urban Development Programmes. Experience in Urban Reforms and Capacity Building programmes for ULBs

Urban Infrastructure Specialist/1Post

Educational Qualification: Graduate engineer from recognized university. Have a broad range of experience in urban infrastructure and a strong background in public health engineering, especially water supply and sanitation.

c) Experience: Have at least 3-5 yrs. Experience in designing and managing

Municipal infrastructure projects. d) Other Qualifications: Be very familiar with the laws and procedures of the Indian Municipal environment."

B) An enquiry was held by the DMDC, Murshidabad, wherein, the prima facie findings as given, is as follows:-

"i) The complaint was mainly related to:-

(a) Credential of SAMR Industries.

(b) Tender Committee in Municipality.

(c) Quality of work by the agency.

In this connection Bimalendu Sarkar referred the following works:-

(a) Market Complex under Karmatirtha.

(b) Water ATM under Green City Mission.

(c) Drain under AMRUT.

(d) Laying of pipe as well as supply of pipe.

ii) The complaint further stated that as per information received from the Beharampore Municipality, no tender committee was formed, for this work. Normally an institution has a tender committee to float tenders, here, according to Municipality, no such tender committee was in vogue in the municipality. But it is true that the work was float through e-tender vide number 144 of 2017-18. DSC (Digital Signature Certificate) were used by Sri Puskar Sarkar, so it may be presumed that Sri Puskar Sarkar was responsible for this tender process. (The comparative statement was created by Puskar Sarkar, Tender ID 2018_MAD_152993_1).

iii) The second call vide no. 144 of 2017-18 was matured and SAMR Industries was the lowest bidder in the Bid.

iv) Actually, GR Traders was a contractor under Water Sanitation Support Organization PHED, Betkuchi, Guwahati-35 and SAMR Industries worked under the GR Traders.

v) The comparative statement for the number (ii) work was created by Sri Puskar Sarkar on 31.05.18 itself, i.e. the day of certification of 60% work done.

And the comparative statement for number (i) was created by Sri Sarkar on 16.07.18. In my opinion, (DMDC, Murshidabad) the credential, used by the SAMR Industries for the purpose of taking part in the tender process, issued by the municipality, is non realistic in nature.

vi) The DMDC (enquiry officer) further stated that for this work 63 e-tender was floated, but as per report of Municipality there was no formal tender committee. It is noticed that two persons prepared the comparative statement (1) Puskar

Sarkar (2) Dilip Banerjee. So it may be taken that both were in tender committee. All the comparative statement was created on 01.08.18.

vii) In far in my opinion (DMDC?s) the credential used in the tender are not justifiable (except Electrosteel Casting Ltd. in connection with laying of Pipe line with supply and GS Enterprise for laying works) with the work for which the tenders were called, and as a technical person Sri Puskar Sarkar should guide the municipality.

viii) I have no comment (DMDC) with regard to the quality of work, it may be enquired by any technical person.

Here it may be mentioned that Sri Puskar Sarkar is a contractual employee of the municipality holding the designation "Urban Infrastructure Expert" and authorized by the Office of the Executive Engg., MED Murshidabad Division, to record day to day entry in MB as junior Engg. for "The Construction of shelter for urban Homeless".

C) This Court finds that an inspection report on the audit of transactions of Berhampore Municipality for the period from 01.04.2018 to 31.03.2019 was submitted and several irregularities was detected against the Municipality authorities, but the petitioner was not held responsible for any of such irregularities.

Annexure-A vide Para 2 of part -IIB no.8 relates to irregularities in the tender procedure in respect of government notification No.5400F(Y) dated 25.06.2012.

D) On completion of investigation police submitted Charge sheet in Berhampore P.S. case No.1176/2019 under Sections 420/406/408 of IPC, with the findings that:-

"After perusal of the all seized and collected documents it came to learn that e tendering process are in order and followed one and every rules and regulation of finance notification of Government of West Bengal. All relevant papers of bidders i.e. credential, Machinery etc. are not verified by the F.I.R named accused Puskar Sarkar. No such Tender committee found in the Municipality as per record and Digital Signature of Sri Nirmalendu Mondal, Assistant Engineer, Sri Pankaj Kumar Chawdhury, Sub Assistant Engineer and Dilip Kr. Banerjee. Head clerk, all of Berhampore Municipality used by Puskar Sarkar Urban Infrastructure Expert of Berhampore Municipality, Berhampore, Murshidabad illegally without any information them."

