

21.12.2022
Sl. No.7(DL)
srm

W.P.A. No. 25136 of 2022
Banful Enterprise & Co. & Anr.
Versus
The State of West Bengal & Ors.

Mr. Uttiya Ray,
Mr. Arnab Mandal

....for the Petitioners.

Mr. Samrat Sen, Id. Asst. Addl. Adv. General
Mr. Amitava Mitra

...for the State-respondents.

Supplementary affidavit to bring on record the subsequent event of re-tender, is taken on record.

Mr. Sen, learned Assistant Additional Advocate General, has submitted a document which indicates that as soon as the Executive Engineer, W.B.S.R.D.A., Diamond Harbour Division was informed about the interim order passed by the Court, such re-tender was cancelled by an order dated December 19, 2022.

Mr. Sen submits that his clients have instructed him that the dispute shall be sent to the Redressal Mechanism.

The allegation of the petitioners that the situation did not permit the petitioners to undertake the work allotted to them and their subsequent prayer for discharge from the contract upon refund of the security deposit as also other

deposits, shall be referred to the Dispute Redressal System in terms of clauses 24.1 and 24.2 of the Standard Bidding Document.

Learned Counsel prays that a fresh tender be allowed to be floated as a public project has been held up.

Mr. Ray, learned Advocate for the petitioners submits that the notice inviting tender which was published subsequently on December 7, 2022, provided for protective works which meant that the authority had recognized the problems which the petitioners had faced at the time of execution of the work allotted to the petitioners. Had these protective works been implemented, the petitioners could have completed the work within the stipulated period. He further submits that there were other reasons as to why the work could not be completed and the authority supervising the work had also acknowledged the problems the petitioners were facing.

The Court had passed a direction upon the authorities not to take further steps for re-tender on the prima facie view that the Dispute Redressal System should have been exhausted, before the final order of termination was passed.

However, as the authority has already accepted that the Dispute Redressal System shall be set in motion on the basis of the representations of the petitioners dated August

29, 2022 and September 8, 2022, nothing further remains to be decided in the writ petition.

If any re-tender or fresh tender is invited, the petitioners shall be at liberty to participate in the process without prejudice to their rights and contentions in this writ petition and also without prejudice to their rights before the Dispute Redressal System. Such participation shall be subject to fulfillment of other eligibility criteria.

All issues raised by the petitioners and the grounds mentioned by the petitioners for not being able to complete the work including the validity of the order of termination of the contract, shall be decided by the authority concerned. The issue of refund must also be decided.

The petitioners shall be at liberty to produce all the relevant documents and make their submissions in support of their contentions. The authority shall pass a reasoned order by deciding whether the petitioners could have been honourably discharged from the work upon refund of the security deposit or whether the termination under the facts and circumstances, was justified.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)