

OD-1

WPO 1925 of 2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MADHUBAN MOTORS PRIVATE LIMITED & ANOTHER
VERSUS
BENGAL CHEMICALS AND PHARMACEUTICALS LIMITED

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 8th April, 2022.

APPEARANCE:

Mr. Jishnu Saha, Sr. Adv.

Mr. Sayantan Bose, Adv.

Ms. Madhurima Das, Adv.

Mr. Shounak Mukhopadhyay, Adv.

...for the petitioners.

Mr. Subhabrata Chowdhury, Adv.

Ms. Tripti Pandey, Adv.

Mr. Biswajit Goswami, Adv.

...for the respondent.

The Court :- The writ petitioner is aggrieved by a notice of cancellation of tender issued by the Bengal Chemicals and Pharmaceuticals Limited on 24th March, 2021 cancelling the Notice Inviting Expression of Interest on 10th December, 2021.

The brief facts of the case are that tenders were invited for the purpose of letting out on rent certain portions of premises, located at 502, S.V. Savarkar Marg, Prabhadevi Mumbai. A number of bids were received, and the petitioner was found to be the highest bidder. On 10th of January, 2022 the petitioner was informed by one Jyotirmoy Ghosh claiming to act on behalf of the respondent via email that the petitioner's bid was accepted.

The petitioner was asked to come down to the office of the respondent for actual measurement and discussion.

Using the rubber stamp of the Bengal Chemicals and Pharmaceuticals Limited, the said Jyotirmoy Ghosh has signed a document titled “Primary Agreement Between Licensor and Licensee” apparently on behalf of the Respondent, on the 31st of January, 2022. On the very next day, i.e. February 1st, 2022 three letters have been signed on the letter head of the Bengal Chemicals and Pharmaceuticals Limited by the said Jyotirmoy Ghosh making applications to the Municipal Corporation, Pollution Control Board and Industrial Safety authorities of Maharashtra, authorizing the CFO of the petitioner to submit applications for the said premises.

It is submitted by Mr. Jishnu Saha, Senior Counsel for the writ petitioner that there is a concluded contract between the parties. The respondent cannot cancel a tender, after a contract has been formally entered into by the parties. Reliance is placed on the decision of the Supreme court in the case of **Nagendra Rai vs. Om Prakash Singh and others** reported in **(2014) 15 SCC 463**, particularly paragraph 8 thereof.

Counsel for the respondent would submit that the said Jyotirmoy Ghosh was neither authorized by the company ,nor has the Board ever been informed of the steps taken to enter into any agreement with the writ petitioner by him. The letters addressed to the statutory authorities of Maharashtra are also without authorization.

Admittedly, the possession of the property has not been handed over to the writ petitioner.

There is indeed some unusual and curious expedition and urgency in the signing of the documents referred to hereinabove. One would have normally expected any agreement of such category to be a more formal in nature recording distinct terms and conditions. With regard to the execution of the authorization letters issued to the writ petitioner, the signing of all three on the very next day of the alleged agreement without handing over of possession licence is also unusual and suspicious.

Counsel for the respondent further submits that the proceedings have been drawn up against the said Jyotirmoy Ghosh for misconduct, and major penalty proceedings are pending.

This Court is of the view that there is something seriously amiss in the entire process of signing of the letters. This Court cannot help but notice with surprise as to how or why the Respondent that has applied for permissions and extensions authorizing the CEO of the writ petitioner to sign documents on its behalf.

The facts and circumstances referred to hereinabove indicate an amusing tale subtly suggesting conspiracy. Hence, no relief under Article 226 of the Constitution of India can be granted to the petitioner. The argument of the Respondent that a fraud may have been perpetrated against the company cannot be brushed aside.

The Nagendra Rai decision (supra) cited by Mr. Saha cannot be applied as the dispute therein was between two bidders.

This Court is also of the view that the truth of the matter can be ascertained only after a trial on evidence, in an appropriate civil or other proceedings.

In that view of the matter, WPO No. 1925 of 2022 fails and is hereby dismissed.

(RAJASEKHAR MANTHA, J.)

S.Chandra