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2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No.1941 of 2021

**National Projects Construction
Corporation Limited**

Versus

**West Bengal Micro and Small Enterprises
Facilitation Council (SAMADHAAN), MSEFC,
Government of West Bengal and others**

Mr. Debajyoti Basu,
Ms. Reshmi Mukherjee.
...for the petitioner.

Mr. T.M. Siddiqui,
Mr. N. Chatterjee.
...for the State.

The writ petitioner had invoked a bank guarantee against the respondent no.4 in connection with a work assigned to respondent no.4 by the petitioner. The respondent no.4, on the other hand, obtained an order from the respondent no.1-authority, directing the petitioner to pay the dues of respondent no.4 on such work inasmuch as the same pertain to the bank guarantee amount.

Such order of the respondent no.1, dated August 19, 2020, was challenged in a writ petition bearing WPA 7287 of 2020. A co-ordinate Bench of this Court, vide order dated October 13, 2020 passed an interim order restraining the respondents from

giving effect or further effect to such impugned order passed by the respondent no.1 dated August 19, 2020 for a limited period. Such interim order was subsequently extended, lastly till March 31, 2021.

During subsistence of the interim order passed by this Court, respondent no.1 issued another intimation to the petitioner on December 28, 2020, asking the petitioner to make the payment, which was the subject-matter of the previous impugned order, positively within fifteen days from the date of receipt of the letter.

Learned counsel for the petitioner submits that such action on the part of the respondent no.1 is palpably illegal and in blatant contravention of the interim order passed by this Court in the aforementioned writ petition.

Learned counsel appearing for the respondent no.1 submits that the respondent nos.4 and 5 had misled the respondent no.1 into passing such order, which is corroborated by the application made by respondent no.4, annexed at page 326 of the writ petition, wherein it was declared by the respondent no.5, on behalf of the respondent no.4, on November 9, 2020 that the said respondents had not filed/preferred any appeal before any court on the same dispute.

As per submission of the petitioner, however, in the meantime the respondent nos. 4 and 5 had challenged the invocation of bank guarantee in a writ petition and had preferred an application under Section 9 of the Arbitration and Conciliation Act, 1996 as well. The respondent nos.4 and 5 have also invoked the arbitration clause in the relevant contract in the meantime.

The said writ petition was adjourned and still pending. However, the application under Section 9 of the 1996 Act was subsequently dismissed, which order was challenged in an appeal under Section 37 of the said Act at the behest of respondent nos. 4 and 5, giving rise to FMAT No.481 of 2020, which is still pending. It may be recorded that no interim order has been passed in the said appeal.

In the context of the submissions of the parties, it is evident that the impugned order passed by the respondent no.1, annexed at page 324 (annexure P/6 of the writ petition) was palpably illegal and in direct violation of the interim order passed by the co-ordinate Bench (subsequently extended) in WPA 7287 of 2020.

However, a benefit of doubt can be given to the respondent no.1 for such illegal action in issuing the notice dated December 28, 2020, since it is apparent from the application made by respondent

nos.4 and 5, that an incorrect submission as regards the pendency of other matters was given by the respondent nos.4 and 5.

Although learned counsel for the respondent no.1 submits that the order passed by the co-ordinate Bench on October 13, 2020 in WPA 7287 of 2020 was not within the knowledge of the respondent no.1, such submission has to be taken with a pinch of salt since the respondent no.1 was a party to the said proceeding and was apparently served before the interim order was passed.

It ought to be mentioned that the respondent no.1, which discharges public functions, being an instrumentality of the Government, ought to be more cautious in passing orders at the drop of a hat without verifying the factual basis of the applications on the basis of which such orders was passed. It was for the respondent no.1 to verify from this Court, at least by taking information in proper form, as regards pendency of any other litigation in the present regard. Having not done so, the respondent no.1, in a sense, shirked its duties as a public body.

Be that as it may, in view of the impugned order dated December 28, 2020 being patently *de hors* the law and in contravention of the impugned order passed by WPA 7287 of 2020, the same is set aside. WPA 1941 of 2021 is disposed of accordingly.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)