

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

APOT 56 of 2021
With
WPO 559 of 2019
WPO 466 of 2019
IA No. GA 1 of 2021
GA 2 of 2021

Reserved on: 01.07.2022
Pronounced on: 17.08.2022

Mina Begum, Proprietor of M/s. MN Sultana Enterprise

...Appellant

-Vs-

The Kolkata Port Trust and Others

...Respondents

Present:-

Mr. Ranjit Kumar Jaiswal,
Mr. Sekhar Pal,
Mr. Mobakshar Islam, Advocates
... for the appellant

Mr. Probal Mukherjee, Sr. Advocate
Mr. A. K. Jena, Advocate
... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This intra-court appeal is at the instance of the writ petitioner aggrieved with the order of the learned Single Judge dated 07.01.2021 whereby WPO 466 of 2019 and WPO 559 of 2019 have been dismissed.
2. The appellant is a proprietorship firm which was the successful bidder in response to the electronic tender issued by the respondent Kolkata Port Trust (KPT) for providing service for general up-keepment of Chief Engineer's Office and other offices at Budgebudge by providing and supplying semi-skilled and unskilled labourers with necessary tools and tackles as and when required for different locations

as directed by the Office of the Superintending Engineer (Kol) for a period of two years. The work order for the aforesaid job was issued in favour of the appellant on 06.12.2017. According to the appellant, she had duly submitted before the respondent No. 2 on regular basis a declaration in respect of compliance of the norms with regard to the payment of wages to the labours and she was also submitting statutory contributions to Employees State Insurance Corporation (ESIC) and the Employees Provident Fund Organisation (EPFO). The letter dated 29.03.2019 was sent by the respondent No. 2 to the petitioner requiring her to produce the register for payment to contractor's employees at the time of processing of the bills. The appellant had submitted the written prayer before the respondent No. 2 stating that the appellant was making all requisite payments and contributions before the Employees State Insurance Corporation (ESIC) and the Employees Provident Fund Organisation (EPFO) but the concerned office had refused to accept the payment resulting into the delay in preparation of bills. According to the appellant, 25% deduction was made by the respondent from the bills of January, 2019 to April, 2019 abruptly and arbitrarily. Some exchange of correspondence had taken place between the appellant and the respondents and thereafter the appellant was issued the letter dated 02.09.2019 by the respondent No. 2 intimating that in terms of the work order, the contract would be terminated within 7 days in the event the appellant fails to regularize the payment with regard to the previous dues before the statutory authorities. The appellant had filed WPO 466 of 2019 challenging the letter dated 02.09.2019. Learned Single Judge by order dated 24.09.2019 had directed the appellant to meet the respondent No. 2 with all documentary evidence of compliance of the

labourer loss along with the bills for the months subsequent to April, 2019 and directed the respondent No. 2 to prepare report and had listed the writ petition on a later date. Subsequently, the respondent No. 3 had issued the letter dated 14.10.2019 proposing to terminate the contract as per clause 8.3 of the general conditions of the contract. The appellant had submitted the reply and the respondents had issued the termination letter dated 28.10.2019 which became subject matter of challenge in WPO 559 of 2019.

3. Learned Single Judge by the impugned common order dated 07.01.2021 has decided both the writ petitions and has found that the appellant had failed to establish any illegality or irregularity on the part of the respondents in terminating the contract. Accordingly both the writ petitions have been dismissed on contest.

4. Learned Counsel for the appellant submits that there was no complaint prior to March, 2019 and that the bills raised by the appellant were not paid in full from January, 2019 to April, 2019 and there is no default on the part of the appellant, therefore, termination of contract is bad in law.

5. As against this, learned Counsel for the respondents referring to the documents on record had submitted that the appellant had committed default, therefore, the contract has rightly been terminated.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that clause 8.3 of the Contract permits respondents to terminate the Contract in case of default of the contractor. The termination letter dated 28.10.2019 duly discloses the reason for invoking clause 8.3 of the general conditions of contract and terminating the contract by mentioning that the appellant had failed to

comply and complete the tender obligations including clearing all dues with regard to ESI, EPF, EPS, EDLI within stipulated time.

7. Prior to issuance of the termination notice, appellant was given the notice dated 02.09.2019 stating that after physical verification of the documents, the discrepancies were shown to the representatives of the appellant and last payment was made to the appellant on the declaration that all the previous dues would be regularised on the respective accounts of the labours immediately after the payment, which the appellant failed to do and that the appellant had also committed defaults on various occasions to pay the wages on time as per the Payment of Wages Act, 1936. For the aforesaid reason, the appellant was given an opportunity to regularise all previous dues within 7 working days. He was clearly informed that on failure to do so, balance work would be carried by engaging another agency at “Risk & Cost” of the subject contract. Hence, the order of termination has been issued to the appellant after due notices.

8. A bare perusal of the order of the learned Single Judge reveals that all the relevant aspects have duly been considered. Learned Single Judge has accepted the submission of the learned Counsel for the appellant about maintainability of the writ petition in spite of availability of alternative remedy and rejected the respondents’ contention about dismissal of petition as not maintainable. Thereafter learned Single Judge has taken note of various clauses contained in general conditions and also the scope of clause 8.3 thereto and has rightly reached to the conclusion that it was the duty of the contractor to comply with all the provisions under the Contract Labour (Regulation and Abolition) Act, 1970, Employees’ Provident Funds and Miscellaneous Provisions Act,

1952, and Employees' State Insurance Act, 1948 and has further found that violation of the respective statutes would constitute breach of contractual obligations. It has also been found that on the plea of disputes regarding overpayment and/or rate of deposit, the appellant could not have avoided the statutory liabilities which had merged into her contractual liabilities and that the appellant had failed to take up any compliance in this regard in consonance with clause 10.2 and 10.3 within the stipulated period. It has also been found that the default of the appellant in depositing the statutory dues in compliance with the labour laws directly had affected the labourers and their livelihood. Learned Single Judge has noted that the order of the Court dated 24.09.2019 passed in WPO 466 of 2019 was duly complied with by the respondent authorities and a report in consonance thereto was also filed and that the respondents were within their jurisdiction to terminate the contract.

9. Hence, we find that the learned Single Judge has assigned cogent reasons while reaching to the conclusion that the termination was valid both as per the contract and in law. Hence, we find no illegality in the order of the learned Single Judge.

10. In the above circumstances, no case for interference in this appeal is made out which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
17.08.2022

PA(SS)

(A.F.R. / N.A.F.R.)