

04
20.07.2022
d.p./BM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 8070 of 2022

**Gautam Ghosh
-versus
The State of West Bengal & Ors.**

**Mr. Siddhartha Banerjee,
Mr. Subhankar Das,
Mr. Bikram Sarkar.
...For the Petitioner.**

**Mr. Lalit Mohan Mahata,
Mr. Rudranil De.
...For the State.**

**Mr. Tapash Kumar Mondal,
Ms. Priya Ghosal.
...For the Respondent
Nos. 2 to 5.**

The petitioner is aggrieved by the termination of contract of the work order issued under Memo No. 194/ZP/PW/DE/22 dated 16th February, 2022 issued by the District Engineer, South 24-Parganas Zilla Parishad.

By the said communication, the District Engineer has terminated the contract of the petitioner and has forfeited the security deposit and the earnest money deposit.

The Zilla Parishad was also of the view that the petitioner may be debarred from participating in any procurement process under the South 24-Parganas Zilla Parishad for a period of two years.

The petitioner was issued a Work Order for construction of “Upgradation of road from Golar More to Chakda under Magrahat-I Panchayat Samity under RIDF – XVII” on 7th June, 2012.

The work order was issued by the District Engineer, South 24-Parganas Zilla Parishad specifically mentioning that the work should be started immediately from the date of commencement i.e. 9th June, 2012 and completed as per the specification and other terms of contract within twelve months.

The petitioner was unable to conclude the work within the stipulated period of twelve months. First show cause notice was issued to the petitioner by the District Engineer on 22nd December, 2017 whereby the petitioner was directed to show cause within fifteen days as to why Clause 2 of the Contract Agreement will not be invoked.

The petitioner filed the reply to the show cause and the time to complete the work stood extended.

The petitioner thereafter, failed to complete the work within the extended time period.

Resolution was taken in the meeting of the Zilla Parishad held on 18th June, 2019 that the time to complete the work be extended for a further period of six months.

The petitioner again failed to finish the work within the aforesaid time limit.

A further show cause was issued on 4th October, 2021 directing reply to be filed. Further extension of time was granted.

By the impugned communication dated 16th February, 2022, the District Engineer terminated the contract, forfeited security deposit and earnest money deposit and debarred the petitioner for a period of two years. The petitioner challenges the same.

It has been submitted that there is no provision for blacklisting or debarring a tenderer to participate in the tender process in terms of the contract pursuant to which the work order was issued and work was done.

Reference has been made to clause 2 of the Contract Agreement which specify that in the event the contractor fails to comply with any of the conditions, he shall be liable to pay as compensation an amount equivalent to one per cent or such similar amount as the Additional Executive Officer (AEO), Executive Engineer/District Engineer, may decide on the said tender costs of the whole work for each day that due quantity of work remains incomplete.

The entire amount of compensation to be paid shall not exceed 10% of the tender amount of the work shown in the tender.

It has been submitted that there is no provision for debarring the petitioner from participating in other procurement process undertaken by the Zilla Parishad.

It has further been submitted that the District Engineer, South 24 Parganas Zilla Parishad is not the competent authority to terminate the contract. Time was never the essence of the contract, since the time period for conclusion of the work stood extended on mutual discussions on several occasions.

Learned advocate representing the Zilla Parishad opposes the prayer of the petitioner.

It has been submitted that acceptance-cum-work order for the work clearly mentioned that the same was to be completed within a period of twelve months. In spite of repeated chances given to the petitioner, work could not be completed.

Zilla Parishad was left with no other alternative but to terminate the contract and engaged a separate contractor for conclusion of the work, which remained not completed by the petitioner.

It has further been submitted that show cause notice was duly issued in favour of the petitioner prior to taking a decision with regard to terminating the contract.

Clause 3 of the contract agreement has been relied upon by the respondents wherein it has been mentioned that the District Engineer is the competent

authority to take a decision to rescind the contract and in such case security deposit of the contractor stand forfeited and at the absolute disposal of the Government.

The District Engineer also has power and authority to take step to complete the unexecuted portion of work and to offer it to other contractor to complete the same and in such case, expenses which may be incurred in excess of the same which would have been paid to the original contractor, if the work had been executed by him shall be borne and paid by the original contractor and the same may be deducted from any money due to him by the Government under the contract or otherwise or from his security deposit or proceeds of the sale.

It has been fairly submitted before this Court by the learned advocate representing the respondents that there is no apparent provision for blacklisting or debarring a candidate from participating in subsequent procurement process under the Zilla Parishad.

It has been contended that as the petitioner failed to complete the work within the extended period of contract, accordingly, a minor or a token punishment has been imposed by debarring him from participating in any procurement process under the Zilla Parishad for a period of only two years.

Prayer has been made for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

It appears from records that the contract was issued in favour of the petitioner in June, 2012 and the date of commencement was 9th June, 2012. The work ought to have been completed in terms of the work order within a period of twelve months. The said period was repeatedly extended. Even after a period of ten years from the date of initial issuance of the contract, the petitioner failed to conclude the work in terms of work order issued in his favour.

The Zilla Parishad invoked provision of Clause 2 and Clause 3 of the contract agreement and rescinded the contract and forfeited the security deposit.

The termination of contract was issued under the signature of the District Engineer who happens to be competent authority as per the terms and conditions of the contract.

Repeated opportunities were given to the petitioner with regard to invocation of Clause 2 of the contract agreement and only thereafter decision was taken to terminate contract invoking provision of Clause 3 of the agreement.

As regards debarment of the petitioner from participating in any procurement process, there is no provision in the contract in support of the same.

As it appears that decision of the District Engineer to debar the petitioner from participating in the procurement process is not supported by the terms and conditions of the contract, accordingly, the same could not have been imposed upon the petitioner.

In view of the above, the decision of the District Engineer debarring the petitioner from participating in any procurement process under South 24 Parganas Zilla Parishad for a period of two years is absolutely bad in law and liable to be set aside. The same is accordingly set aside.

The Court, however, refrains from interfering with the termination of the contract and forfeiture of the security and earnest money deposit in the impugned communication dated 16th February, 2022.

It will be open for the petitioner to approach the concerned authority with his prayer for disbursing the amount which according to the petitioner is due and payable to him in terms of the work order and the work concluded by him.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)

