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TUESDAY

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23506 OF 2017

Court : CB-07
Item : DL-20
Bench : SINGLE
Matter : WPA
Status : DISMISSED
ID : 266057
AR : NANDY

SARBANI PRASAD CHATTERJEE AND SONS
VS.
HALDIA DEVELOPMENT AUTHORITY & ORS.

MR. SIDDHARTHA BANERJEE, SR. ADVOCATE
MR. SUDIP SARKAR, ADVOCATE
MR. ANINDA BHATTACHARYA, ADVOCATE
MR. BITAN SARKAR, ADVOCATE

.....for the Petitioners

MR. SWARAJIT DEY, ADVOCATE
MR. SAPTARSHI KAR, ADVOCATE
MS. DEBARATI DAS, ADVOCATE

.....for the HDA

1. By filing this writ petition, the petitioner initially sought a direction upon the competent authority to release the payment raised in his bill for the work already executed by him under Work Order No. 2538/HAD/IX-C-358 dated 11.01.2013, along with the security deposit and accrued interest thereon. Subsequently, by way of a supplementary affidavit, the petitioner has challenged the validity of the order by which he has been delisted and/or debarred from participating in any future contracts.
2. Briefly stated, the facts leading to the filing of the present writ petition are that the Haldia Development Authority (hereinafter referred to as 'HDA') issued a tender for the construction of a concrete road from Maheshpur to Jambari via Rainagar Mansa Temple, located within Gokulnagar Gram Panchayat under Nandigram-I Panchayat Samity, District Purba Medinipur. The petitioner-firm, being an enlisted contractor, participated in the tender process and, upon emerging as the successful bidder, was awarded a work order dated 11.01.2013 in its favour.
3. The work order contained a specific clause

requiring the petitioner to complete the assigned work within six months from the date of its issuance. It also incorporated a default clause stipulating that, in the event of failure to complete the work within the stipulated time, the authority would be entitled to terminate the contract, claim damages, blacklist the contractor, forfeit the security deposit, and withhold payment of running account bills.

4. Mr. Banerjee, learned Senior Advocate appearing for the petitioner, submits that the petitioner completed approximately 95% of the work entrusted to him. He further submits that the petitioner was unable to complete the work within the stipulated period due to obstructions caused by local residents, which hindered the progress of the construction activities.
5. Referring to a letter annexed at page 48 of the writ petition, Mr. Banerjee submits that the concerned Pradhan, in a certificate issued to the petitioner-firm, acknowledged that the delay in completion of the work was due to reasons beyond the petitioner's control. He further submits that, upon the petitioner's request, the competent authority granted extensions of time on several occasions. However, despite this, the authority ultimately terminated the contract, withheld payment for the work already executed by the petitioner-firm, and proceeded to blacklist it.
6. He contends that, despite the petitioner having invested a substantial amount of money and having completed approximately 95% of the assigned work, the respondent authority, in disregard of settled principles of law, has withheld the payment claimed. Mr. Banerjee, therefore, prays for an

appropriate direction upon the authority to release the payment due as per the final bill submitted by the petitioner.

7. Mr. Dey, learned Advocate appearing for the Haldia Development Authority (HDA), vehemently opposes the petitioner's contentions. He questions the maintainability of the present writ petition, contending that the dispute arises out of a purely contractual matter. He further submits that the case involves complex and disputed questions of fact that would necessitate evaluation of evidence, which cannot be undertaken in writ jurisdiction. According to him, the appropriate forum for adjudicating such issues is the Civil Court. In support of his contention he cites the decision reported in *(2021) 10 SCC 690 (Union of India & Ors. Vs. Puna Hinda)* and also refers to a decision reported in *(2002) 1 SCC 216 (State of Bihar & Ors. Vs. Jain Plastic and Chemicals Ltd. & Ors.)*.
8. Heard the learned advocates. Perused the materials-on-record.
9. It is undisputed that upon emerging as the successful bidder, the petitioner was issued a work order for the construction of a concrete road. The work order stipulated that the contractor was required to complete the work within six months from the date of issuance, with a clear indication that time was of the essence of the contract. The work order further contained a provision stating that in the event the contractor failed to complete the work in proportion to the time specified, the contractor would be liable to pay compensation. Additionally, the authority reserved the right to forfeit the security deposit and terminate the contract. Another

clause of the work order specified that the contractor would not be entitled to recover any sum for work actually performed under the contract unless the competent authority had certified in writing the performance of such work and the corresponding value was payable in respect thereof.

10. Record would reveal that the Chief Executive Officer of the Haldia Development Authority, through his communication dated 28.03.2017, informed the petitioner that the Tender Committee had decided to close the subject work on an 'as-is-where-is' basis and, as a result, no payment would be released for the said work at that time.
11. It is well established that the scope of judicial review in matters pertaining to contracts is limited. A State or its agency, when entering into an agreement with a private individual or entity, is at liberty to stipulate the terms and conditions of the contract. Judicial intervention will only be warranted if a specific case is made out demonstrating that the terms and conditions of the contract fail to meet the test of reasonableness, or if the stipulations violate any statutory provisions or contradict the constitutional mandates. In the absence of such a case, the Court generally adheres to the doctrine of self-restraint.
12. In the present case, it is undisputed that the petitioner, having agreed to the terms and conditions set forth in the work order, accepted the same and proceeded to carry out the work assigned to him. However, the petitioner contends that due to circumstances beyond his control, he was unable to complete the work within the stipulated time. The

petitioner himself acknowledges that, based on his requests, the time for completion was extended on several occasions. Ultimately, the contract was terminated, and the authority took on the responsibility of completing the remaining portion by engaging another contractor. Furthermore, in one of the petitioner's communications, he expressed his inability to complete the work within the specified timeline due to financial constraints.

13. It is submitted by learned advocate appearing on behalf of the authority that an approximate sum of Rs. 35 lakh has been incurred by the authority to complete the remaining portion of the work.
14. Therefore, before the dispute can be resolved, it is necessary to determine whether, in light of the clause referred to in the preceding paragraph, the petitioner is entitled to any payment from the concerned authority. It must also be assessed whether there was any justifiable reason that prevented the petitioner from completing the work within the stipulated time. Furthermore, it is to be considered whether the extent of work completed by the petitioner qualifies for certification under the compensation clause of the work order. Finally, if it is found that the petitioner is entitled to payment, the quantum of such amount must also be determined.
15. I agree with the submission made by Mr. Dey that all of these are disputed questions of fact, and to resolve these issues, it is necessary for evidence to be presented.
16. Therefore, I am of the considered opinion that in a writ proceeding, which is inherently a summary proceeding and involves the exercise of judicial

review, it is not possible to resolve the aforementioned disputed questions of fact.

17. I am informed that the petitioner was blacklisted for a period of one year, and with the passage of time, the said order has become ineffective. Therefore, no further order is required to be passed on this issue.

18. Based on the discussions in the preceding paragraphs and applying the principles laid down in the decision cited above, I am of the considered view that no interference is warranted in the present writ petition.

19. However, it is imperative to clarify that this order shall not preclude the petitioner from raising his grievances before the appropriate forum in accordance with the law.

20. Accordingly, the writ-petition being **WPA 23506 of 2017** is **dismissed**.

(PARTHA SARATHI CHATTERJEE, J.)

