

30.09.2024
Sl. No.10(DL)
srm

W.P.A. No. 21928 of 2024

**People's Association for Total Help and
Youth Applause & Anr.**

Versus

State of West Bengal & Ors.

Mr. Kushal Chatterjee,
Mr. Ajay Chaubhey,
Mr. Arunava Ganguly,
Mr. Chandan Mishra

...for the Petitioner.

Sk. Md. Galib,
Ms. Priyamvada Singh

...for the State-respondents.

Mr. Sirsanya Bandopadhyay,
Mr. Avishek Guha

...for the KMDA.

Supplementary affidavit is taken on record.

In view of the dispute resolution and arbitration clause,
being clause 10.10 of the Request for Proposal, the writ
petition is not entertained. The said clause is quoted below:-

“10.10. Dispute Resolution and Arbitration

Any dispute between the parties arising out of this RfP Document, relating thereto, or arising there from will be settled by a binding arbitration in Kolkata under the Arbitration and Conciliation Act, 1996. The parties specifically agree to be bound by the decision rendered by the Sole Arbitrator and agree not to submit a dispute to any Court except as may be necessary to enforce the arbitration procedures of this clause or to enforce the decision rendered by the Sole Arbitrator or as permitted in law. The proceedings will be conducted in English.

The language of the proceedings and the Award will be in English. Each party will pay its own costs.

Court at Kolkata will alone, to the exclusion of all other Courts, have jurisdiction over all matters between the parties arising out of the present RfP Document or relating thereto.”

The intricacies of the factual disputes raised by the petitioners, cannot be decided under Article 226 of the Constitution of India.

The petitioners are aggrieved by some communications from the Kolkata Metropolitan Development Authority (KMDA), whereby and whereunder damages in the nature of compensation were claimed from the petitioners on account of non-completion of the work, in terms of the RfP.

It is the specific contention of the KMDA that extension of time was granted to the contractor to finish the work beyond the stipulated period, but the contractor was also put on notice that the extension was granted subject to the right of the KMDA to recover liquidated damages in terms of clause 2 of the contract.

Under such circumstances, the validity of the steps which were taken sometime in 2022 by the KMDA, cannot be entertained at this stage in view of the factual disputes as to whether the petitioners had actually completed the work in

terms of the contract or not. Moreover, there is an alternative remedy under the terms and conditions of the RFP.

The factual aspects have not been gone into and the power of judicial review is not invoked, as the conditions for such review do not exist in view of the alternative remedy. This order will not prevent the petitioners from raising all questions, which have been raised in the writ petition, before the appropriate forum.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)