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Item No. 57
09.10.2023
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**MAT 2000 of 2023
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**M/s. SRP Construction & Anr.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Pritam Majumdar,
Mr. Soumya Sankar Chini,*

...for the appellants.

*Mr. Pinaki Dhile,
Mr. Abu. S. Mullick,*

...for the State.

*Mr. Dipak Kumar Mukherjee,
Mr. R. Mukherjee,
Ms. S. Bhandari,*

...for the Municipality.

Mr. M. Bandyopadhyay,

...for the CBI.

Affidavit of service filed in court today be kept with the records.

By consent of the appearing parties, the appeal and the connected application are taken up for hearing together.

An order dated September 26, 2023, *interim* in nature in the sense that the writ petition is pending before the Learned Single Judge, is under challenge in this appeal.

The appellants/writ petitioners approached the learned Single Judge assailing similar orders dated September 11, 2023, whereby the Bhatpara Municipality cancelled several work orders issued in favour of the appellants and also blacklisted the appellants for two years.

The learned Single Judge noted that the impugned order was passed after giving an opportunity to the writ

petitioners to show cause. Since the contract entered into between the appellants and the Municipality was not found to be on record, the learned Judge directed the Municipality to file a report in the form of affidavit disclosing all documents including payment schedule pursuant to which payment is to be disbursed in favour of the writ petitioners/contractor. Such report has been directed to be made available to learned Advocate for the writ petitioners by October 12, 2023. The writ petitioners have been granted liberty to file exception to such report by October 18, 2023. The learned Judge has granted liberty to the parties to mention the matter thereafter. The learned Judge also clarified that pendency of this writ petition will not stand in the way of the Municipality to disburse the admitted amount payable to the writ petitioners.

Being aggrieved, the writ petitioners have come up before us by way of this appeal.

Mr. Majumdar, learned Advocate, representing the appellants says that the cancellation of the work orders is tainted with oblique motive and is arbitrary. So is the decision to blacklist the writ petitioners for two years. There is no provision in the contract between the parties for blacklisting. The Municipality has withheld huge sums of money payable to the appellants in respect of the work already completed. Immediately after the appellants demanded payment of the admitted dues from the Municipality, show cause notices were issued. Such notices were duly replied to by the appellants. Without even

considering such replies, the work orders in question were cancelled.

Mr. Majumdar further submitted that the closed mind of the Municipal Authorities would be apparent from the fact that in respect of two cases, work order has not yet been issued in favour of the appellants but such non-existent work orders have been sought to be cancelled.

Learned Advocate for the Municipality says that the appellants have hopelessly defaulted in carrying out the work entrusted to them. In some of the cases the work has not yet been started. The work is for the benefit of the public. Even in July 2023, through whatsapp message, the Municipality called upon the appellants to immediately commence and complete the work. The appellants failed to do so. Accordingly, in grater public interest, the Board of Councilors of the Municipality resolved to cancel the work orders issued in favour of the appellants.

Although we have recorded the submission made on behalf of the respective parties, we are not inclined to interfere. The order impugned is *interim* in nature. The learned Judge has not decided anything finally. We are of the view that the parties should argue all points that are available to them before the learned Single Judge after the report is filed before the learned Judge by the Municipality and the writ petitioners file their exception to such report, if they so wish.

We have not gone into the merits of the case at all. All points are kept open for the learned Single Judge to decide.

Learned Advocate for the appellants says that some precedence should be given to this matter by the learned Judge. The appellants would be at liberty to make such request to the learned Judge who may consider the same to the extent the business of the court may permit.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)