

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 21.04.2025

DELIVERED ON: 21.04.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**F.M.A. 531 of 2024
With
I.A. No. CAN 1 of 2024**

**M/s. TOTCO
Vs.
The Union of India & Ors.**

Appearance:-

**Mr. Sattwik Bhattacharyya
Mr. Aashutosh Bhattacharyya
Mr. Aritra Roy
Mr. Titas Niyogifor the appellant**

**Mr. Souvik Nandi
Mr. Partha Chakrabortyfor the respondents**

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated January 22, 2024 in W.P.A. 21181 of 2023. The said writ petition was filed by the petitioner challenging the decision taken by the respondent authorities in debarring the petitioner from participating in future contracts and also cancelling the tender, which was awarded in favour of the appellant/writ petitioner.

2. The learned Single Bench dismissed the writ petition on the ground that the matter involves disputed questions of fact and the matter is purely contractual and therefore, the writ petition cannot be entertained. Aggrieved by such order, the appellant/writ petitioner has preferred this appeal before this Court.
3. We have elaborately heard the learned advocate appearing for the appellant and the learned advocate appearing for the respondents.
4. The learned advocate appearing for the appellant placed reliance on the decision of the Hon'ble Supreme Court in **UNITECH Limited & Ors. vs. Telengana State Industrial Infrastructure Corporation (TSIIC) & Ors.** reported in **(2021) 16 SCC 35** in support of his contention that even in contractual matters, the jurisdiction of this Court under Article 226 of the Constitution of India is not ousted.
5. We have heard the learned advocates appearing for the respondents on the above submission. In the decision rendered by the Hon'ble Supreme Court, one of the issues, which was considered was the maintainability of a writ petition under Article 226 when the matter pertains to recovery of money arising out of a contractual matter and whether the jurisdiction under Article 226 of the Constitution of India was altogether excluded in a contractual matter. The Hon'ble Supreme Court after noting several decisions held that while exercising jurisdiction under Article 226, the Court is entitled to inquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence to any violation of Article 14.
6. It was further pointed out that in determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly

eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial.

7. Further, it was held that it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempted from the duty to act fairly merely because in their business dealings, they have entered into the realm of contract. Similarly, the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.
8. The Hon'ble Supreme Court found that the claim of the appellants therein viz., M/s. Unitech Limited and others was not disputed by the respondents TSIIC, which was a State instrumentality and the Court found that the said State instrumentality hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago and in such factual background, it was held that the High Court rightly invoked the jurisdiction under Article 226 of the Constitution of India.
9. Thus, this Court is required to consider the facts of the case as to whether the appellant would take recourse to public law remedy under Article 226 of the Constitution and avoid the remedies, which have been provided for under the terms and conditions of contract entered into between the appellant and the respondents.
10. Admittedly, the contract is for providing infrastructure facilities and there are annexures to the stay petition from which it can be seen that there were several communications between the respondents and the appellant for

which the appellant has given several replies justifying its stand and also representations requesting for re-consideration of the matter. Therefore, undoubtedly, in the instant case, if the Court has to examine the correctness of the decision making process adopted by the respondents, several disputed questions of fact have to be gone into, which obviously, cannot be done based on affidavits in a petition under Article 226 of the Constitution. Therefore, the learned Single Bench was right in not entertaining the writ petition as the facts are to be examined to decide as to whether the decision making process adopted by the respondents was just and proper as well as the ultimate decision taken by the respondents is justified in the given facts and circumstances of the case.

11. Thus, we find that the appellant has not made out any ground to interfere with the order passed in the writ petition. Accordingly, the appeal fails along with the connected application (I.A. No. CAN 1 of 2024).
12. However, dismissal of the appeal will not stand in the way of the appellant invoking the remedies provided for under the general conditions of contract and other terms and conditions including the contract and if such remedy is invoked within a period of three months from the date of receipt of server copy of this judgment and order, the authority before whom such remedy is invoked, shall proceed to take up the matter and decide the same on merits and in accordance with law uninfluenced by any observation of this Court in this judgment and order.
13. It is made clear that the petitioner will also be entitled to question the correctness of the decision debarring the petitioner from participating in any future tender in the manner provided for under the general conditions of contract and the terms and conditions of the tender.

14. No costs.
15. 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

I agree.

(CHAITALI CHATTERJEE (DAS), J.)