
(2019) 09 CAL CK 0054

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 337, 338, 339, 340 Of 2018

M/S Jagannath Enterprise & Anr

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 45
Indian Contract Act, 1872 — Section 70

Citation : (2019) 09 CAL CK 0054

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Saptangshu Bose, R.N. Chakraborty, M., Ahmed, Alok Kr. Ghosh

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

The Court : Item nos.10 to 13 involved similar questions of facts and law and by consent of parties I have taken them up together consolidated and heard them analogously. Item nos.12 and 13 did not disclose any purchase order. Item nos. 10 and 11 disclosed purchase order.

Documents have been discovered by the respondent Kolkata Municipal Corporation by an affidavit affirmed by Mr. Manas Som, Superintendent, Central Medical Stores of the Kolkata Municipal Corporation affirmed on the 9th day of September, 2019, which is taken on record and a copy has been served on Mr. Bose's advocate on record. The factual basis of Mr. Bose's submission have been admitted by the said deponent as appeared from paragraph 6 of the said affidavit, which is as follows ;

"The specific case of the respondent amongst others is that the Superintendent, CMS was not authorised to enter into the contract on his behalf, if the issuance of the purported order by him or supplying medicine by the writ petitioner no.1 at the unit price of medicine as fixed is considered to be a contract. In fact such

purported contract does not bind the Kolkata Municipal Corporation under the law. Although there was no specified and/or prescribed guidelines for procurement of medicine, the Kolkata Municipal Corporation used to obtain the supply of medicines at the approved rate either of the Government or through tender process. In the instant case the unit price of medicines was fixed at much higher rate than that of the Government and no tender process was initiated. At all material point of times not only in the instant case but in several other cases the supply of medicines was obtained at a higher price during the year 2013-2014, 2014-2015 and 2015-2016. As a result there was an excess payment to the tune of Rs.3.72 crores towards procurement of medicines as revealed from the audit observations regarding procurement of medicines. Subsequently the Health Department of Corporation submitted its observation on Audit Observation Report.

Copies of the audit observation as well as observation of the Kolkata Municipal Corporation are annexed hereto and marked collectively with letter "-3".

In my order dated July 25, 2019 after recording the entire ambit of the dispute I had categorically asked the following to be produced ;

"Accordingly, the respondents are given liberty to produce the original records of the case including the price for procurement as prescribed by the Government and documents to show that these were accepted by the respondent no.1 before June 3, 2015, if at all available and how these were communicated to the petitioner before entering into the contract and also what steps have been taken against the then Superintendent, Central Medical Stores, Kolkata Municipal Corporation as alleged by the respondents in their earlier opposition."

Therefore, it is clear that none of the documents that would have been present in the possession of the respondent no.1 had the contention that there was any prescribed rate of supply of specified medicines was there and/or was the approved rate of the Government and that this was none to the petitioners before June, 2015 and that it bound the respondent and the petitioners cannot be established by the Corporation. The only point of law is whether there was a concluded contract and whether the Superintendent, Central Medical Stores, who has affirmed a supplementary affidavit could be said to have authority to enter into the contract on behalf of the Municipal Corporation in view of section 45 of the Kolkata Municipal Corporation Act, 1980. Of course, as I have held in my order dated July 25, 2019 possibly this point cannot be raised for the reasons stated therein but after hearing the parties I reserve judgment in all four matters.

Mr. Bose has cited [2004] 3 SCC 553, 2008 [3] ICC 630 and [2006]10 SCC 236.

Mr. Bose has relied upon section 70 of the Indian Contract Act, 1872, which is as follows ;

"S.70.Admission of execution by party to attested document.- The admission of a party to an attested document of its execution by himself shall be sufficient proof

of its execution as against him, though it be a document required by law to be attested."

Mr. Ghosh submitted that this provision pertains to assessment of compensation, which cannot be ascertained by a writ court since, first, this is not a matter of constitutional tort and, second, because it is in the arena of a civil dispute as to how much would be payable. He also submits that under section 70 the Corporation ought to have been given the right to elect whether to retain the benefit or to pay compensation, which cannot be done in the writ court since here compensation cannot be assessed. Mr. Bose submits that the medicines have already been consumed and/or their benefits have been received in so far as each of the medicines is now beyond their expiry date and cannot be returned in the same form and of the same nature. They are useless now as medicines and cannot, therefore, be restored to the petitioner. Therefore, the benefit cannot be restored.

As far as the price per unit is concerned, he says that this is available from the invoices themselves, as is the batch number of each medicine manufactured from the invoice. If the price for each unit of medicine is accepted as a matter of record, the question of ascertaining the compensation would not arise since the compensation in this case is a reflected amount, which is apparent from the face of the records.

By relying upon [2004] 3 SCC 553 paragraph 19 and 29 he says that he should not be relegated to the suit court for item nos.12 and 13 and no evidence is required to be adduced.