

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA 809 of 2022
With
IA NO: CAN 1 of 2022**

**DIPANKAR GHOSH
VS
THE STATE OF WEST BENGAL AND ORS.**

For the Appellant : Mr. Debashis Banerjee,
Mr. Rakesh Jana, Advocates

For the State : Mr. Sudipto Panda,
Mr. Subhabrata Das, Advocates

Heard & Judgement on : September 05, 2024

DEBANGSU BASAK, J.

1. Appeal is directed against an order dated April 5, 2022 passed in WPA 4246 of 2022. By the impugned order, learned Single Judge found that there were disputed question of facts involved and, therefore, exercised discretion of not passing any further order in the writ petition.

2. Learned advocate appearing for the appellant submits that, the appellant participated in the tender process and was awarded a contract on February 7, 2020 for supply of potassium permanganate. He submits that, pursuant to the award of contract dated February 7, 2020, appellant sold and

delivered the entire quantity of 6505 Kg. potassium permanganate to the Authorities. Appellant went to submit the bills for such goods sold and delivered, physically when the Authorities refused to accept the same. Thereafter, appellant submitted the same online.

3. Learned advocate appearing for the appellant submits that, subsequent to the appellant supplying all the goods in terms of the award of contract dated February 7, 2020, the Authorities purported to cancel the award of the contract by a writing dated March 20, 2020. No opportunity of hearing was given to the appellant prior to the cancellation.

4. Relying upon **(2021) 19 SCC 706 [State of U.P. vs. Sudhir Kumar Singh & Ors.]**, learned advocate appearing for the appellant submits that, since the contract was cancelled without hearing the appellant, a public law element crept into the contract. Writ petition is, therefore, maintainable. Learned Single Judge erred in not granting relief to the appellant.

5. Learned advocate appearing for the appellant submits that, the goods were received by the Authorities without raising any objection. Since the goods were sold and delivered in terms of a contract validly entered into, the Authorities are liable to pay for such goods.

6. Learned advocate appearing for the State submits that, the contract was cancelled on March 20, 2020. Goods purportedly delivered in terms of the award of the contract dated February 7, 2020 were not utilized since there was quality disputes. They are still lying with the Authorities. Authorities requested the appellant to take back the goods which the appellant refused.

7. Appellant participated in a tender bearing No. 400 dated December 9, 2019 for supply of potassium permanganate under the scheme of distribution of potassium permanganate to different brackish water blocks under the District of Purba Medinipur due to cyclonic storm Bulbul.

8. Appellant became successful in such tender process and was awarded a contract for the same by an award of contract dated February 7, 2020. Appellant was required to supply 6505 kgs of potassium permanganate by the award of the contract. Appellant apparently, delivered the 6505 kgs of potassium permanganate to the Authorities.

9. Authorities claimed that the quality supplied was not up to the mark. Authorities cancelled the tender by a writing dated March 20, 2020.

10. Appellant claimed that both the goods and the bills submitted in respect of the goods were accepted by the Authorities without any demur. Moreover, the cancellation of the award of the contract was made unilaterally without hearing the appellant and, therefore, was bad in law.

11. Sudhir Kumar Singh (supra) considers a case of cancellation of contract without hearing the parties affected thereby. It is of the view that, where a contract entered into by an Article 12 Authority is cancelled and such cancellation is vitiated by arbitrariness or breach of principles of natural justice, then, a public law element is involved and that, such contract does not remain a simple contract between two contesting parties. In such scenario, a writ petition under Article 226 of the Constitution of India is maintainable. In the fact of that case, since the writ petitioner therein did not seek any damages for the termination of the contract, Supreme Court found it appropriate to let the matter rest.

12. In the fact the present case, appellant claims that it discharged its obligation in terms of the award of the contract dated February 7, 2020, sold and delivered goods in terms of such contract and submitted bills again in terms of the contract. All such activities occurred without any demur on the part of the respondent authorities.

13. On the other hand, the claim of the respondent authorities are that, goods supplied were not of the specified quality and that, the tender was cancelled.

14. There are disputes with regard to the quality of the goods supplied. Learned Single Judge noticed such disputes and held that, since disputed question of facts were involved, it would be appropriate that such disputes be settled by the appropriate Court rather than exercise of discretion under Article 226 of the Constitution of India.

15. Notwithstanding a writ petition being maintainable, in a given facts, a writ Court may find that, disputed question of facts are involved which will require adjudication by a process other than the summary process of the writ Court. We hasten to add that, a writ Court is not precluded from recording evidence, if it deems it appropriate, in a given case.

16. Learned Single Judge exercised discretion in not entertaining the writ petition any further on the ground of existence of disputed question of facts. Existence of disputed question of facts cannot be denied.

17. In an intra-Court appeal, we are not in a position to return a finding that, the discretion exercised by the learned Single Judge is perverse.

18. In such circumstances, we find no merit in the present appeal.

19. FMA 809 of 2022 along with connected application are **dismissed** without any order costs.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)

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