

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

32 06.9.2023
Sc Ct. no. 2

WPA 569 OF 2023

M/s Apex Technology
Vs.

Indian Railway Catering and
Tourism Corporation Ltd. (IRCTC) & Ors.

Mr. Kaushik Chatterjee
Mr. Debajit Kundu.

....For the Petitioner

Mr. Akash Dutta

....For the Respondent
Nos. 1 to 5 & 9

This writ petition arose out of a tender which was floated in the year **2016** and the currency of the tender stood expired in **2021**.

In view of the prevailing Covid situation, the currency of the tender was extended for a period of **484 days, i.e., till March 25, 2022**, as would be evident from **page 188** to the writ petition.

The parties previously travelled before the arbitral tribunal on the disputes touching the said tender. An **award** was passed which is also under challenge by the respondents before various courts.

A proceeding was also filed by the petitioner before the Hon'ble Supreme Court **for transfer of arbitration proceedings, the same is still pending before the Hon'ble Supreme Court**. An

order of the Hon'ble Supreme Court dated **August 14, 2023** in this regard is made over to this Court, which is taken on record. It is recorded that, despite direction the respondents have not filed affidavit-in-opposition.

Through this writ petition the petitioner has challenged an ***alleged decision of termination of contract with the petitioner, Annexure-P7 at page 189*** to the writ petitioner. ***There was an arbitration clause under the Tender Terms*** being ***Clause 10*** as would be evident from ***page 55*** to the writ petition.

Mr. Kaushik Chatterjee, learned advocate appearing for the petitioner submits that, this termination was wholly illegal and the same could not have been done after the ***currency of the tender*** being ***expired***. He submits that, the petitioner worked substantially under the tender.

Mr. Aakash Dutta, learned counsel appears through virtual mode for the respondent nos. 1 to 5 and 9. He submits that, upon scrutiny it was found that, the document and information submitted by the petitioner were not genuine in terms of the tender terms, hence, the termination was done.

In reply, the petitioner submits that, there was no opportunity of hearing afforded to the petitioner after around seven years while terminating the contract.

The contentions of the petitioner, as recorded above, are disputed by the learned counsel for the appearing respondents.

Considering the submissions made on behalf of the parties and considering the materials on record and also considering the series of events already taken place arising out of the selfsame tender including the arbitration proceeding, this Court is of the view that, the contentions raised on behalf of the parties are required to be gone into by way of a detailed fact finding inquiry for which this Writ Court shall not exercise its discretionary power.

Be that as it may, without going into the merits of the claim of the petitioner in this writ petition and without going into the merits of the submissions made on behalf of the respondents, this Court is of the view that, the writ petition is not maintainable and, accordingly, this writ petition, **WPA 569 of 2023** stands dismissed, without any order as to costs.

However, the petitioner shall be at liberty to proceed if it is otherwise eligible in law and shall proceed strictly in accordance with law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)