

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 8148 of 2021

Pearl Corporation
Vs.
State of West Bengal & Ors.

Mr. Tapas Dutta
... For the petitioner

Mr. N.C. Bihani
Ms. Papiya Banerjee Bihani
... For Digha Sankarpur
Development Authority

The petitioner says that on 11th July, 2020 a tender for Construction of Rehabilitation Stall near Helipad Ground at New Digha, Unit No.E floated by Digha Sankarpur Development Authority, being the respondent no.2, was cancelled on or about 11th July, 2020. The memo of cancellation was uploaded in the portal on 13th July, 2020 as will appear from the print out annexed at page 28 of the writ petition. The petitioner also says that there were four bidders in the said tender process, yet the tender was cancelled on the ground that the minimum number of tenderer required to have participated as enumerated in the notification dated 25th June, 2012 published by the Government of West Bengal, Finance Department, Audit Branch, were not present. This fact, according to the petitioner, is incorrect on the face of

record as the names of four participants have been shown even in the cancellation memo. The petitioner challenged this cancellation by filing a writ petition, being WP No.6122 (W) of 2020 which is pending. In the said writ petition, directions for affidavits were given on 12th August, 2020 without any interim order being passed. The petitioner further says that the said writ petition is pending after completion of affidavits.

The petitioner then refers to page 29 of his writ petition and submits that a fresh tender for the selfsame work, i.e., Construction of Rehabilitation Stall near Halipad Ground at New Digha, Unit No.E, has been again floated on 1st February, 2021. The petitioner has challenged the said notice inviting tender floated on 1st February, 2021 on the ground that after cancelling the tender on 11th/13th July, 2020, the respondent authorities could not have floated a fresh tender for the selfsame work when the petitioner's previous writ petition challenging the cancellation is pending. The petitioner says that the intention of the respondents is *mala fide* which is apparent from their action. This Court, therefor, according to the petitioner, shall intervene in the matter by exercising jurisdiction under Article 226 of the Constitution of India as the soundness of the decision in floating the fresh tender is in question. The petitioner relies upon the judgment reported in **(2018) 5 SCC 562 (Municipal Corporation, Ujjain & Anr. v. BVG India Limited & Ors.)** in this regard.

On behalf of Digha Sankarpur Development Authority, it is submitted that the previous tender had to be cancelled because the technical bid of two persons/entities out of four were cancelled which brought down the number of participants below three and, as such, the tender had to be cancelled in view of the directions given by the Finance Department, Audit Branch of the Government of West Bengal in its notification dated 25th June, 2012. It is further submitted on behalf of Digha Sankarpur Development Authority that the scope of judicial review in case of awarding of Government contract is very limited. The petitioner's case does not come within the exceptions for which this Court exercising its writ jurisdiction shall interfere in the matter.

After hearing the parties and considering the materials on record, I find that the writ petition is not maintainable in the facts as stated in the writ petition. In this context, the judgments reported in **(1994) 6 SCC 651 (Tata Cellular v. Union of India)**, **(2007) 14 SCC 517 (Jagdish Mandal v. State of Orissa)** and **BVG India** (supra) are taken note of.

The petitioner, in this writ petition, has not challenged the decision-making process in awarding the contract but challenges the action of Digha Sankarpur Development Authority in floating a tender for the selfsame work, the tender against which had been previously

cancelled for inadequate participation. This is a policy matter which involves public interest. This decision of Digha Sankarpur Development Authority cannot be questioned by the petitioner on the ground of *mala fide* or for its soundness. The floating of the fresh tender for the selfsame job cannot also be said to be arbitrary.

The petitioner's case does not come within any of the grounds for intervention enumerated in the judgments referred to hereinabove.

The writ petition is, therefor, dismissed without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)