

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 660 of 2021

IA NO: CAN 1 of 2021

IA NO: CAN 2 of 2021

(Through Video Conference)

Reserved on: 08.12.2021

Pronounced on: 23.12.2021

West Bengal State Electricity Distribution Company Limited & Ors.

...Appellants

-Vs-

M/S. Hilltake Electronics Private Limited & Ors.

...Respondents

Present:-

Mr. Partho Sarathi Bhattacharya,
Ms. Sonal Sinha,
Mr. Abhishek Prasad, Advocates
... for the appellants

Ms. Sutapa Sanyal,
Ms. Joyee Maiti, Advocate
... for the State

Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Samik Sarkar
... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. The appellant, West Bengal State Electricity Distribution Company Limited, being aggrieved with the order of the learned Single Judge dated 12th February, 2021 passed in WPA 718 of 2021 has filed this writ appeal.

2. Respondents had filed the WPA before the learned Single Judge with the plea that the tender was floated by the appellants on 13th May, 2013 inviting bids for rate contract for online collection arrangement of energy bills at different locations of West Bengal. Respondents had submitted the bid and being L1, Letter of Award (LOA) dated 18th December, 2019 was issued to it but by order dated 09th November, 2020, the contract was terminated. The termination of contract was on the basis of the Government Notification dated 12th October, 2020. Therefore, by filing the writ petition, the respondents had challenged the order of termination of contract as also the applicability of the notification dated 12th October, 2020 and subsequent notification dated 14th October, 2020.

3. The learned Single Judge by the impugned order has allowed the writ petition and has set aside the notice of termination by further directing that the contract between the respondents and appellants is revived and will run its due course subject to the terms and conditions as mentioned therein.

4. The submission of learned Counsel for the appellants is that it was a civil dispute, therefore, the learned Single Judge ought not to have entertained the writ petition and that there is an arbitration clause in the agreement, therefore, the same should have been resorted to and that in view of the notifications of the State Government dated 12th October, 2020 and 14th October, 2020, now the collection of electricity charges through the Bangla Sahayak Kendra (BSK) is free, therefore, there was no further need of the respondents to continue with the work and continuation of the work by the respondents would have resulted into unnecessary additional financial burden on the appellants.

5. Learned Counsel for the respondents submit that none of the grounds mentioned in the termination clause of the contract are available and that in terms of clause 17 of the contract, the hearing

was necessary before taking the decision which has not been given and clause 18 has not been followed and further that the period of contract was three years which has not expired but in the mean while, the termination has been made. He submits that learned Single Judge has not committed any error in allowing the petition.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the work order dated 18th December, 2019 was issued to the respondent in respect of online collection of payments against energy/non-energy bills/quotations at different locations of West Bengal for a period of three years. It is not in dispute that the service has not been commenced though about two years have already elapsed. The work order contains the clause relating to the right of the appellant to terminate the contract on negligence or failure to commence the service within the time schedule.

7. After awarding the contract, the State Government had issued the notification dated 12th October, 2020 stating that it had set up Bangla Sahayak Kendra (BSK) all over the State for providing free digital and online service to the people across the State and that State will render all its services through the BSK and no service will be rendered through Common Service Centre (CSC)/TMK. A further notification dated 14th October, 2020 was issued making it mandatory for all Government departments to render digital and online service through the BSK. The list enclosed along with that notification at serial no. 131 mentions the service relating to payment of electricity bills.

8. In view of the above notification dated 12th October, 2020, the contract issued to the respondent was cancelled by order dated 09th November, 2020.

9. The contract contains following arbitration clause:

“ITB.20. Settlement of Disputes: Settlement of Disputes

In case of any dispute arising out of the contract, the same shall normally be settled through meeting between and the contracting agency at the appropriate level. Any dispute arising out of or in connection with the contract shall, to the extent possible, be settled amicably between the parties. All disputes or differences in respect of which the decision if any has not become final shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act – 1996 or any statutory modification thereof. The venue of Arbitration shall be Kolkata only.”

10. In terms of the above clause, respondents have the remedy of arbitration to settle the disputes and differences.

11. The Supreme Court in the matter of **Tata Cellular vs. Union of India, (1994) 6 SCC 651** has held:

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of

reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

12. This Court does not sit as a Court of Appeal in such contractual matters. The issue relating to the scope and applicability of the application of notifications, termination of the contract, scope of the clause of termination and the correctness and validity of the termination order are the issues which require factual enquiry. It also needs to be examined in that process if after issuance of the notifications dated 12th October, 2020 and 14th October, 2020, the appellant could have proceeded with the contract especially when the service under the contract had not commenced. Therefore, learned Single Judge is not justified in examining this controversy himself instead of directing the parties to resort to the arbitration clause. In the facts of the case, parties ought to have been relegated to take recourse to the arbitration.

13. Hence, we set aside the order of the learned Single Judge and by allowing this appeal, grant liberty to the parties to act in accordance with the arbitration clause.

14. Accordingly, this appeal is allowed and the connected application(s), if any, is disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
23.12.2021

PA(RB)