

OD – 1 & 2

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

APO 136 OF 2020
WITH
WPO 340 OF 2018
IA NO: GA 2 OF 2020

M/S JAGANNATH ENTERPRISE AND ANR.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

&

APO 138 OF 2020
WITH
WPO 339 OF 2018
IA NO: GA 2 OF 2020

M/S IMPULSE HEALTH CARE AND ORS.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 23rd March, 2021.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Mayukh Maitra, Adv.

Mr. Rajesh Naskar, Adv.

...for Petitioner

Mr. Alok Kr. Ghosh, Adv.

Mr. Gopal Chandra Das, Adv.

...for KMC/respondent

The Court : Four writ petitions were disposed of by the Hon'ble Single Bench by a common judgement and order dated 27th September, 2019. Two of the four writ petitions being WP No. 337 of 2018 and WP No. 338 of 2018 arrived before this Court by way of two separate appeals being APO No. 164 of 2019 and APO No. 163 of 2019 respectively.

By way of a further background to the facts of this case, it is also necessary to refer to the judgement and order of this Court dated 11th March, 2020 in APO No. 163 of 2019 and APO No. 164 of 2019 respectively (*supra*).

By the order dated 11th March, 2021, this Court affirmed the order of the Hon'ble Single Bench dated 27th September, 2019 in WP No. 337 of 2018 and WPO No. 338 of 2019 directing, *inter alia*, the respondents/Kolkata Municipal Corporation to pay the appellants the rates claimed by them in terms of the Work Orders communicated to them for supply of medicines to the Kolkata Municipal Corporation.

This Court agreed with the view of the Hon'ble Single Bench that the rates of supply having been fixed in the Work Orders in WPO No. 337 of 2018 and WPO No. 338 of 2018 corresponding to APO No. 163 of 2019 and APO No. 164 of 2019, such Work Orders/Purchase Orders could be treated as valid contracts entered into by and between the appellants/the suppliers and the KMC.

The facts in these two appeals follow a similar but not identical background of supply of medicine by the appellants to the

respondents/KMC. The difference lies in the fact that in the present set of appeals, there are no written Work Orders/Purchase Orders from which the Hon'ble Single Bench could come to the conclusion that the supply of medicines was at a particular rate.

Reliance is placed by Mr. Chowdhury, learned Counsel appearing for the present appellants on several delivery challans which show the supply of medicines and the receipt thereof, by way of a stamped receipt from the office of the Superintendent, Central Medical Stores KMC.

Mr. Chowdhury, submits that from the delivery challans as attached to the writ petition as well as to the stay applications in the appeals, it will be evident that the same imbibe the colour of invoices. Therefore, there can be no manner of doubt that the rates of supply of medicines in such delivery challans as admittedly delivered to the Kolkata Municipal Corporation cannot be disputed at this stage.

Mr. Chowdhury, learned Counsel appearing for the appellants, fortifies his arguments by relying upon the principal of summary demands as provided under Order 37 of the Code of Civil Procedure and cites several legal authorities in support thereof. It is submitted that such principles are analogous to the facts in the present appeal. The legal authorities relied upon by Mr. Chowdhury are as follows :-

2017 SCC Online Del 7894 (M/s. FLINT GROUP INDIA PRIVATE LIMITED VS. M/s. GOOD MORNING INDIA MEDIA PRIVATE LIMITED)

MANU/DE/0406/2001 (KLG SYSTEL LTD. VS. FUJITSU ICIM LTD.)

MANU/MH/1363/2007 (JATIN KOTICHA VS. VFC INDUSTRIES PVT. LTD.)

MANU/DE/0001/1992 (PUNJAB PEN HOUSE VS. SAMRAT BICYCLE LTD.)

Per contra, Mr. Ghosh, learned Counsel appearing for the KMC, highlights that in the facts of the present appeal there are no written contracts/Work Orders/Purchase Orders which have been visibly signed by and between the KMC and the appellants. Even assuming for the sake of argument that there has been supply of medicine by the appellants, the distinction connected to such supplies lies in the fact that the appellants have been unable to establish that the supplies were institutionally ordered by the KMC as one of the contracting parties.

Therefore, Mr. Ghosh submits that the Hon'ble Single Bench has permitted the appellants to prove their case before an appropriate alternative forum which is the competent civil court.

Having heard and considered the facts on record, this Court finds no reason to take a view different from the stand taken by the learned Counsel for the KMC in the given set of facts. In the absence of specific work orders and rates, reliefs in this appeals cannot be granted to the appellants in

contradistinction to APO No.163 of 2019 and APO No.164 of 2019.

Accordingly, the Judgement and Order of the Hon'ble Single Bench dated 27th September, 2017, relegating the writ petitioners in WP No.339 of 2018 and WP No.340 of 2018 to the competent Civil Court deserves no interference.

APO No.136 of 2020 and **APO No.138 of 2020** stand thus dismissed.

Parties to act on a server copy of this order downloaded from the official website of the Hon'ble Court.

(HIRANMAY BHATTACHARYYA, J.)

(SUBRATA TALUKDAR, J.)