
(2020) 06 CAL CK 0025

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5453 (W) Of 2020

MSV International INC. & Anr

APPELLANT

Vs

West Bengal Highway Development Corporation Limited &
Anr

RESPONDENT

Date of Decision : 05-06-2020

Acts Referred:

Citation : (2020) 06 CAL CK 0025

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Jayanta Mitra, Subhojit Roy, Jishnu Chowdhury, Joydip Banerjee

Judgement

Ashis Kumar Chakraborty, J

The petitioners have filed this writ petition challenging the decisions of the respondent No.1, West Bengal Highway Development Corporation Limited rejecting the tender, submitted by the petitioner No.1 in response to Request For Proposal (RFP) dated June 30, 2019 for upgradation of Kalyani Expressway and to black list them for one year.

The respondent No.1 issued various communications dated February 17, 2020 and February 19, 2020 resulting in rejection of the bid submitted by the petitioner No.1 in respect of the RFP. The grounds on which the petitioners' bid was rejected were well mentioned in the said communications. The petitioners, however, did not challenge the said decisions until issuance of communication dated March 6, 2020 debarring them from participating in any future tender for a period of one year. With the issuance of the said communication dated March 6, 2020 the performance of Bank guarantee submitted by the petitioners has also been encashed. From the records it appears that it was the authorized representative of the petitioner No.1 viz. Sri Dinesh Kumar Dinkar, who failed to produce the original documents which he was required to produce before the respondent No.1 for considering the tender submitted by the petitioner No.1.

At the present moment, the petitioners seek an interim order for stay of operation of the communication dated March 6, 2020 issued by the respondent No.1 debarring them from participating in any future tender floated by the respondent No.1 for a period of one year. In support of such interim order, learned senior counsel appearing for the petitioners relied on the several decisions of the Hon'ble Supreme Court in the cases of Erusian Equipment & Chemicals Limited -vs- State of West Bengal & Anr. and Raghunath Thakur -vs- State of Bihar & Ors. reported in (1975)1 SCC 70 and (1989) 1 SCC 229, respectively. According to the petitioners, the impugned action of the respondent No.1 debarring them from participating any tender for a period of one year, without granting any opportunity of hearing, result in violation of principle of natural justice and on the strength of the said Supreme Court decisions, the impugned decision of the respondent No.1 as recorded in the communication dated March 6, 2020 is liable to be set aside. It is further submitted that the impugned communication dated March 6, 2020 does not disclose any reason as to why the petitioner no.1 has been de-barred/black listed. It was emphasized that in the present case the petitioner No.1 has not submitted any incorrect information for the second time making it liable to be debarred from participating in any future tender as mandatorily required under GCC Clause 4.5d. Urging all these grounds learned Senior Counsel appearing for the petitioners prays for an interim order of injunction restraining the respondent no.1 from acting in terms of the impugned communication dated March 6, 2020.

Learned counsel appearing for the respondent No.1, on the other hand, raised an objection to the maintainability of the present writ petition. It was urged that the petitioners had accepted the decision of the respondent No.1 to reject their tender resulting in issuance of the communications dated February 17, 2020 and February 19, 2020. Even the petitioners were all along aware of the decision dated March 6, 2020 debarring the petitioner No.1 from participating in the future tender of the respondent No.1 for a period of one year as well as encashment of the performance guarantee. The present writ petition has been filed on May 16, 2020. The attention of this Court was drawn to paragraph 14 of the writ petition wherefrom it appears that the petitioners accepted the grounds of cancellation of their tender. An opportunity was sought on behalf of the respondent no.1 to file affidavit in opposition. According to the respondent no.1, the petitioners have not been able to make out any ground for obtaining any interim order in this application. It was emphasised the grounds on which bid/tender of the petitioner No.1 was rejected by the respondent, which entailed blacklisting of the petitioner No.1 and as such, there was no requirement of the petitioners being granted a fresh opportunity of hearing.

I have considered the materials on record, as well as arguments advanced by the learned counsel appearing for the petitioners and the respondent No.1, respectively. It was in the month of February, 2020 when the tender of the petitioner No.1 was rejected by the respondent No.1 but the petitioners did not forthwith challenge the said decision. Even being fully aware of the

communication dated March 6, 2020 issued by the respondent No.1 and encahsment of the performance guarantee, the petitioners waited till May 15, 2020 to file this writ petition. Considering all these, I find that I am not inclined to pass any ad-interim order as prayed for the petitioner. The writ petition should be decided after granting an opportunity to the respondent No.1 to file affidavit-in-opposition.

As submitted by the respondent No.1, let the affidavit-in-opposition be filed by it within a week from date, reply thereto if any, be filed within a week thereafter.

The writ petition will appear for hearing, before the appropriate Bench, two weeks hence.