

16.04.2025
Item No.10
Ct. No.01
RP/SM

FMA 434 of 2025
with
IA NO: CAN/1/2025

ASIT KUMAR AICH
VS.
STATE OF WEST BENGAL AND ORS.

Mr. Kamalesh Bhattacharya, Adv.
Mr. Rezaul Hossain, Adv.
Mr. Anirban Saha, Adv.
Mr. Parvez Hossain, Adv.

....For the Appellant

Mr. Suman Sengupta, Sr. Govt. Adv.
Mr. Gourav Das, Adv.

....For the State-Respondent

1. Affidavit-of-service filed by the appellants is taken on record.
2. This intra-court appeal is directed against the order dated 16th January, 2025, by which writ petition being WPA 23894 of 2024 was dismissed. The appellant filed the writ petition praying for issuance of direction upon the respondent authorities to pay a sum of Rs.48,92,208/- along with interest by way of refund against the goods supplied to the authorities and not to enforce any penal clause against the appellant/writ petitioner for the purposes of deduction made for the bills raised by the appellant against the supply in question. Admittedly, the supply was made between the year 2014 to 2016 and the appellant in no certain terms

accepted that there was delay in supply. The authority took into consideration the terms and conditions of the tender and has imposed penalty. Aggrieved by the order of penalty an appeal was preferred by the appellant before the appellate authority by appeal memorandum dated 31st July, 2019. In the said appeal petition also it is not disputed that there was delay in supply but the appellant would contend that for the past 15 years they have a long standing performance as a CMS supplier and, therefore, requested the appellate authority to reassess the matter and to minimise the amount deducted for delays in supply. The appellate authority has reassessed the matter and has rejected his prayer by order dated 2nd March, 2020. The said order has not been challenged by the appellant/writ petitioner. After more than four years the writ petition was filed seeking for payment. Therefore, the learned Single Bench was fully justified in not granting the relief sought for considering the facts and circumstances of the case and more particularly, the appellant did not dispute the fact that there was delay in supply.

3. Hence, we find no ground to interfere with the impugned order and the appeal fails. Accordingly, the appeal along with the application is dismissed.

4. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]