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2021

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

W.P.A. No. 9308 of 2020

**M/s. H.R. Construction
Versus
The State of West Bengal and others**

Ms. Shabana Hasin.
...for the petitioner.

Mr. Samrat Sen.
...for the State.

Learned counsel for the petitioner submits that the petitioner's bid in a tender, issued by the respondent-authorities, was rejected on the ground that the partnership deed of the petitioner was not registered. It is submitted that the petitioner only came to know of the ground of such refusal after it filed a previous writ petition bearing WPA 9072 of 2020, which is still pending. Learned counsel places reliance on photocopies of several documents annexed to the writ petition, which show that, apparently, the petitioner's partnership deed was registered on the relevant date as well as that the petitioner/firm was appropriately registered with the Registrar of Firms.

Learned senior counsel appearing for the respondent-authorities objects at the outset on two-fold grounds:

First, due to pendency of the previous writ petition on the self-same cause of action, challenging the technical bid, it is argued that the present writ petition is not maintainable.

Secondly, learned senior counsel submits that work order was already issued in respect of the impugned tender long back in favour of the successful bidder, who has since completed the work and payments have also been made for such work done. As such, it is submitted that the present writ petition has become infructuous, in any event.

Even without going into the merits of the case as regards the entitlement of the petitioner to be considered as an eligible bidder, it is evident that the work, for which the impugned tender was floated, has already been completed.

It is arguable, though, whether the present writ petition is not maintainable, since two options were available to mitigate such grievance of the petitioner. The first being that the pending writ petition could be directed to appear along with the present and clubbed together for disposal. Secondly, the petitioner might be permitted to have its previous writ petition dismissed for non-prosecution and

proceed with the present writ petition, thereby obviating the scope of pendency of two writ petitions on the same cause of action.

However, the second point urged by the respondent-authorities is fatal to the writ, inasmuch as there is no scope remaining for the petitioner to participate in the tender process, since the work in terms of the same has already been concluded and payments made.

However, this cannot preclude the petitioner from seeking damages, if entitled in law and facts, before the appropriate forum.

Accordingly, WPA 9308 of 2020 is disposed of by granting the petitioner liberty to approach the appropriate forum for the remedy of damages on the allegations made on merits in the present writ petition, if so entitled in law and fact. In the event any such approach is made, the concerned court shall decide the same on its own merits and in accordance with law, without being prejudiced in any manner by the disposal of the present writ petition and/or observations made herein.

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.)