

(2009) 04 CAL CK 0011

Calcutta High Court

Case No: Writ Petition No. 30746 (W) of 2008 with A.S.T. No. 2690 of 2008

Samserganj Thana and Thana
Majhi Co-operative Transport
Society Ltd. and Another

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: April 28, 2009

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Shibdas Banerjee, Chaitali Bhattacharjee, Anwar Hossain for the Petitioner in W.P. No. 30746W/08, Tapan Kr. Mukherjee, Chandan Mishra for the petitioner in A.S.T. No. 2690/08, for the Appellant; B.R. Patranabis for the State, L.C. Bihani, Md. Taimur Hossain, Sibani Bhagat, Md. Afzal Hossain, M. Sultana for the Respondent No. 6, Supriyo Bose, Soma Roy Chowdhury for respondent Nos. 1 to 5 (in W.P. No. 30746(W)/08), Tapas Kumar Sinha, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

Alleging illegality and arbitrariness on the part of the respondent-authorities, the writ petitioners approached this Court with the prayer for direction upon the respondent-authorities for not giving effect to the result of the tender in connection with Memo No.P/Ferry/- 1/08/12634-37 dated 4.12.2008. The petitioners also sought for an order directing upon the authority-concerned to withdraw the result of the said tender in connection with Memo No. P/Ferry/- 2/08/1263841 dated 4.12.2008 and for further direction upon the respondent-authorities for not giving effect to the award in consequence of the notice inviting tender dated 10.11.2008 being Annexure P-2.

2. It was claimed on behalf of the petitioners that petitioner No.1 is a Cooperative Society duly enlisted for the purpose of granting lease in respect of different ferry

ghats under the authority and control of the official respondents. Petitioner No.1 is a lessee in respect of Arjunpur Kulidiara Brahman Gram Ferry and Khuta Ghat for the purpose of running the said ferry ghat upto 31.12.2008. The notice inviting tender was issued by the Sub Divisional Land and Land Reforms Officer, Malda, being respondent No.4, under Memo No. PF 11132 dated 10.11.2008 for granting of lease in respect of the ferry ghats as mentioned therein for the years 2009, 2010 and 2011.

3. The time and date of submission of quotation was fixed upto 3 p.m. of 26th November, 2008 against minimum quotation referred by the government in respect of each of the said ferry ghats as mentioned in the tender notice. On 26.11.2008 the petitioner No.1 submitted quotation in respect of said ferry ghats to District Land and Land Reforms Officer, being respondent No.3. The drafts as required by the aforesaid notice inviting tender dated 10.11.2008 were also submitted in respect of each quotation. Though the ferry ghats are operating in the district of Murshidabad but notice inviting tender was issued from the office of the concerned respondent-authorities situated at Malda. The quotations were opened on 26.11.2008 in presence of petitioner No.1 and some other bidders. But the result was published on 4.12.2008 in the Notice Board of the office of the respondent No.3. The result of tender in support of Dhulian Deonapur Ferry & Khuta Gari was published under Memo No.P/Ferry/- 1/08/12634-37 dated 4.12.2008 and the said tender was awarded in favour of Rajmahal Prakhanda Mechanized Nao Yatayat Swabalambi Sahakari Samity, who submitted the quotation in the tune of Rs.7, 25,555/-. The result of tender in respect of Arjunpur Kulidiara Brahman Gram Ferry & Khuta Gari was also published under Memo No. P/Ferry /- 2/08/12638-41 dated 4.12.2008 and it was awarded in favour of Satui Ferry Samabay Samity who submitted quotation in the tune of Rs. 2,75,550/-. The tender in respect of Beniagram Lakshmipur Sikharpur has not been awarded in favour of any of the bidders. The petitioner No.1 claimed to be the highest bidder in respect of Dhulian Deonapur Ferry & Khuta Gari who submitted the quotation of Rs.10, 01,000/- which is the highest amount. The petitioner No.1 is also the highest bidder who submitted quotation of Rs.3, 30,000/- for Arjunpur Kulidiara Brahman Gram Ferry & Khuta Gari. The quotation of petitioner No.1 was rejected on the ground of non-submission of draft in proper time. On that very date i.e., 4.12.2008, the petitioner No.1 submitted representation before the District Land and Land Reforms Officer, Malda being respondent No.3 herein. It sought for grant of lease in its favour and submitted a representation dated 6.12.2008 before the Additional District Magistrate and District Land and Land Reforms Officer, being respondent No.3. Thus, the quotation of the petitioner No.1 was rejected on the ground of non-submission of the draft in proper time though it was submitted according to the terms and conditions as mentioned in the notice being Annexure P-2. Such refusal of quotation on the basis of a false/fictitious ground is illegal, arbitrary and without any basis. The notice dated 10.11.2008, being Annexure P-2, mentions that the concerned

respondent-authorities may not accept the quotation of the highest bidder without showing any reason thereof. This clause is illegal, arbitrary and in violation of the principles of natural justice. It had been alleged that respondent No.6 is a Co-operative Society, working in the State of Jharkhand and is not entitled to run its business in West Bengal. The official respondents were not justified in awarding the lease in favour of such respondent No.6. The petitioners claimed that the authority-concerned could not have refused the petitioners who were the highest bidders.

