
(2010) 12 CAL CK 0010
In the Calcutta High Court

Case No : Writ Petition No. 22556 (W) of 2010 with W.P. No. 20591 (W) of 2010

Rafik Miya

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Specific Relief Act, 1963 — Section 14(1)

Citation : (2011) 3 CHN 343

Hon'ble Judges : N. Patherya, J

Bench : Single Bench

Advocate : Ravi Sankar Chattopadhyay, Uday Sankar Chattopadhyay, Suman Sankar Chatterjee and Arindam Sen, for the Appellant; Prafulla Ghosh and Snehasish Bala for the State, Saptangshu Basu and Aparna Banerjee for the respondent No. 5, for the Respondent

Judgement

N. Patherya, J.—By these writ petitions, the petitioner has sought to challenge the letter dated 14th September, 2010 and seeks cancellation of the fresh tender notice dated 23rd September, 2010.

2. The case of the petitioner is that he was the lowest bidder and on the basis thereof was selected and Work Order was issued. W.P. 20591 (W) of 2010 was filed challenging the notice dated 14th September, 2010 and during its pendency a tender notice was issued on 23rd September, 2010. The said cancellation dated 14th September, 2010 is without any reasons and is based on the oral decision of the B.D.O. Without assigning of any reasons therein, renders the notice dated 14th September, 2010 and subsequent tender notice as bad and liable to be quashed. Reliance is placed on East Coast Railway and Another Vs. Mahadev Appa Rao and Others, and Lalthai and Others Vs. State of Mizoram and Another, .

3. Counsel for the respondent-authorities submits that the agreement between the parties is in the realm of a contract and in view of section 14(1)(a) of the Specific Relief Act, 1963 as damages would be sufficient compensation and section 14(1)(a) being applicable, this writ petition merits no order. In fact,

pursuant to tender dated 23rd September, 2010 an agreement has been entered into with respondent No.6 and rights have accrued in his favour. All that the petitioner could be entitled to is loss of profit and damages will be an adequate relief. As there is no public law involved and the commercial element paramount, no order need be passed on this application. Reliance is placed on National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, .

4. Counsel for the private respondent submits that pursuant to the notice inviting tender an application was filed and tenders opened on 30th September, 2010. Appointment has been made on 5th October, 2010 and thereafter Work Orders issued. Therefore, this writ petition merits no order.

5. The petitioner, in reply, placed reliance on Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Tata Cellular Vs. Union of India, and ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , for the proposition that in contractual matters it is difficult to exclude the State actions from the purview of judicial review. Therefore, the action of the State-respondents is not exempt from judicial review and the notice dated 14th September, 2010 which is devoid of reasons, be set aside.

6. Having considered the submissions of the parties, by letter dated 29th April, 2010, the bid of the petitioner was accepted with effect from 29th April. 2010 to 31st March. 2010. On the basis thereof, Work Orders were issued from time to time and each of these Work Orders have, been complied with and payments made. Each of the Work Orders, including the acceptance of tenders was issued by the respondent No.5. Therefore, the action to cancel the Work Order cannot be doubted. It is the contents of such cancellation letter which must be looked into and on a reading thereof it appears that the cancellation has been effected on the basis of oral instruction given by the BDO, namely, the respondent No.3. No reasons have been assigned in the said communication, and therefore, the said letter cannot be sustained in the eye of law. It is true that the parties were bound by a contract but as held in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , State actions in contractual matters cannot be excluded from the purview of judicial review, in the event it fails to satisfy the test of reasonableness. In the instant case, the test of reasonableness has not been satisfied and accordingly, the letter dated 14th September, 2010 is set aside, so also all subsequent actions taken thereafter.

7. It is true that third party interest has intervened but his intervention is due to the issuance of the tender notice dated 30th September, 2010. As the cancellation notice dated 14th September, 2010 is set aside, the question of issuance of tender notice afresh on 30th September, 2010 could not have arisen. Accordingly, the tender notice dated 30th September, 2010 is also set aside.

8. With the aforesaid direction, this application is disposed of.

9. Urgent certified photocopies of this order, if supplied for, be given to the parties subject to compliance with all requisite formalities.