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16.11.2021
TN

WPA No.17438 of 2021

Mamoni Construction
Vs.
The State of West Bengal and others

Mr. Shamim Ul Bari

.... for the petitioner

Mr. Tapan Kumar Mukherjee,
Mr. Shantanu Mitra,
Mr. Pranab Halder

....for the State

Upon hearing learned counsel appearing for both the contesting parties, it appears that the petitioner's primary grievance is that, the petitioner could not complete the construction of road, which was assigned on tender to the petitioner, due to several difficulties beyond the control of the petitioner.

Apart from the fact that several hindrances were created by the local people while constructing the road-in-question in terms of the work order, the delay was occasioned subsequently due to the dearth of manpower in the pandemic situation as well.

That apart, the petitioner was short of funds since the petitioner's dues for the past work were

withheld by the authorities on the ground that the penalty deductible from the petitioner had not yet been cleared.

Although the petitioner, by placing reliance on several communications, has satisfactorily shown that the petitioner might have had certain inconveniences in completion of the work, the respondent-authorities cannot be faulted on any score, either on the ground of arbitrariness or mala fides or otherwise. The authorities gave several opportunities to the petitioner and were considerate enough in withholding the amount and not deducting the liquidated damage at the initial stage. However, the inconveniences faced by the contractor have to be kept in balance with the urgency implicit in public works.

In the present case, ample opportunities were given to the petitioner during the pandemic period and earlier to complete the work. However, since the petitioner could not do so, the authorities were justified in law and as per the contract between the parties to cancel the petitioner's contract and float a fresh tender.

Moreover, the newly floated tender is at a mature stage of completion and disturbing the same by a judicial order would tantamount to interfering with the administrative discretion of the State and the

authorities, which would ultimately paralyze all public works and would be an intrusion to the concept of separation of powers.

In such view of the matter, despite having full sympathies for the plight of the petitioner, there is no scope of exercising “mercy jurisdiction” under Article 226 of the Constitution of India.

Accordingly, WPA No.17438 of 2021 is dismissed on contest without any order as to costs.

It is made clear that this order will not prevent the petitioner from claiming its legitimate dues from the respondent-authorities, if any, and, in the event any such claim is made, the respondent-authorities shall decide on the same upon hearing the petitioner, if necessary, and communicate the decision to the petitioner in accordance with law.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)