

(1997) 01 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No. 465 (W) of 1997

Radhanath Bhuiya

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Jan. 21, 1997**Citation:** (1998) 2 ILR (Cal) 480**Hon'ble Judges:** Satyabrata Sinha, J**Bench:** Single Bench**Advocate:** A.P. Chatterjee and Ratna Bhattacharya, for the Appellant; Ashutosh Ganguly and M. Dey for State, for the Respondent

Judgement

Satyabrata Sinha, J.

The Petitioner in this writ application, inter alia, has prayed for the following relief:

(a). A writ and/or order and/or direction in the nature of Mandamus directing the Respondents to forbear from giving effect to or further effect to and/or withdraw and/or cancel the impugned Notice inviting Tender being No. 16 of 1996-97 of the East Midnapur Division issued by the Respondent No. 1 under Memo No. 3362(2) dated 10th December, 1996 along with its corrigendum being Annexures "B" and "C" of this application.

2. The basic fact of the matter is not in dispute. The Executive Engineer floated a tender being Tender No. 15 of 1995-96 on or about October, 1995. Several corrigendum were issued thereupon. The Petitioner was an intending tenderer. He deposited the earnest money.

3. It is stated by Mr. Chatterjee, Learned Counsel for the Petitioner which fact is not denied or disputed by the Learned Counsel for the Respondent that the tender process was started on November 7, 1996 and the said tenders were opened at 20-30 P.M. on that date. One M/s. Economic Traders filed a representation. It appears that the Executive Engineer by his order dated November 6, 1996 has stated that they had not applied for issuing tender form in connection with the work

in question. The said Economic Traders approached the higher authority in terms of their letter dated November 11, 1996 but despite the request they could not produce any receipt proving that they had earlier prayed for issuing tender form. A writ application was filed in this Court which was registered as Company No. 18705 (W) of 1996. The writ application was disposed of by an order dated December 6, 1996 upon taking into consideration the. aforementioned fact in the following terms:

The writ petition thus involves a disputed question. However, it is observed that in the event tender process has not yet started, the Superintending Engineer, Western Circle-II, Irrigation and Waterways Department, Keranitola, Midnapore, may, keeping in view the special facts and circumstances of this case, consider the desirability of handing over a tender form to the Petitioners so as to enable their tender being considered along with other eligible tenderers.

4. Thereafter by an order dated December 12, 1996, the Superintending Engineer cancelled the said tender.

5. Mr. Chatterjee, Learned Counsel for the Petitioner has. raised a short question in support of this writ application. The Learned Counsel submits that the contention raised by the Respondent is not correct, inasmuch as, this Court by order dated December 6, 1996 has merely directed the Superintending Engineer to consider the desirability of handing over a tender form to the Petitioner, if the tender process had not started by that time. According to Mr. Chatterjee, Learned Counsel, as the tender process has already started, the question of handing over a further tended form and/or cancelling the said notice inviting a tender with a view to enable M/s. Economic Traders to participate therein does not arise. The Learned Counsel submits that the action on the part of the Respondent is, therefore, mala fide.

6. Mr. Ganguly, Learned Counsel for the State, however, submits that in terms of Clause 226 of the Irrigation and Waterways Department Code, the authority has the right to reject the tender form so received without assigning any reason and the same should be expressly stated in the advertisement or notice. The notice inviting tender in question is contained in annexure "A" to the writ application. Clause 4 of the said notice states thus:

4. No tender form will be issued on the date fixed for opening the tender. Successful tenders will have to submit duplicate copy of the tender in form No. 2911(ii) on further payment of a sum in cash as per rule of each copy of the tender form together with-all other documents specified above.

7. There cannot be any doubt whatsoever as is evident from the letter dated December 12, 1996 issued by the Superintending Engineer to the Executive Engineer that the tender in question has been cancelled in view of the order of the Hon'ble High Court. There cannot further be any doubt whatsoever that in terms of Clause 7 of the notice inviting tender the Superintending Engineer does not bind

himself to accept the lowest tender and receive without assignment of any reason. In terms of Clause 7 he reserves himself the right to cancel the tender without assignment of any reason, but in fact, the Superintending Engineer has not acted in terms of Clause 7 of the notice inviting tender.

8. A bare perusal of the order dated December 6, 1996 clearly shows that the said order is a contingent one.

9. The Learned Counsel for the Petitioner rightly states that the question involved in this earlier writ application was held to be a disputed question. However, in view of the assertion made by the Petitioner, this Court asked the concerned authority to consider the desirability of issuing a tender form only in the event, the tender process has not been started and in fact completed. As the tender papers were already opened, the question of giving effect to the said order by the Superintending Engineer did not arise.

10. For the reason aforementioned, there cannot be any doubt whatsoever that the Superintending Engineer, Western Circle-II, Irrigation and Waterways Department, Midnapur, has acted illegally and without jurisdiction in passing the said order dated December 12, 1996 so far as he took into consideration irrelevant facts and failed to take into consideration the relevant fact.

11. The Superintending Engineer also acted in violation of Clause 7 of the notice inviting tender and the purported attempt on his part to take recourse to Clause 226 of the Code is of no avail. It is now well-known that a judgment of this Court has to be read reasonably and in its entirety. An order passed by this Court has to be read in the context of the statements made in the writ application. The said order dated December 6, 1996 clearly stated the fact of the matter upon which the said observation has been made. In fact, by reason of the said order no direction has been issued.

12. In this view of the matter, the appropriate authority is directed to take action in terms of the original notice inviting tender upon taking into consideration all relevant facts. The appropriate authority is expected to act fairly and reasonably. If any allegation has been made as against the Executive Engineer, the appropriate authority may take the same into consideration but for that matter the impugned order being Tender No. 16 of 1996-97 cannot be sustained.

13. The writ application is disposed of with the aforementioned observations and directions.

14. The Learned Counsel for the Petitioner is permitted to take down the gist of this order for communication.