

WPO/910/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RAJ CONSTRUCTION CO. AND ANR.

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 8th October, 2024.

Appearance:

Mr. Sagar Bandopadhyay, Adv.

Mr. Subir Pal, Adv.

.... for the petitioner.

Mr. Susovan Sengupta, Adv.

Mr. Abhisek Sikdar, Adv.

...for the respondent no. 1.

The Court: The petitioner is aggrieved by a communication received from the West Bengal Small Industries Development Corporation Limited dated March 6, 2023. By the said communication, the petitioner was asked to show cause as to why disciplinary action would not be taken in terms of the clauses of the tender. It was informed that if no satisfactory reply reached the Executive Engineer (Civil), within the period mentioned in the said notice, the authority would proceed with the disciplinary action. A reply to that effect was sent by the learned Advocate of the petitioner, dated March 16, 2023. The authority has not yet disposed of the matter.

Mr. Bandopadhyay, learned Advocate for the petitioner submits that the work was completed sometime in June, 2019. The completion certificate was issued by the authority. The defect liability clause, which is Clause 27 of the tender document, was not complied with by the authority. At the end of the first year from completion, 30% of the security deposit was to be refunded. After completion of the second year, another 30% was to be refunded. The authority did not take steps, despite the petitioner having made repeated requests. Suddenly, the show cause notice was issued by referring to unsatisfactory work, which was allegedly communicated to the petitioner sometime in August, 2021. The petitioner contends that the said defect was rectified. This disputed question of fact, cannot be decided by the Court.

The show cause notice does not indicate the details of the unsatisfactory work of the petitioner. The authority was supposed to mention the specific allegations against the petitioner, with the details. Unless the person to whom a show cause notice is issued, is aware of the reasons as to why such notice has been issued, it is impossible for such person to address the allegations with befitting answers. In any event, as the matter is pending before the concerned authority and the show cause notice indicates that the Executive Engineer (Civil) did not proceed in accordance with law, this Court is of the view that the Managing Director, West Bengal Small Industries Development Corporation Limited, must decide the matter in accordance with law.

The writ petition (WPO/910/2024) is disposed of with a direction upon the respondent no.3, i.e, the Managing Director, West Bengal Small

Industries Development Corporation Limited, to treat the writ petition of the petitioner as a reply to the alleged show cause notice and dispose of the same in accordance with law upon hearing the petitioner as also the Executive Engineer (Civil) and by passing a reasoned order. The reasoned order shall be communicated to the petitioner. Needless to mention, the authority shall apply the clauses of the tender, the law in place and the factual issues.

The interim prayer for release of 60% of the security deposit, which the petitioner submits should have been refunded after the first two years, shall also be decided by the authority as an interim prayer.

It is made clear that the defects which were allegedly found, should be made known to the petitioner during the course of hearing and the petitioner may be allowed to file a supplementary reply, explaining his stand. The entire exercise shall be completed within a period of three months from the date of communication of this order.

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

(SHAMPA SARKAR, J.)