

(2018) 05 CAL CK 0182
In the Calcutta High Court
Case No : Writ Petition5285 (W) of 2018

Uma Corporation

APPELLANT

Vs

Hindustan Steelworks Construction LTD. & ORS.

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Citation : (2018) 05 CAL CK 0182

Hon'ble Judges : TAPABRATA CHAKRABORTY, J

Bench : Single Bench

Advocate : Dipen Shah, Shayak Chakraborty, Haradhan Banerjee, Ashok Kumar Jene, Ashok Kumar Banerjee, A. K. Bhattacharya, S. Gangapadhyay

Final Decision : Dismissed

Judgement

The present writ petition has been preferred primarily praying for the following reliefs:

a) A writ of and/or in the nature of Mandamus do issue commanding the respondents:

i) To annual/Cancel Sub-Contracts issued to any contractor and Respondent no.3 for execution of aforesaid LOI without inviting tenders.

ii) To forthwith float a tender in respect of the works to be sub-contracted by them and issue necessary directions for future. A notice inviting online

tender was issued by Kolkata Port Trust (in short KPT) for supply, installation operation and maintenance of road weighbridges at Haldia Dock

Complex, KPT.Â In the said tender process the petitioner herein was a participant.Â The petitioner could not emerge to be successful in the

same.Â Subsequent thereto, the Letter of Intent (in short, LOI) was issued in favour of the respondent no.1 on 16th June, 2017. Aggrieved thereby,

the petitioner preferred a writ petition but the same was dismissed by an order dated 13th July, 2017.Â

The petitioner challenged the same in an appeal which was also dismissed by a judgment dated 6th September, 2017. The Special Leave Petition (in

short, SLP) preferred by the petitioner was also dismissed.Â In the midst thereof, the petitioner submitted applications under the Right to Information

Act, 2005 (in short, the said Act of 2005) primarily seeking information as to whether HSCL has empanelled any Company for the works related with

weighbridge operations.

Placing reliance upon letter dated 26th April, 2017 issued in response to the petitionerâ??s application under the said Act of 2005, Mr. Shah, learned

advocate appearing for the petitioner submits that HSCL had engaged the respondent no.3 and had sub-contracted works of the LOI to the said

respondent clandestinely for commercial gain and private benefits. The LOI has been issued to the respondent no.1, who does not have the ability to

manufacture and install weighbridges by themselves and as a consequence thereof public money would be at stake.

According to him the respondent no.1 was keen to carry out such work through a sub-contractor and to that effect the respondent no.3 was engaged

and such illegalities warrant interference of this Court.Â In support of such contention reliance has been placed upon the judgments delivered in

Sterling Computers Limited Vs. M/S. M & N Publications Limited & Ors. reported in (1993) 1 SCC 445 and in Centre for Public Interest Litigation &

Ors. Vs. Union of India & Ors. reported in (2012)3 SCC 1.

Per contra Mr. Banerjee, learned advocate appearing for the respondent no.1 submits that challenging the tender process and alleging that the

respondent no.1 did not fulfil the eligibility criteria and had sought to conclude the work under the tender by engaging an agency, the petitioner

preferred a writ petition. Such challenge has failed and the judgment delivered in the writ petition has been affirmed through dismissal of the appeal

and the SLP. In view thereof, the issue as agitated in the said writ petition cannot be reopened and reargued in the present writ petition. A decision is

a precedent on its own facts. The judgments, upon which the petitioner has placed reliance, have no manner of application. In support of such

contention reliance has been placed upon the judgment delivered in the case of

State of Rajasthan vs Ganeshi Lal, reported in AIR 2008 SC 690.

Mr. Haradhan Banerjee, learned advocate appearing for the respondent no. 3 adopts the submissions advanced on behalf of the respondent no.1 and

submits that the contract was between KPT and the respondent no.1 herein. The challenge against the issuance of LOI in favour of the respondent

no.1 has failed in the earlier proceedings. The respondents cannot be repeatedly troubled for the same cause. Indisputably challenging the tender

process and the grant of LOI in favour of the respondent no.1, the petitioner preferred an earlier writ petition being W.P. 1687(W) of 2017.

In the said proceedings it was contended on behalf of the petitioner that HSCL does not have any experience towards installation of weighbridges and

would be engaging an agency in executing the work. The issues involved in the same have attained finality in view of dismissal of the appeal and the

SLP filed by the petitioner and the same issues cannot be reopened. There has been no change of circumstances and by splitting up the claims the

petitioner cannot approach the Court repeatedly. The judgments upon which reliance has been placed by the petitioner are distinguishable on facts

and have no manner of application in the instant case.

For the reasons discussed above, this Court is unable to grant the reliefs as prayed for and the writ petition is, accordingly, dismissed. There shall,

however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon

compliance of all necessary formalities.