

**W.P. No.13044 (W) of 2018**  
**Birendra Nath Dey**

v.

**District Magistrate, Murshidabad & Ors.**

29.08.18  
 SL-29  
 Ct-13  
 (S.R.)

Mr. Utpal Majumder  
 Mr. Abhishek Banerjee

... for the petitioner.

Mr. Sakya Sen  
 Mr. Hasibul Islam

... for the State.

A tender process is under challenge at the behest of the writ petitioner.

Learned advocate for the petitioner submits that, the tender was done without requisite advertisement in respect thereof. Moreover, the petitioner and the intending tenderer were not allowed to obtain the tender papers. He draws the attention of the Court to a complaint made by the petitioner on July 20, 2018 and the directions issued by the Sub-divisional Officer dated July 23, 2018 with regard thereto. He submits that, the tender process stands vitiated.

Learned advocate appearing for the State submits that, the writ petitioner approached the Writ Court on two previous occasions. He draws the attention of the Court to the order dated July 2, 2018 passed in W.P. No.9908

(W) of 2018 (Birendra Nath Dey v. District Magistrate, Murshidabad & Ors.). He submits that, the advertisement for the subject tender was made immediately upon publication of the notice of the tender. The notice-inviting tender is dated July 5, 2018 and the requisite advertisement was published subsequent thereto, commencing from July 6, 2018. He submits that, a similar grievance with regard to the petitioner not being made available the tender papers was raised by the petitioner in the earlier writ petition being W.P. No.9908 (W) of 2018. The same was not accepted by the Court. In the present case, five persons participated in the tender. The tender has since been processed and the District Magistrate has given approval for issuance of the contract. The authorities have not issued the contract since the writ petition is pending. He submits that, the present writ petition is a process by which, the petitioner as the existing contractor, is trying to elongate his period of contract.

I have considered the rival contentions of the parties and the materials made available on record.

Principally, there are twofold challenges advanced



by the petitioner with regard to the tender process. The first ground of challenge is absence of requisite advertisement. With respect, such a ground is not available to the petitioner since, the authorities did publish advertisements subsequent to the issuance of the notice inviting tender. The subject notice-inviting tender is dated July 5, 2018 and the requisite advertisements are from July 6, 2018.

The second ground of challenge is the alleged prevention of the petitioner from obtaining the tender papers. There is a contemporaneous complaint made by the petitioner on July 20, 2018. The dates fixed for obtaining tender papers are July 18, 2018 to July 20, 2018. Therefore, the petitioner did lodge a contemporaneous complaint with regard to the petitioner being prevented from obtaining the tender papers. The Sub-divisional Officer, to whom the complaint was lodged, called for a report by a writing dated July 23, 2018. Nothing is placed on record to show that, the authorities acted on the basis of such complaint. The petitioner is an existing contract holder. The petitioner came to the Writ Court at least twice earlier. He came to the Writ Court

challenging a tender notice dated November 28, 2016 by a W.P. No.30637 (W) of 2016. Such writ petition was disposed of by an order dated January 20, 2017 setting aside such tender process. The authorities floated subsequent tender dated June 14, 2018 which was made the subject matter of challenge by the writ petitioner in W.P. No.9908 (W) of 2018. Such writ petition was disposed of by an order dated July 2, 2018. In such writ petition, the petitioner claimed that, he could not collect the tender form. Even on such allegation, the Court did not intervene.

Since, the petitioner is an existing contract holder, and the allegation that, he was prevented from obtaining tender papers is not accepted at the stage.

The issues raised in the writ petition are such that, an opportunity should be afforded to the respondents to file affidavits.

Let affidavit-in-opposition be filed within three weeks from date. Reply thereto, if any, be filed within two weeks thereafter.



List the writ petition under the same heading in the monthly list of November 2018.

It is clarified that, the authorities are at liberty to proceed with the tender process, in accordance with law. The tender will, however, abide by the result of the writ petition. It is expected that, the authorities places on record the result of the enquiry directed by the Sub-divisional officer in the writing dated July 23, 2018, in their affidavit.

Urgent website certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

**(Debangsu Basak, J.)**