

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

A.P.O.T. No. 97 of 2021
IA No:GA/1/2021
Madho Das Mundhra
Versus
Railtel Corporation of India & Anr.

-And-

A.P.O.T. No. 100 of 2021
IA No:GA/1/2021
Madho Das Mundhra
Versus
Railtel Corporation of India & Anr.

BEFORE:

The Hon'ble JUSTICE TAPABRATA CHAKRABORTY

-And-

The Hon'ble JUSTICE SUBHASIS DASGUPTA

Date : 5th August, 2021.

Mr. Suddhasatva Banerjee with Mr. Sourajit Dasgupta,
Mr. Ashis Kr. Mukherjee & Mr. Sourabh Prasad, Advs.
... for Appellant.

Mr. Vikas Baisya with Mr. Ritoban Sarkar, Advs.
... for Respondents

The appeal being APOT No.97 of 2021 has been preferred challenging an order dated 18th February, 2021 passed in a writ petition being WPO No.71/2021. The said writ petition was preferred by the writ petitioner/appellant challenging *inter alia* a tender process initiated by a Notice Inviting Tender (in short, NIT) dated 14th January, 2021.

The appeal being APOT No.100 of 2021 has been preferred challenging an order dated 18th June, 2021 passed in the same writ petition on an application subsequently preferred by the appellant *inter alia* praying for restraining the respondents from opening the financial bids in the tender process initiated by the NIT dated 14th January, 2021.

It appears that there is a delay in preferring the appeal being APOT No.97 of 2021. However, in view of the order passed by the Hon'ble Special Bench of this Court and since we have invited the learned advocates to advance their arguments on merit, the delay stands condoned.

Mr. Banerjee, learned advocate for the appellant in both the appeals argues that 25th January, 2021 could not have been the end date for seeking clarification since the last date of downloading the document in respect of the tender was fixed on 22nd February, 2021. By such arbitrary fixation of dates, the tender process was sought to be limited within a favoured few. In view thereof, the learned Judge ought to have granted the interim protection, as sought for by the petitioner.

He argues that the order impugned in the appeal being APOT No.97 of 2021 was passed without even considering the order passed by a Coordinate Bench of this Court in a similar tender process initiated by a NIT dated 26th August, 2020.

According to him, while passing the order impugned in the appeal being APOT No.100 of 2021, the learned Judge failed to appreciate that the respondents were proceeding in hot haste to open the financial bids with an intent to disentitle the appellant from submitting his bid.

Mr. Baisya, learned advocate appearing for the respondents submits that the tender pertains to sectional railway traffic management all over India and is a public project. The appellant did not even participate in the said tender process and preferred the writ petition with the sole intent to stall the same. There is no infirmity in the orders impugned in the present appeals and as such no interference is called for, moreso when work orders had already been issued. In support of his argument, Mr. Baisya placed reliance upon a judgment delivered in the case reported in *2020 SCC OnLine Calcutta 2213 (Subir Ghosh vs. The State of West Bengal & Ors.)*.

In reply, Mr. Banerjee submits that the petitioner could not have challenged the tender process having participated in the same.

A perusal of the order dated 18th February, 2021 impugned in the appeal being APOT No.97 of 2021 reveals that the issues agitated by the appellant were duly considered. In appreciation of the fact that serious challenges have been levelled by the appellant against some of the clauses of the NIT, the learned Judge directed the parties to exchange their affidavits and also observed that *'any action taken in the meantime on the*

basis of the notice inviting tender shall abide by the result of the writ petition'.

In view of such protection as conferred by the order dated 18th February, 2021 and since there had been no change in the circumstances, the learned Judge by an order dated 18th June, 2021 rightly did not interfere in the tendering process.

Upon dealing with all the factual issues and considering the arguments as advanced, the learned Single Judge passed reasoned orders refusing the interim reliefs, as prayed for by the appellant, and we do not find any error in the same. The orders impugned in the above appeals also do not suffer from any [patent infirmity](#) warranting interference.

Accordingly, the appeals being APOT No.97 of 2021 and APOT No.100 of 2021 are dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(SUBHASIS DASGUPTA, J.)

(TAPABRATA CHAKRABORTY, J.)

