

(2018) 07 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition9536 (W) of 2018

Sekh Abbas

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

West Bengal Panchayat Act, 1957 — Section 97(c)
West Bengal Panchayat (Zilla Parishad and Panchayat Samiti) Accounts and Financial Rules, 2003 — Section 91(7)

Citation : (2018) 07 CAL CK 0063

Hon'ble Judges : TAPABRATA CHAKRABORTY, J

Bench : Single Bench

Advocate : Debobrata Saha Roy, Falguni Bandyopadhyay, Chama Mukherjee, Joyee Maiti

Final Decision : Dismissed

Judgement

The present writ petition has been preferred challenging inter alia a memo dated 19th June, 2018 issued by the respondent no. 7 intimating cancellation

of the tender pertaining to the work proposals stipulated under serial nos. 3, 4, 5 & 6 in the notice inviting e-tender (in short, the NIT) dated 20th

March, 2018 Mr. Saha Roy, learned advocate appearing for the petitioner submits that responding to the NIT dated 20th March, 2018, the petitioner

participated in the tender process pertaining to the work proposals under serial nos. 3, 4, 5 & 6. From the status updated in the web portal on 29th

March, 2018, the petitioner came to learn that his technical bid has been accepted pertaining to the said work proposals.

Thereafter the financial bid was opened and work orders pertaining to the work proposals under serial nos. 1, 2 & 7 were issued but the result of the

work proposals under serial nos. 3, 4, 5 & 6 were withheld. Aggrieved thereby,

the petitioner submitted a representation to the respondent no. 7 on 12th June, 2018. Surprisingly thereafter by a notice dated 19th June, 2018 it was intimated that the work proposals under serial nos. 3, 4 & 6 have been cancelled for not having received the minimum number of bids and a second call notice inviting e-tender was issued pertaining to the said work proposals.

He submits that there were more than one tender pertaining to the work proposals under serial nos. 3, 4, 5 & 6 in the NIT and as such the tender pertaining to the said work proposals could not have been cancelled. In support of such contention he has placed reliance upon Rule 91(7) of the West

Bengal Panchayat (Zilla Parishad and Panchayat Samiti) Accounts and Financial Rules, 2003. He further submits that the tender documents do not

specify the minimum number of bidders required for completion of the works under tender and the authorities have illegally rejected the tender on a

ground which is not explicit in the tender documents. In support of his contention, Mr. Saha Roy placed reliance upon the judgment delivered in the

case of Indian Railway Catering and Tourism Corporation Ltd. & Anr. Vs. Doshion Veolia Water Solutions Private Ltd. & Ors. reported in (2010) 13

Supreme Court Cases 364.

Per contra Ms. Mukherjee, learned advocate appearing for the State respondents submits that a complaint was lodged before the respondent no. 7 as

regards participation of the petitioner in the tender process detailing that the petitioner's wife is a member of the Jhalda-1 Panchayat Samiti and

the work proposals in the tender were pertaining to the said Panchayat Samiti. Upon consideration of such complaint, the tender in respect of the work

proposals under serial nos. 3, 4, 5 & 6 in the said NIT was cancelled.

In view of the petitioner's disqualification, the number of bidders in the tender process pertaining to the work proposals under serial nos. 3, 4, 5 &

6 became less than three warranting cancellation due to minimum bids and there is no infirmity in such decision in view of the notification of the

Finance Department dated 14th February, 2017 which inter alia provides that the minimum number of bids is required to be three. However, no final

decision pertaining to the work proposal under serial no. 5 has yet been taken since the number of bids submitted for the said work was four including

that of the petitioner.

She further submits that the non-disclosure of the fact that his wife is a member of the concerned Panchayat Samiti was not a bona fide action on the

part of the petitioner. Such suppression of fact invites disqualification. In support of such contention she has placed reliance upon Section 97 (c) of the

West Bengal Panchayat Act. The petitioner's wife being the member of the Panchayat Samiti was indirectly involved in the bidding process and

as such the decision taken by the authorities does not suffer from any infirmity.

In reply Mr. Saha Roy submits that on 28th May, 2018 the petitioner's wife tendered her resignation and the authorities cannot add fresh reasons

to the order by which the petitioner's tender has been rejected inasmuch as in the NIT there was no provision requiring the petitioner to disclose

that his wife was a member of the said Panchayat Samiti. Reliance has been placed upon the judgment delivered in the case of Mohinder Singh Gill vs

Chief Election Commissioner, New Delhi, reported in 1978(1) Supreme Court Cases page 405. The resignation letter as produced be kept on record.

Indisputably, in respect of the work proposals under serial nos. 3, 4 & 6 of the NIT there were three participants including the petitioner. The Finance

Department notification dated 14th February, 2017 inter alia provides that the minimum number of bids in a tender process is required to be three. The

petitioner's wife was a member of the concerned Panchayat Samiti and such fact came to the notice of the authorities from the complaint lodged

on 29th March, 2018. It would be explicit from the eligibility criteria as provided in the tender documents that tenders were invited from bona fide

contractors. The non-disclosure of the fact that his wife is a member of the concerned Panchayat Samiti, was not a bona fide action on the part of the

petitioner.

The decision towards cancellation was taken by the competent authority and there is no infirmity in the decision making process warranting

interference of the Court in exercise its discretionary jurisdiction more so, when the scope of judicial review in award of contract is very limited. The

judgment delivered in the case of Indian Railway Catering Tourism Corporation (supra) and in the case of Mohinder Singh Gill (supra) are

distinguishable on facts. For the reasons discussed above, this Court is reluctant to exercise any discretion in favour of the petitioner. Accordingly, the

writ petition is dismissed. There shall, however, be no order as to costs. Urgent

photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.