32. On close examination of the materials on record in the present case, several discrepancies/irregularities are apparent on the face of it:-

i) The petitioner was appointed on 09.11.2016.

ii) Annexure P-5 at page 74 is memo no.219/AMRUT/19/BM dated 10.07.2019. This is a performance report of the petitioner issued by the Executive Officer of the Berhampore Municipality stating that his performance was satisfactory.

iii) Vide another memo being No.1119/2019/BM dated 29.08.2019, the Executive Officer, terminated the service of the petitioner as per order of the State Mission Director, AMRUT, West Bengal and the Administrator, Berhampore Municipality.

iv) The petitioner preferred a writ petition against such termination.

v) Vide memo No.135/KUSP/18/BM dated 02.07.2018, the Executive Engineer, Murshidabad Division had certified that:-

"after examination it is found that all the tender papers are in order in all respect. It is also ensured that all rules and regulations of e-tender have been observed to our satisfaction as per all relevant Finance Notification of Government of West Bengal from time to time. The bidders documents such as credential, GST Registration, PAN No., Machineries, Technical Person, Credentials, Bank solvency I.T return, P.T.C.C, Bye Law, Audit Report of Last Three years, Trade License/Registration Certificate, Earnest money, invoice of machineries have been verified properly in order."

Sd/-

Chairman

Berhampore Municipality

vi) The Administrator, Berhampore Municipality, vide Memo No.365/KUSP/18/BM dated 05.03.2019 certified that:-

"1) Sri Puskar Sarkar, UIE, Berhampore Municipality did not have any stake to call upon the tenders for the schemes mentioned attached with the aforesaid letter.

2) The tenders were called upon as per the instruction of the Chairman of Berhampore Municipality.

3) The tenders were called maintaining all the financial and administrative guidelines of Government of West Bengal.

4) The process of floating tenders on emergency purpose in this case as there was information of visit of Hon'ble Chief Minister during October 2018 for beautification of Berhampore Municipality."

Sd/-

Administrator

Berhampore Municipality

vii) By Memo No.578(19)/MA/AMRUT/E-6/2015(Pt-IV) dated 24.09.2018 the State Mission Director, AMRUT, West Bengal informed the Chairpersons and Commissioners of several municipalities the name of DPRs as well the name of tenders which were appraised/approved by the Chairman, State Level Technical Committee (SLTC) under AMRUT.

"You are requested to initiate the tendering process in case of DPRs and to issue LoI/Work Order in case of tender immediately in vision of complete implementation of projects in stipulated time period."

At serial no.16 are the projects related to Berhampore Municipalities.

viii) By a certificate dated 14.11.2018 issued by the Executive Engineer, EM-Sector, KMDA, it was certified:-

"That I have checked and verified of E-tender process for Electro-Mechanical Scheme under Green City Mission as detailed mentioned below:-

1. Supply, fitting and fixing of LED street Light(120 Watt) in existing poles at different Roads and Places within Berhampore Municipality Area(Under Green City Mission).
2. Supply, fitting and fixing of LED street light (90 Watt) in existing poles at different Roads and Places within Berhampore Municipality Area (under Green City Mission).
3. Supply, installation, Testing and Commissioning of Water ATM with allied works (Electro-Mechanical Part) in different wards within Berhampore Municipality Area (under Green City Mission).
4. Supply, Erection, fitting and fixing of 16 Mtr High Mast (12 nos) with LED floor lights at different places for beautification work within Berhampore Municipality Area (under Green City Mission).
5. Supply, erection, fitting and fixing of 12.5 Mtr High Mast (12 nos) with LED flood lights at different places for beautification work within Berhampore Municipality Area (under Green City Mission).

I have scrutinised the E-tender process and verified the all E-tender documents for the above mentioned scheme and found it to be maintaining all the financial and administrative guideline of Government of West Bengal without any irregularities."

Sd/-

Executive Engineer (E)

Electrical Circle-I

EM-Sector, KMDA

ix) Annexure P-12, is a certificate dated 05.03.2018, issued by the Chairman, Berhampore Municipality regarding verification of the tender process. He has certified:-

"This is to certify that I have checked and verified of E-Tender process for construction of Market Complex under Karmatirtha within Berhampore Municipality vide E-Nit No.144 of 2017-2018. I have examined the E-tender

process and verified all the financial and administrative guidelines of Government of West Bengal without any irregularities.”