4. In such circumstances the petitioners sought for direction upon the respondent-authorities for awarding the lease in favour of the petitioners in respect of the two ferry ghats, as referred to, after cancellation of the relevant memo dated 4.12.2008.

5. Respondent nos. 1 to 5 contested the case by filing Affidavit-in-Opposition wherein all the material allegations made by the writ petitioners had been denied. It was claimed that such lease is granted every three years to several Cooperative Societies by open tender in accordance with the law. The lease period of the last settlement expired on 31st December, 2008. In order to settle the ferry for the next term of three years i.e., 01.02.2009 to 31.12.2011, tender notices were served upon the enlisted societies including previous leaseholders by fixing date of tender on 26.11.2008. The time period for receiving tender was fixed from 11 a.m to 3 p.m on the same date i.e., on 26.11.2008. Accordingly, tender box was kept in open place and several societies dropped their respective tenders upto 3 p.m. at 3.05 p.m. the Sub Divisional Land and Land Reforms Officer (hereinafter referred to as S.D.L. and L.R.O.), Malda, being empowered as per Bengal Ferries Act, 1985 opened the tender box at the chamber of Additional District Magistrate and District Land and Land Reforms Officer, Malda, in presence of all the tenderers and all concerned Officers including A.D.M. & D.L. & L.R.O., Malda. On opening it was found that 4 Co-operative Societies and one individual dropped their tenders mentioning the amount of the details of the tender submitted by them. The writ petitioner offered the highest amount of Rs.10, 01,000/- but it was not taken into consideration since the writ petitioner did not deposit the earnest money (draft) along with the same. Offer made by the society being Serial no.2 was also not accepted on the ground that draft had not been submitted in proper time. This was despite the fact that it offered Rs.8, 01,000/-. Another writ application being AST No.2690 of 2008 had been filed by the said society.

6. The Samity who is the third in the list, offered an amount of Rs.7, 25,555/- and since it fulfilled all the formalities, the offer made by him was accepted by A.D.M. & D.L.R.O. as highest bidder. Tender offered by the other two, being Serial Nos. 4 & 5, were rejected since they could not successfully compete. The result of the tender was put up on Notice Board on 4.12.2008 and all the participants signed such notice. The claim as made on behalf of the petitioners, that the petitioner No.2 submitted

tender along with bank drafts of Rs.5, 000/- and Rs.10, 000/- respectively in favour of D.L. & L.R.O., Malda, is false. It had been further claimed on behalf of the respondent Nos.1 to 5 that as per tender notice the date of purchase of the following draft is not relevant but it is the date of submission of the same. Such respondents categorically denied that such bank drafts were submitted within time along with the tender paper. Ferries are settled as per Rule of W.B.L.R. Manual, 1991. There had been neither any arbitrary action nor any violation of the principles of natural justice. Ferry was settled as per Bengal Ferries Act, 1991 and the offer of the petitioner was rejected due to non-submission of bank draft with the tender paper though it was the highest bidder. It had been further claimed that the documents annexed to the supplementary affidavit and marked as P-8, cannot supersede Annexure P-7 of the writ petition.

7. Affidavit-in-Opposition was also filed by respondent No.7 with the prayer for dismissal of the writ application. The petitioners by filing supplementary affidavit sought to strengthen the claim as made in the writ application. Respondent filed opposition to the same.

8. Having regard to the submission made by Learned Counsel for the parties that the issues raised in W.P. No. 30746 (W) of 2008 are identical to those raised in A.S.T. No.2690 of 2008, both the writ applications were heard together.

9. The crux of the controversy is whether the respondent-authorities were justified in rejecting the offer made by the petitioners in the two applications. Though emphatically claimed on behalf of the writ petitioners, proper adjudication of the controversy raised in the two writ applications demand examination as to whether bank drafts for the specified amount were duly submitted along with the tender or not.

