

WA No. 04/2022

SONAM TSEWANG BHUTIA & ORS.

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Appellants : Mr. Karma Thinlay, Senior Advocate.
Mr. Yashir Namgyal Tamang, Advocate.

For Respondents : Dr. Doma T. Bhutia, Addl. Advocate General.
Mr. S.K. Chettri, Govt. Advocate.

Date: 26/08/2022

CORAM:

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

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JUDGMENT : (per the Hon'ble, the Chief Justice)

This Intra-Court Mandamus Appeal arises from an order dated 08th July, 2022, passed by a learned Single Judge of this Court in WP (C) No.34 of 2022 (*Sonam Tsewang Bhutia & Ors. Vs. State of Sikkim & Ors.*). By the impugned order, the learned Single Judge has been pleased to issue notice to all the respondents and kept the writ petition pending without passing any ad-interim order, as prayed for by the petitioners. The writ petitioners are now before this Court as appellants praying for issuance of such ad-interim order(s) as prayed for before the learned Single Judge.

After considering the submissions made by the learned advocates for the parties and upon perusing the pleadings on record and also the order impugned, being the order dated 08th July, 2022, we notice certain facts. The notice inviting tender is dated 28th of February, 2022. It was published on 08th of March, 2022. The writ petition was filed on 05th July, 2022. The writ petitioners were never participants in the tender process which is the subject matter of challenge before the Writ Court. However, it appears that they obtained certain



information after invoking the Right to Information Act. Based on such information, they filed the writ petition seeking such reliefs as prayed for in the writ petition.

The learned senior counsel representing the appellants/writ petitioners takes us through the pleadings and submits that the entire tender process was vitiated due to gross irregularities and illegalities, which came out in the open only after information was obtained under the Right to Information Act.

Learned Additional Advocate General appearing on behalf of the State, on the other hand, submits that the writ petitioners do not have any locus standi to approach the writ Court without having even participated in the tender process. She further submits that most of the work has already been completed and just a portion of the work remains to be finished and as such, the Court may not interfere at this belated stage.

The only question which falls for consideration before this Court is whether we can grant any ad-interim relief to the appellants/writ petitioners as prayed for in the writ petition.

Considering the facts of the instant case, as stated earlier, if we restrain the concerned respondents from taking any further steps pertaining to the tender in question at this belated stage, it will tantamount to Court's interference in stopping a public work without even considering the entire spectrum of the facts which are relevant and are required to be considered by the writ Court since the writ petition is pending before the learned Single Judge. We are of the view that the rights of the parties and the issues raised by the appellants/writ petitioners before the writ Court are yet to be finally adjudicated upon and any observation from this Court may have a binding effect before the learned Single Judge, which we are loathed to do so at this preliminary stage. We are, however, of the view that this Intra-Court Mandamus Appeal can be disposed of at this stage itself with an observation that the tendering process — which has already commenced and is about to be completed — shall abide by



the result of the writ petition while keeping the point of locus standi, as sought to be raised by the learned Additional Advocate General as also the point of maintainability of the writ petition, open, to be decided by the learned Single Judge.

We make it clear that any observation made by us in this order shall not be construed by the parties as a decision on the rights of the parties in any manner, which shall be finally adjudicated upon by the learned Single Judge in accordance with law.

The writ appeal stands disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

jk/bp/ami