Sd/-

Chairman

Berhampore Municipality

x) By a certificate dated 25.09.2018 the Chairman, Berhampore Municipality and the Superintending Traffic and Transportation Engineer certified regarding SAMAR industries as follows:-

“That I have re-examined the technical and financial capability of SAMR Industries and other concerned agency for construction of high drain under AMRUT within Berhampore Municipality. I have examined E-tender Process and verified the all tender documents to maintain all financial and administrative guideline without any irregularities. After that the work order issued to the concerned agency.”

Sd/-

Chairman

Berhampore Municipality

xi) A certificate dated 16.03.2017 issued by the Chairman, Berhampore Municipality is as follows:-

“Puskar Sarkar UIE, Berhampore Municipality do not have any stake to Call, Updating and Evaluation (Technical and Financial), Preparation of BOQ Comparative chart of any tender (Online, Offline and Quotation) of Berhampore Municipality.”

Sd/-

Chairman

Berhampore Municipality

xii) Though the Enquiry Officer and the Investigating Officer both have based their total case on their finding that no tender committee was formed by the Berhampore Municipality, it is seen that vide Memo No.56 dated 05.03.2018, the Chairman, Berhampore Municipality had constituted the following tender committee of which, the petitioner was not part of.

The said order is as follows:-

“Memo No.56(A)/KUSP/TEND/18/BM dated 05.03.2018

ORDER

In terms of Government Order the following tender committee have been

constituted as stated under:-

1. Chairman, Berhampore Municipality- Chairman of Tender Committee
2. Finance Officer, Berhampore Municipality – Member & Convenor of Tender Committee
3. Superintend Engineer, TP&TE, Transport Department- Member of Tender Committee, Government of West Bengal.

Accordingly, the tender committee has scrutinised the tender document which is as follows:-

1. Construction of Market Complex under Karmatirtha within Berhampore Municipality vide NIT No.144 of 2017-18.

After examination it is found all the tender papers are in order in all respect. It is also ensured that all rules and regulations of E-Tender have been observed to our satisfaction as per all relevant Finance notification of Government of West Bengal from time to time. The bidders documents such as credential, PAN No, Machineries, Technical Person, Audit Report etc. have been verified properly in order.”

Sd/-

Chairman

Berhampore Municipality

xiii) Vide Memo No.168/KUSP/TENDER/18/BM dated 16.07.2018, the Chairman, Berhampore Municipality issued the following order:-

ORDER

In terms of Govt. Order the following tender committee have been constituted as stated under:-

1. Chairman, Berhampore Municipality- Chairman of Tender Committee
2. Finance Officer, Berhampore Municipality – Member & Convenor of Tender Committee
3. Executive Engineer (E), Electrical, Circle-1 KMDA- Member of Tender Committee

Accordingly, the tender committee has scrutinised the tender document which is as follows:-

1. Supply, installation, Testing and Commissioning of Water ATM with allied works(Electro-Mechanical part) in different wards within Berhampore Municipality.
2. Supply, fitting and fixing of LED street light (90 Watt) in existing poles at different Roads and Places within Berhampore Municipality.

3. Supply, fitting and fixing of LED street light (120Watt) in existing poles at different Roads and Places within Berhampore Municipality.
4. Supply, erection, fitting and fixing of 12.5 Mtr High Mast (12 nos) with LED flood lights at different places for beautification of works within Berhampore Municipality Area.
5. Supply, erection, fitting and fixing of 12.5 Mtr High Mast (12 nos) with LED flood lights at different places for beautification of works within Berhampore Municipality Area.
6. Supply, erection, fitting and fixing of decorative 5.12Mtr light poles(TRIDANT) with light fixture (LED lamp) at different Road and places for beautification work within Berhampore Municipality Area.

After examination it is found all the tender papers are "In order in all respect. It is also ensured that all rules and regulations of E-Tender have been observed to our satisfaction as per all relevant Finance Notification of Government of West Bengal from time to time. The bidders documents such as credential, PAN No., Machineries, Technical Person, Audit Report etc. Have been verified properly in order."

Sd/-

Chairman

Berhampore Municipality

xiv) Enquiry Report dated 18.06.2020 submitted by the Additional Chief Engineer, Housing Sector(RE), KMDA is as follows:-

"With reference to above, I am to inform you that I have examined the E-Tendering process of the following projects under Berhampore Municipality i.e.

1. E-tendering process of Electro Mechanical scheme under green City Mission including water ATM installation.
2. E-tendering process of Market Complex under Karmatirtha.
3. E-tendering process of execution of Storm Water Drainage Projects under AMRUT.
4. E-tendering process of supply and laying of DI pipes for water supply and it is found out that the E-tendering process for all the aforesaid Projects have been done maintaining the financial and administrative rules and regulation laid out in E-tendering process prescribed by Government of West Bengal and all the processes followed in this regards in compliance with the norms of E-tendering without any irregularities for all the aforesaid projects."

