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

APO 163 of 2019
WITH
WPO 337 of 2018
IA GA No. 1 of 2020
(Old GA No. 406 of 2020)
GA 2 of 2020

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

WITH

APO 164 of 2019
WITH
WPO 338 of 2019
IA GA NO. 1 of 2020
(Old GA No. 407 of 2020)
GA No. 2 of 2020

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

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

And

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 11th March, 2021.

APPEARANCE:

Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.

Mr. Jishnu Choudhury, Adv.
Mayukh Maitra, Adv.

The Court :- Under challenge in this appeal is the order impugned of the Hon'ble Single Bench dated 27th September, 2019 in WP No. 337 of 2018. The Kolkata Municipal Corporation along with its concerned officers, being the respondents in the writ petition, are the appellants before this Court.

By the order impugned the Hon'ble Single Bench, *inter alia*, held that the sums of money claimed by the writ petitioners/ the respondents in the appeal for supply of medicines against Work Orders to the KMC were liquidated sums and, therefore, payable in terms of the rates as fixed in the Work Orders as issued to the writ petitioners. The Hon'ble Single Bench, therefore, allowed the writ petitions and directed payment to be made within a fortnight to the writ petitioners from the date of the communication of the order. While so directing, the Hon'ble Single Bench turned down the principal argument of the KMC/ the respondents in the writ petition, that change in the rates of procurement of medicines unilaterally introduced by the KMC subsequent to the Work Orders cannot apply retrospectively.

It is relevant to mention at this juncture that the writ petition under consideration in this appeal being WP No. 337 of 2018, along with three other matters were decided by the common judgment and order dated 27th September, 2019. A similar direction of the nature as stated hereinabove was passed by the Hon'ble Single Bench also in respect of WP 338 of 2018.

Accordingly, the remaining directions of the Hon'ble Single Bench in the common judgment and order dated 27th September, 2019 were not germane before this Court for consideration in this appeal.

It is of consequence to this discussion that on the same date, i.e. the 27th of September, 2019, the Hon'ble Single Bench was pleased to record in its order as follows:

“Later

On the prayer of Mr. Ghosh, learned Senior Counsel appearing for the Corporation, the time to make payment as in paragraph 14 of this judgment is extended by a period of four weeks after reopening of Court after long vacation.”

Mr. Ghosh, learned Counsel appearing for the KMC, takes a novel stand before this Court that the rates in the Work Orders in issue were fixed unilaterally and in personal capacity by the superintendent of the Central Medical Stores of the KMC. Thus, the KMC did not enjoy any contractual relationship with the writ petitioners and, axiomatically therefore no contractual obligation to pay the amounts at all or, at the highest, at the rates as claimed by the writ petitioners exists *qua* the KMC.

The further stand taken by learned Counsel for the KMC that the subsequent recording by the Hon'ble Single Bench of extension of time to make payments as directed by the order impugned dated September 27, 2019, ought not to be construed as the stand of the KMC itself. Even assuming for the sake of argument that such a recording by the Hon'ble Single Bench beginning with the word '*Later*' is correct, such stand is of the learned Counsel and, cannot bind the KMC.

Mr. Choudhury, learned Counsel appearing for the writ petitioners/the respondents in this appeal with Mr. Maitra, learned Counsel, submits that in effect the KMC is not a person aggrieved by virtue of the concession as recorded by the Hon'ble Single Bench beginning with the expression '*Later*'. It is submitted that the consent offered by learned Counsel for the KMC to make payment within an extended time

requires to be appreciated in the context of the specific directions of the Hon'ble Single Bench. It is submitted that in view of the Hon'ble Single Bench ultimately settling the rates of the payment as fixed by the respective Work Orders and the outer time limit to make such payment, the concession of the Learned Counsel as recorded by the Hon'ble Single Bench is binding on the KMC.

It is submitted by Mr. Choudhury that from the documents before the Hon'ble Single Bench and before this Court as annexed to the application for stay filed by KMC being G.A. No. 1 of 2020, it would be abundantly clear that the Purchase Order was signed on behalf of multiple officers belonging to the Medical Stores and to the Health Department on behalf of the KMC itself. Similar is the position with regard to the acknowledgement of the supply of the said items as well as payment of bills.

The particular attention of this Bench is drawn to the affidavit relied upon on behalf of the KMC before the Hon'ble Single Bench. Such affidavit, it is pointed out, is titled "*Discovery of Documents in the Form of Affidavit on behalf of the Respondent no. (1-5)*". Paragraph 1 of the said affidavit and has been affirmed by the Superintendent of the Medical Stores of the KMC/the respondent no.5 to the writ petition on behalf of self and the KMC as impleaded in the writ petition. Relying on the authorities of **(2008) 13 SCC 597** at **paragraph 44** and **(2017) 16 SCC 757** at **paragraph 26**, Mr. Choudhury submits that the Hon'ble Single Bench was correct in noting that there can be no subsequent change, alteration, novation in the contract after the terms and conditions have been entered into by and between the parties and acted upon by them. It is submitted that the parties to the Purchase Order entered into by and between the writ petitioners and the KMC represented by its Health and Medical Stores Department was a step in the contract and was acted upon by the KMC acknowledging supply of medicines etc.

Having heard the parties and considering the materials placed, this Court finds that the point taken by learned Counsel for the KMC that the recording by the Hon'ble Single Bench beginning with the expression '*Later*', when viewed in the context of the directions passed by the Hon'ble Single Bench cannot acquire any meaning other than a commitment on the part of the Learned Counsel for KMC to pay the amounts as directed by the order dated 27th September, 2019 within the extended period of time. It is of relevance to point out to paragraph 14 of the judgment and order dated 27th September, 2019 read with the direction to pay in terms of prayer (a) of the writ petition within the extended period of time.

In the above view of the matter, this Court is in agreement with the stand taken by Mr. Choudhury that the appellants stand non-suited at the threshold *qua* concession as recorded by the Hon'ble Single Bench and, at the time without taking steps at the earliest to bring to the notice of the competent Hon'ble Single Bench the present stand taken in the appeal refuting the said concession. In the considered view of this Court, nothing can be inferred to the effect that the concession is not binding on the KMC. Additionally, there are no Grounds in the Memo of Appeal taken by the appellants/the KMC to support its above noted stand.

Having discussed as above, even on merits, this Court cannot agree with the stand taken by the appellants that it had no obligation under the contract. The nexus of the appellants with the Purchase Order and, therefore, the contract is writ large on the documents itself. The conduct of the appellant also shows such.

In the backdrop of the above discussion, the appeal fails.

A.P.O. No. 163 of 2019 with IA No.:GA/1/2020 (Old No:GA/406/2020), GA/2/2020 and A.P.O. No. 164 of 2019 with IA No:GA/1/2020(Old No:GA/407/2020), GA/2/2020 stand dismissed.

Since the parties are not contesting on any issue over and beyond what stands discussed above on law, affidavits are not invited. Accordingly, other allegations shall be deemed to be denied and disputed.

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.)