

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

13 09.9.2024
Sc Ct. no.2

WPA 1837 OF 2024

Tathagata Dutta

Vs.

Joint Secretary of the
Department of Urban Development
and Municipal Affairs (UD & MA)
Government of West Bengal & Ors.

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Raj Kumar Mitra
Ms. Mrinmayee Das.

....For the Petitioner

Mr. Joyjit Choudhury, Ld. AAG
Mr. Subir Kumar Saha, Ld. AGP
Mr. Nabankur Paul.

....For the Respondent
Nos. 1 to 3 and 7

Mr. Arjun Ray Mukherjee
Mr. Raja Saha
Ms. Bedashruti Bose.

...For the Respondents
SJDA

Since the respondent nos. 4 to 6, despite notice, were not represented on **September 4, 2024**, this Court requested Mr. Raja Saha, learned counsel along with Ms. Bedashruti Bose, learned counsel to represent the respondent nos. 4 to 6.

Today when the writ petition has been taken up for consideration, Mr. Raja Saha, learned counsel appears through virtual mode and Ms. Bedashruti Bose, learned counsel is also present in

Court and Mr. Arjun Ray Mukherjee, learned counsel appears through virtual mode representing the respondent nos. 4 to 6 who submits that, he has been assigned the brief by the authority.

Be that as it may, the three counsel shall appear for the respondent nos. 4 to 6 and their appearance shall be regularized forthwith by the **Siliguri Jalpaiguri Development Authority** (for short the **SJDA**).

Mr. Jagriti Mishra, learned counsel appears for the petitioner.

Mr. Joyjit Choudhury, learned Additional Advocate General appears for the respondent nos. 1 to 3 and 7.

Through this writ petition, the petitioner has challenged the decision of the respondent no.4 dated **July 23, 2024, Annexure-P7 at page 170** to the writ petition. The said decision has **two** significant parts which would appear from the relevant portions quoted below :

“As per contract conditions due to your deliberate disobedience to the Departmental instructions to restart, Clause 2 was enclosed from 11th May, 24 and Authority had waited till 15th June, 24 for completion of the work. But ignoring all requests, written instructions and contract conditions, you are obstinate on not to execute any further. Hence this Authority has no other alternative than to rescind the contract

herewith as per Clause 3(a) of the conditions of the contract. Your entire Earnest Money, Security Deposit of the accepted work and Performance guarantee shall stand forfeited and shall be absolutely at the disposal of the Authority. Under this circumstances, the work order issued vides memo no.613/IV/Engg/44/19/ SJDA, Dated. 21.11.2022 is also hereby cancelled.

Additionally, Authority has a close observation on your poor performance and disobedient activities since inception of this work. Now it is decided to suspend and debar you and your firm for willful breach of contract from participating any Tender Quotation invited by Siliguri Jalpaiguri Development Authority for 2 (two) years as per GCC Clause 41. The disqualification will be counted on and from the date of issuance of this letter.

However, after refunding the claim the claim amount (interim advance paid for WBM layer in the RA bill), joint measurement of the acceptable work will be taken if any item/s executed after first RA bill, maintaining specification and satisfaction of the Authority within 10(ten) working days as per convenience of the concerned Executive Engineer. The joint measurement, date and time will be fixed and communicated later on only after fulfilling the mentioned condition. Otherwise measurement will be taken (if any) ex parte and will be binding to you in all respects.”

The petitioner was engaged by the respondent nos. 4 to 6 for construction of a new road to have access to **NH-31** from the relevant college. This is an infrastructural work for construction for the purpose of general public.

For the various reasons mentioned in the said impugned decision, the contract awarded to

the petitioner for construction of the said road was terminated and the petitioner contractor was ***black listed*** from participating in any tender to be invited by the **SJDA** for a period of next ***two years***.

Mr. Jagriti Mishra, learned counsel appearing for the petitioner submits that, the termination of the contract awarded in favour of the petitioner and the said decision for black listing, both are bad in law. He submits that, no opportunity of hearing was granted to the petitioner before taking the decision against the petitioner. No show cause notice was ever issued upon the petitioner. The petitioner, therefore, claims issuance of mandamus for quashing the said impugned decision dated ***July 23, 2024***.

