

288 06.07.2022
M/L

gd/ssd

MAT/476/2022
IA NO: CAN/1/2022
VISIBILITY & ANR.
VS

THE STATE OF WEST BENGAL AND ORS.

Mr. Shamim Ahamed,
Mr. Arko Maity,
Mr. Sarthak Burman,
Ms. Ambia Khatoon
..for the Appellants

Mr. Amitesh Banerjee,
Ms. Ipsita Banerjee
..for the State

This appeal is at the instance of the writ petitioners challenging the order of the learned Single Judge dated 03.03.2022 whereby WPA 17486 of 2021 has been disposed of by holding that the grievance raised by the appellants lies into the realm of private contract and for violation thereof civil remedy may be sought.

The appellants had filed the writ petition challenging the memo dated 28.07.2021 whereby the work of installation and maintenance of Police Traffic Control (Manual and Assistance) Booth including the Security Cabins in the Murshidabad district was awarded to INCODA.

The plea of the appellants is that the work order was issued to the appellants on 13.07.2021 and thereafter for the same work, contract could not have been given to the third party without cancelling the

earlier contract as per the terms of the work order.

The submission of learned counsel for the appellants is that the work order awarded to the appellants and the appellants had invested the amount but without cancelling the work order of the appellants, now the contract has been awarded to a third party.

As against this, the submission of learned counsel for the State is that the contract which was awarded to the appellants was subsequently terminated in a mutual discussion and the original work order was returned back by the appellants and thereafter the work was awarded to the third party INCODA which had done the work earlier. He submits that the appellants were not in a position to mobilise the resources for carrying out the work of operation and maintenance of traffic signals in the district concerned and the work could not have been stopped even for a minute, therefore, the contract was awarded to the third party.

We have heard the learned counsel for the parties and perused the record.

The stand taken by the respondent nos.3 to 5 in their affidavit-in-opposition before this Court is as under:

“INCODA approached the respondent authorities seeking permission to continue the work and at a meeting held on 26.07.2021 between the Appellant and the Respondent No.4. i.e. the Additional Superintendent of Police (Traffic), Murshidabad PD with the permission of the Superintendent of Police, Murshidabad PD, the

Appellant agreed to withdraw from the proposal to do the work and returned the agreement/letter dated 13.07.2021 to the respondent authorities. The Appellant was given a copy of the agreement with the endorsement “cancelled” and the Respondent authorities retained the original. It is pertinent to mention that the Appellant had not started any work at that point of time and after amicable discussion the original agreement copy which was returned by the appellant was duly cancelled and the same was intimated to them at once.”

The above stand of the State authorities has been denied and disputed by the learned counsel for the appellants. Therefore, now the appeal involves a disputed question of fact as to whether by mutual consent the work order was cancelled/withdrawn. Such a disputed factual issue cannot be decided in exercise of the writ jurisdiction. Therefore, we find that the learned Single judge has not committed any error in taking the view that the appellants are required to avail the civil remedy. That apart, the learned Single judge has also rightly noted that the grievance raised by the appellants lies realm of private contract and the remedy in respect of breach thereof lies before the Civil Court.

Thus, we do not find any good ground to interfere in the order of the learned Single Judge.

The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

