

08.03.2022

Ct. No. 13

Sl.15

pk

W.P.A No. 1961 of 2022
(Through Video Conference)

Arup Mallick

Vs.

State of West Bengal and another

Mr. Joy Saha,

Mr. Surojit Dasgupta,

Mr. A. Chaudhury

.... For the petitioners

Mr. Uttam Kumar Bhattacharya

... for the Zilla Parishad.

The writ petitioner challenges an order dated 22.12.2021 passed by the Assistant Engineer, Purba Medinipur Zilla Parishad terminating a contract for construction of road from Bhairabdari PMGSY Road to Mallikpur Rangamatia Primary School under Patashpur-II.

The principal ground urged is that the time period for completion of contract was extended by a period of three months from December 16, 2022 and the petitioner still had about three months or so to complete the same. It is next argued that in terms of Section 55 of the Contract Act, the petitioner had the option to either accept the extension of time and change of conditions or terminate the contract. Since the petitioner had accepted the extension, he should

be allowed to perform the contract within the three months period which is yet to expire.

It is lastly argued the principal reason the petitioner could not complete the contract within the extended time is non availability of new material called 'Morrum'. The original contract described that the petitioner was to use brick aggregates and sand to fill up the road. Under the extended time, the petitioner was required to undertake construction with morrum instead of the original material.

On the question as to why a Writ Court should entertain the petitioner's claim, Mr. Saha, learned senior advocate appearing for the petitioner would argue that the respondents have acted arbitrarily in terminating the contract despite there being three months available to the petitioner to complete the works.

Rights under Article 19(1)(g) of the Constitution of India stated to have been affected by the reason of the acts and omissions of the respondents.

This Court has carefully considered the arguments of the petitioner. Any enquiry for consideration of a prayer for interference under Article 226, at an interim stage in a purely private contract with the State would involve examining as to whether the petitioner was able to perform the contract during the extended period of time.

While the petitioner contends that he was terminated from doing so for want of new raw material, the State in its letter of termination would appear to have contended otherwise. One would have to weigh evidence and enter into disputed questions of fact, to even consider the passing of any interim relief in aid of any final relief.

A Writ Court under Article 226 of the Constitution of India cannot enter into disputed questions of fact. The petitioner in any event has an efficacious and alternative remedy before a civil forum for damages which constitute effective and adequate relief.

In any event, this Court does not wish to entertain the writ petition given the disputed questions of fact involved. The dicta of the Hon'ble Supreme Court in the case of **Joshi Technologies International Inc. Vs. Union of India** reported in **2015 SCC OnLine SC 490** is referred to in this regard. Paragraph 69 of the said decision is set out hereinbelow:

“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.”

For the reasons stated herein above, the writ petition must fail and is hereby dismissed.

It is made absolutely clear that this Court has not in any way decided upon the mutual rights and claims of the petitioner against the State. The same are left to be adjudicated, if the parties approach before the civil forum or as may be determined in terms of the contract between them.

Since the respondents have not used any affidavit in opposition, none of the allegations contained in the writ petition shall be deemed to have been admitted by them.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