10. In response to direction given by this Court, Mr. Supriyo Bose as Learned Counsel for the respondent-authorities arranged for production of the relevant office file. Inviting attention of the court to the same, it was submitted that the bank drafts for the respective amounts as claimed on behalf of the writ petitioners in W.P. No.30746 (W) of 2008 were not submitted along with the tender application. Mr. Bose as Learned Counsel for the respondent-authorities in fact went a step further while inviting attention of the court to the Annexure P-3 at page 38,39 & 40 while submitting that the relevant entry at the left side bottom of the said two pages being shown as enclosures were not shown in the original papers. According to Mr. Bose, the same had been subsequently incorporated and as such, Mr. Bose emphatically submitted that an attempt has been made by the writ petitioners to mislead the court.

11. This has been largely supported by Mr. L.C. Bihani who appeared as Learned Counsel for respondent No.6 in W.P. No.30746 (W) of 2008. Annexure P4 at page 41 & 42 reflect the "result of the tender" held on 26.11.2008. It is found that the claim

of the writ petitioners in the first case was rejected as per order of District Magistrate on the ground of non-submission of draft in proper time. Offer made by the tenderer as Serial No.2 was also rejected as per order of District Magistrate on identical ground. This left the concerned-authorities with no choice but to accept the offer of the tenderer being serial No.3 since the offer of Rs.7, 25.555/- was the highest amongst others.

12. Mr. Kalyan Bandyopadhyay who initially appeared as Learned Counsel for the writ petitioner sought to place emphasis on the copies of the communication with endorsement regarding submission of draft along with tender offer. But the materials as produced on behalf of the State-respondents clearly indicate that such an endorsement regarding deposit or submission of a bank draft was not there in the original tender offer. This having been subsequently introduced, it was not right on the part of the writ petitioner to get copies of such documents, which are certainly not original, annexed to the writ application. this Court, to say the least, deprecates such an action on behalf of the writ petitioner. The materials on record leave no scope for any doubt or controversy that the writ petitioners did not submit the required bank draft along with the tender offer. In such circumstances, the authority-concerned was perfectly justified in rejecting their offers and that having been done under the order of the concerned District Magistrate, question of raising any technical point just does not arise.

13. Mr. Shibdas Banerjee who subsequently appeared for the writ petitioner in W.P. 30746 (W) of 2008 referred to the government order being Memo No.4141 (68)-Coop dated 24.11.1966 of Co-operative Department being Annexure P-7 at page 49. The said memo relates to "exemption from payment of earnest money - security deposit against government tenders".

14. Paragraph 2 of the said memo reads as follows:-

"2. In the circumstances, for promotion and extension of co-operative movement in the state, the governor has been pleased to allow as a special case, the Co-operative Societies Supplying Goods and/or Services to any Government Department, exemption from payment of earnest money and security deposit against the tenders and orders of the department provided such cases are duly recommended by Registrar of Co-operative Societies, West Bengal". Relying upon the same, Mr. Banerjee contended that the present petitioner as such was entitled to get such exemption from payment of earnest money and security deposit and it matters little as to whether he submitted the bank draft along with tender offer or not. To this, Mr. Shibdas Banerjee, as Learned Counsel for the respondent-authorities quite rightly submitted that such an exemption can only be extended to those Co-operative Societies supplying goods and/or services to any government department. It was further submitted that there was further requirement of having recommendation by the Registrar of Co operative Societies, West Bengal. It is not in dispute that the writ petitioners do not satisfy the said requirement. There is no

such material inspiring confidence of the court so as to indicate that the writ petitioners' society supplies goods and/or services to any government department and there is nothing to indicate that there had been any recommendation made by the Registrar of Co-operative Societies.

15. Mr. Bihani as Learned Counsel for the respondent No.6 in W.P. No.30746 (W) of 2008 submitted that the claim as made by the writ petitioners is devoid of merit. The Learned Counsel for the Private-respondent in the other writ application also took identical stand.

16. Provision 281 of the West Bengal Land and Land Reforms Manual, 1991 lays down that ferries which have been declared as public ferries under The West Bengal Fisheries Act, 1885 shall be exclusively under the control of the District Magistrate subject to the direction of the Commissioner. It indicates that those are now under administrative control of the Public Works Department. Following the provision of the Manual, it may be pointed out that the same is required to be made by public auction. Here, in the present case, there had been no illegality or irregularity in the manner in which such public auction was held and no impropriety in rejecting the offer made by the writ petitioners in the two cases. Moreover, the petitioners having participated in the selection process and being unsuccessful are not expected to raise technical objections which again are of little consequence. In the result, the present writ application being W.P. No.30746 (W) of 2008 fails and be dismissed. This order also governs the case being A.S.T. No.2690 of 2008.

17. There is no order as to costs. Xerox certified copy of this judgment be supplied to the parties, if applied for, as expeditiously as possible.