

Subrata Kumar Banerjee. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Mar-17-2011

Judge : Jayanta Kumar Biswas, J.

Acts : [Constitution of India](#) - Articles 226; Right to Information Act

Appeal No. : W.P. No.298 of 2011.

Appellant : Subrata Kumar Banerjee.

Respondent : State of West Bengal and anr.

Advocate for Pet/Ap. : Mr Sakya Sen and Mr A. Chakraborty, Advs.

Judgement :

1. The petitioner in this art.226 petition is seeking the following principle relief:-
 - a) A writ of or in the nature of Mandamus do issue commanding the respondents to forthwith cancel and/or quash the measures be taken by the respondents for initiation of the procedure for enlistment of Class I Contractor.
2. Counsel appearing for the petitioner submits that after holding that the petitioner would be at liberty to apply for enlistment when the process would be initiated, behind the petitioners back the authority concerned has enlisted contractors as will appear from a news item and the statement made in the petition.

3. By a letter dated December 6, 2010 the petitioner called upon the Principal Secretary and the Technical Secretary of the Public Works Department of the Government of West Bengal to supply him information regarding the contractors who were enlisted and steps taken, if any, for public notice inviting application for enlistment. Counsel submits that since the petitioner called upon the respondents to supply necessary information and the respondents have failed and neglected to supply the information, the petitioner is entitled to approach the High Court under art.226 seeking a mandamus quashing the measures taken by the respondents.

4. The petitioner requested the respondents to supply the information by making a representation. That was not an application under the Right to Information Act, 2005. There is nothing acceptable to show that the respondents took any measure for enlistment of contractors in violation of any law. The petitioner is seeking a mandamus quashing certain measures. Unless evidence is produced to show what measures, if any, have been taken, in my opinion, the petitioner cannot seek a mandamus quashing the unknown measures. It was for him to collect the necessary evidence and produce them with the petition. It is not for the High Court to collect the evidence by making an enquiry.

5. In my opinion, on the basis of a bald case stated without any supporting evidence, the petition cannot be entertained for examining whether the measures, if any, taken by the respondents should be quashed. A bald claim or assertion made in an art.226 petition does not make out a prima facie case, for evidence in proof of a claim or assertion has to be produced with the petition itself and the prima facie case has to be ascertained considering the claim or assertion and the evidence together.

6. For these reasons, I dismiss the petition making it clear that nothing herein shall prevent the petitioner from collecting the evidence and filing a fresh case questioning the measures, if any, taken by the respondents with the supporting evidence. No costs. Certified xerox.