Learned counsel appearing for the respondent nos. 4 to 6 submits that, despite repeated opportunities were granted to the petitioner and despite repeated negotiations with the petitioner, though the petitioner submitted they would continue with the work and complete the same, but the petitioner has committed breach of his undertaking and performance. The breach is of such a nature that, the petitioner failed and neglected to carry out, execute and complete the work for construction of the said road. Hence, the

termination of the contract took place by the **SJDA** and the petitioner was rightly black listed.

Learned counsel for the respondent nos. 4 to 6 further refers to a letter of the petitioner dated **April 22, 2024 at page 157** to the writ petition and submits that, the petitioner by its own accord asked the **SJDA** to relieve him from the tender work and to settle the final payment for the bills raised by the petitioner on account of the work done and executed by him. He submits that, following the said stand of the petitioner and since the petitioner did not execute the work, the contract was terminated.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the application through which the petitioner applied for the construction work is a voluminous document available at **pages 72 to 99** to the writ petition containing all the terms and conditions of the contract executed by and between the **SJDA** and the petitioner for construction of the subject road. The parties also accept the said document on the basis whereof the contract was executed.

The impugned decision dated **July 23, 2024, Annexure-P7 at page 170** to the writ petition has clear **two parts**.

1. The **First Part** is the **termination** of the contract executed in favour of the petitioner.

2. The **Second Part** is the **black listing**.

The counsel for the respondent nos. 4 to 6 has not been able to show that, there was any show cause notice issued upon the petitioner or any opportunity of hearing was granted to the petitioner before taking the said impugned decision, save and except the said letter of the petitioner dated **April 22, 2024 at page 157** to the writ petition on the basis whereof the termination of contract has taken place on the voluntary asking of the petitioner.

The law is trite, when a party to the contract does not wish to proceed with the contract any further, such party has a right to exercise his option for **termination** of the contract and can seek for rescission of the same upon compliance of all the necessary formalities those are required to be complied with by and between the parties to the contract. One of the parties to a contract can rescind the contract from his end subject to the legal consequences that may arise therefrom.

The law is also trite that, before **black listing** anybody, the authority who wishes to black list such a party must grant that party an opportunity of hearing before taking the decision for **black listing**.

In the light of the above, this Court is of the firm view that, insofar as the termination of contract of the petitioner is concerned, the same was done in conformity with the said letter of the petitioner dated **April 22, 2024** at **page 157** to the writ petition.

The account is required to be settled by and between the parties, since the termination of contract is not interfered with by this Court. Such settlement of accounts shall be done by and between the **SJDA** and the petitioner strictly in accordance with the terms and conditions mentioned under the applicable conditions of the said application submitted by the petitioner starts at **page 70** to the writ petition. The appropriate authority under such terms and conditions upon issuing a prior hearing notice of at least **seven days** to the petitioner shall hold the hearing and proceed with to settle the accounts of the petitioner taking into account of all the factors whether the work has been done or executed by the petitioner and if done to what extent and if not done at all.

It is made clear that, this Court has not gone into the merits of this writ petition and the petitioner shall be at liberty to produce whatever records and documents he wishes to produce and shall also be at liberty to urge whatever points with regard to the settlement of accounts only under the terms and conditions applicable under the said application at **page 70** to the writ petition.

Such appropriate authority of **SJDA** shall carry out and complete the entire exercise for settling the accounts including the making of necessary payment to the petitioner, if any is found to be due and payable by crediting the bank account of the petitioner positively within a period of **eight weeks** from the date of communication of this order.

It is also made clear that, if after conciliation of all the accounts it appears that, the **SJDA** is eligible to receive any further payment from the petitioner then the **SJDA** shall be at liberty to proceed against the petitioner to realise such claim from the petitioner strictly in accordance with law.

Now comes the second limb. Insofar as the **black listing** part is concerned, the appropriate authority of **SJDA**, according to the terms and conditions of the said application at **page 70** to the

writ petition, shall issue a prior hearing notice of at least **seven days** to the petitioner and then after granting him an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

Since this Court has not gone into the merits of the claim against **black listing** raised by the petitioner through this writ petition, the petitioner shall be at liberty to urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before such appropriate authority of **SJDA**.

The entire exercise as directed above shall be carried out and completed by the appropriate authority of **SJDA** by passing its reasoned order on the issue of **black listing** within a period of **six weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioner positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

With the above observations and directions insofar as the **termination of contract** of the petitioner is concerned, the same is **not interfered with** and the same **sustains**. Insofar as the

decision for ***black listing*** is concerned, the same stands ***set aside and quashed***.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms this writ petition, ***WPA 1837 of 2024*** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)