

03.01.2024
Item No.7
Ct. No.1
PG/KS

MAT 2115 of 2023
With
IA No. CAN 1 of 2023
BPCL Railway Infrastructure Ltd. & Anr.
Vs.
Union of India & Ors.

Mr. Jishnu Saha
Mr. Nirmalya Dasgupta
Mr. R. L. Mitra
Ms. Priyanka Dhar

.....For the Appellants

Mr. Siddhartha Lahiri

.....for the Respondent

1. This intra-Court appeal by the writ petitioners is directed against the order dated 13th October, 2023 in W.P.A. No.75 of 2011. In the said writ petition, the appellants had challenged a show-cause notice issued by the respondent/railway authorities proposing to blacklist the appellants from participating in any tender invited by the railway authorities.
2. The learned Single Bench has dismissed the writ petition primarily on the ground that a challenge to the show-cause notice cannot be entertained and did not agree with the contention of the appellants that the show-cause notice was issued with a pre-determined mind.
3. It is an admitted position that during the pendency of the writ petition, though no interim orders were granted by the learned writ Court, the

show-cause notice was not proceeded further and the railway administration maintained *status quo*. One other very important and crucial factor in the present case is that alleging non-payment of bills for the work done, the writ petitioners had initiated arbitration proceeding, which has culminated in an award partially in favour of the appellants. It appears that the railway administration has filed an application before this Court under Section 34 of the Arbitration and Conciliation Act, 1996 in A.P. No.669 of 2011 and the same is pending.

4. Thus, considering the peculiar facts and circumstances of the case, more particularly, that the show-cause notice impugned in the writ petition was not given effect to from the year 2011, it would be inequitable, at this juncture, to permit the respondent/railway administration to proceed with the show-cause notice, more particularly, when an award has been passed by the arbitral Tribunal partially in favour of the appellants, which is the subject-matter of challenge in A.P. No.669 of 2011 at the instance of the railway administration.

5. Therefore, we dispose of this appeal along with the application (IA No. CAN 1 of 2023) by directing that no further action be taken pursuant to the show-cause notice, which was impugned in the writ petition and it will be well open to the railway administration

to commence action subject to the outcome of A.P.
No.669 of 2011.

6. No costs.

7. Urgent photostat certified copy of this order, if
applied for, be furnished to the parties expeditiously
upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)