

AD. 8.
December 9, 2020.
MNS.

W. P. A. 10069 of 2020
(**Via video conference**)

Sundarananda Barman and another
Vs.
The State of West Bengal and others

Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh,
Mr. Monoj Kumar Bhattacharyya

... for the petitioners.

Mr. Samrat Sen,
Mr. Amitava Mitra

...for the State-respondent no. 1.

The grievance of the petitioners is that the respondent-authorities terminated the contract between the respondent no. 2 and the petitioners vide letter dated July 8, 2020 (Annexure- P/3 at page- 25 of the writ petition).

Learned counsel appearing for the petitioners argues that the respondent-authorities acted *de hors* the law in retrospectively terminating the contract with the petitioners on July 8, 2020, with effect from June 1, 2020.

Moreover, learned counsel for the petitioners argues that, on a previous occasion, due to a flood situation, the petitioners had been given an extension to complete the project of

construction at hand, which is the subject-matter of the contract between the parties. However, although it was impossible to complete the construction work within May 31, 2020, which was the extended last date, due to the pandemic situation, the respondents chose to terminate the contract with the petitioners arbitrarily and to hand over the contract to a third party.

Learned counsel for the petitioners submits that such arbitrary act was contrary to principles of natural justice and law is liable to be set aside by this Court.

Learned counsel further submits, on query of Court, that the petitioners are not in possession of any copy of the contract entered between the parties.

Learned senior counsel appearing for the respondent no. 1 submits at the outset that it is not a case where the contract was terminated retrospectively. Rather, the contract came to an end by efflux of time on May 31, 2020 itself. The impugned letter dated July 8, 2020 was merely an intimation to the petitioners, based on the closure of jural relationship between the parties, to remove the construction materials and

machineries of the petitioners from the contractual site.

Learned senior counsel further argues that the petitioners chose not to ask for any extension and cannot have the already-terminated contract revived as a matter of right. Even if the petitioners wanted to take shelter under the pandemic situation, the petitioners ought to have enforced the *force majeure* clause, if any, in the contract.

In any event, learned senior counsel submits, the petitioners have taken a chance by filing the previous writ petition, which was withdrawn on technical grounds, only in the month of September 2020, when a fresh contract was going to be awarded to a third party.

Upon hearing both sides, the documents reveal that the last instance of extension sought by the petitioners was on January 25, 2020, as evident from Annexure- P/2 at page- 23 of the writ petitioner itself.

At that juncture, the petitioners had explained why the construction work could not be completed earlier and asked for time till May 31, 2020 for completion.

However, there is nothing on record, nor pleaded, to show that any further extension was granted to the petitioners.

From the communication dated January 25, 2020 itself, it appears that initial completion period of the work was within fifteen months from February 27, 2018, which condition could not be met by the petitioners. As such, an extension was granted to the petitioners till May 31, 2020 by the respondent-authorities. However, the petitioners did not care even to ask for a further extension of time for completion of the construction work prior to, or even after, the expiry of the extended period of the contract, that is, May 31, 2020. In the absence of such request on the part of the petitioners, the contract automatically came to an end on May 31, 2020, which was the terminus of the extended period.

Thus, the expression “hereby” used in the letter dated July 8, 2020 was superfluous and did not have the effect of determining the contract on that date. What the said communication indicated was merely a re-affirmation of the closure of jural relationship between the parties on May 31, 2020 itself, as rightly argued on behalf of the respondent no. 1.

The letter also carried instruction to the petitioners to remove its construction materials and machineries, thus attributing a meaning to it which is irrelevant to termination of contract. As such, the logic behind the petitioners' argument, that the respondent-authorities terminated the contract-in-question retrospectively, is fallacious.

That apart, the remedy of the petitioners, if any, lay in asking for a further extension of time prior to the expiry of the previously extended period, that is, May 31, 2020.

Moreover, in the absence of any *force majeure* clause having been shown by the petitioners in the contract, there is no question of taking into account the pandemic situation, particularly in view of the nonchalant conduct of the petitioners in not even caring to ask for extension for so long. The project, being admittedly a public one, cannot be stalled indefinitely for an individual company and as such even the balance of public interest is tilted against the petitioners.

As regards the allegation of arbitrariness, there is no inkling of any corroboration of such allegation from the materials on record. In fact, the respondent-authorities were lenient enough to

wait for the end of the pandemic to award contract to a third party, although the contract with the petitioners had already expired on May 31, 2020.

In such view of the matter, the writ petition fails. Accordingly, W. P. A. 10069 of 2020 is dismissed without any order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be uploaded and the respondents are directed to act upon the same.

(Sabyasachi Bhattacharyya, J.)