Sd/-

Addl. Chief Engineer

Housing Sector (RE), KMDA.

33. In the present case, the charge sheet has been submitted on the findings that the e-tendering process was in order and it was done following every rules and regulation of finance notification of Government of West Bengal. It has been specifically stated in FIR that all relevant papers of bidders i.e. credential, machinery etc. were not verified by the FIR named accused/petitioner herein. The charge sheet has been submitted as allegedly the DSC was used by the petitioner, without authority.

34. About the non existence of Tender Committee, it has been seen that there are official memos showing the existence of Tender Committee of which the petitioner is not a member.

35. Finally, the investigating officer has held that the petitioner allegedly used the digital signatures of Sri Nirmalendu Mondal, Assistant Engineer and Dilip Kumar Banerjee, Head Clerk of Berhampore Municipality, without authority.

36. The State has placed a document (Annexure 'F'), issued by the Chairman and Executive Officer of Berhampore Municipality dated 03.12.2019, which directs the officials of the Municipality to hand over their Digital Signature Certificate procured for e-tendering to the petitioner and also authorising the petitioner to maintain all e-tendering process. The said document bears the signature of officials endorsing that as per the said order, they have handed over their DSC to the petitioner.

37. The irregularity in the said document is that it bears an endorsement by one Samiran Hossain dated 26.06.2017, noting that as per instruction of Puskar Sarkar (petitioner) he has received 2(two) number DSC from N. Mondal and D. Banerjee.

38. Surprisingly, this document on which the Prosecution has based its entire case, does not bear the signature of the petitioner. The fact that the total document contains an endorsement on behalf of the petitioner, in such a serious and important process, prima facie goes to show that the said document which bears no endorsement by the petitioner was prepared to falsely implicate the petitioner in this case in a malafide manner.

39. It is also difficult to believe that none of the officials who are the authorised officers, responsible for the works under dispute, as per statute, have been implicated in this case. The said officials have all certified that there was no irregularities in any of the e-tendering process.

40. Thus once again on an overall picture of the present case, for a clear view:-

i) It appears that on a complaint by one Bimalendu Bose (capacity not disclosed), only against the petitioner, the total case has been initiated.

ii) Bimalendu Bose asked for an enquiry and also a vigilance inquiry, both of which was recommended by the SDO and accepted by the District Magistrate.

iii) Documents relating to the constitution of Tender Committee are on record, and the petitioner a contractual employee is not part of it.

iv) Certificates verifying that all the process relating to the tender are according to government rules and there are no irregularities.

v) The allegation that as the petitioner has prepared the comparative chart relating to the tender process, he is liable for the irregularities, if any, is clearly absurd, as the said work is entirely clerical and no responsibility can be fixed upon such a person.

vi) The document relating to the handing over of DSC has also been prepared to prima facie implicate the petitioner as the document does not contain his endorsement but shows that it has been done on his behalf.

vii) Even the investigating officer has found that the total tender process is in accordance with law, though the involvement of the petitioner an Engineer on contractual basis, in the tender process is clearly absent.

41. All these materials on record clearly shows that there has been clearly an abuse of process of law and thus in the interest of justice, the present case against the petitioner is liable to be quashed.

42. In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

"7. ... In the exercise of this wholesome power, the High Court is entitled to

quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

"102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.? Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in

para 102 in *State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp. (1) 335 as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in *Neeharika Infrastructure Pvt. Ltd. v. State of*

Maharashtra and Others, 2021 SCC Online SC 315.”

43. The case of the petitioner clearly falls under Clause 5 and 7 of paragraph 102 of Bhajan Lal (Supra).

44. As to who are the officials actually involved in such defalcation of government fund is remains a mystery. The Principal Secretary, Urban Development and Municipal Affairs is requested to personally enquire into the matter and fix responsibility within six months from the date of this order.

45. The revisional application being CRR 96 of 2020 is thus allowed.

46. The G.R. Case No.4031 of 2019 which arose out of Berhampore Police Station Case No.1176 dated 14.09.2019 under Sections 420/406/408 of the Indian Penal Code, pending before the Court of the learned Chief Judicial Magistrate, Murshidabad, is quashed.

47. All connected applications, if any, stands disposed of.

48. Interim order, if any, stands vacated.

49. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

50. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.