

Ct. 05
Item No.15
08.08.2022
(suvendu)

WPA 17709 of 2022

**Ratan Agarwalla
Vs.
West Bengal State Warehousing
Corporation & Ors.**

Mr. Debabrata Saha Roy
Mr. Subhankar Das
Mr. Neil Basu
..... for the petitioner

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
.....for the West Bengal State
Warehousing Corporation

Mr. Kalyan Kumar Bandopadhyay
Mr. Sirsanya Bandopadhyay
Mr. Rahul Kumar Singh
.....for the respondent no. 5

The affidavit of service is taken on record.

The petitioner has challenged a decision of the West Bengal State Warehousing Corporation dated 15.07.2022 terminating the petitioner's appointment as Handling and Transport Contractor of Rajganj RIDF Godown with effect from 15.08.2022. The ground of challenge is that the impugned decision is contrary to the petitioner's appointment letter of 14.03.2022 which made the appointment valid until 31.12.2022.

Counsel submits that the petitioner deposited 5 lakhs to the Corporation as a result of

the appointment. Counsel also relies on Clause 7.6.12 of the tender conditions by which the selected tenderers were required to perform similar jobs of handling and transport and other allied services within the same or adjacent district which was not included in such tender floated by the Corporation.

Learned counsel appearing for the Corporation relies on a clause in the appointment letter which states that the appointment may be terminated at any time by giving one month's Notice and without assigning any reason. Counsel also submits that the termination letter was in accordance with this Clause and that the petitioner's appointment in relation to the principal Jalpaiguri Warehouse continues undisturbed.

Learned counsel appearing for the respondent no. 5 Contractor who was selected on 1.08.2022 also relies on the Clause by which the Corporation was entitled to terminate the contract without giving any reason. Counsel also submits that the respondent no. 5 has been appointed for the Rajganj Warehouse by way of a letter dated 1.08.2022 for one year.

Upon considering the material on records, the impugned letter of termination dated 15.07.2022 suffers from three factors.

First, the communication is a bare-bones decision which does not record any reason for terminating the petitioner's Rajganj contract. The defence that the Corporation is entitled to terminate without assigning any reasons, although contained in a Clause in the petitioner's appointment letter of 14.03.2022, is weak as such kinds of clauses are not only arbitrary but are capable of manipulating an existing appointment. Courts have struck down these kinds of clauses on the ground of being discriminatory and unconscionable.

Second, the appointment of the petitioner as well as the impugned termination indicate that the appointment was to be valid till 31.12.2022. The impugned order does not reflect any basis for discontinuing the appointment four months before the end of validity period. The defence that the appointment was a temporary one does not absolve the Corporation of the duty of providing a reason for the premature termination.

Most significant, the appointment of the respondent no. 5 of 1.08.2022 was admittedly given on terms which are noticeably different from

the petitioner's terms of appointment. The terms on which the private respondent has been given the contract are much more relaxed and would in fact result in a loss to the Corporation. This appointment hence fails the test of reasonableness. It also fails the test of transparency since there is no indication as to why the respondent no. 5 has been appointed to the exclusion of others. No tender has been disclosed to the Court for selecting the respondent no.5. The petitioner expressed his willingness to participate in a fresh tender for the new appointment. Hence, the Corporation is also answerable under Article 14 of the Constitution of India.

Ramana Dayaram Shetty Vs. International Airport Authority of India & Others, (1979) 3 SCC 489, puts the State on a strict obligation in matters of contracts with a public element not to resort to any discrimination or unfair procedure. The facts in the present case show that the Corporation fell foul precisely on this court. The Corporation has not acted with accountability.

The respondents do not wish to file affidavits by reason of the view taken by the Court as stated above.

WPA 17709 of 2022 is accordingly disposed of by setting aside the impugned order dated 15.07.2022. The respondent no. 1 is accordingly restrained from taking any further steps with regard to the same.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)