

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 509 of 2025

Pho-Com-Net Private Limited & Anr.
Vs.
The Office of the Chief Electoral Officer,
Government of West Bengal

For the writ petitioners	:-	Mr. Anirban Ray, Sr. Adv. Mr. V.V.V. Sastry, Adv. Mr. Sourab Roy, Adv. Mr. Abir Lal Chakravarti, Adv.
For the respondents	:-	Mr. S.N. Mookerjee, Sr. Adv. Mr. Suddhasatva Banerjee, Adv. Mr. Anuran Samanta, Adv.
Heard on	:-	15.07.2025
Judgment on	:-	15.07.2025

Amrita Sinha, J.:-

1. The petitioner no.1 claims to be an existing company within the meaning of the Companies Act. It is involved in IT and ITES which assists corporate and government agencies in providing digital and electronic document management solutions.
2. In response to a notice inviting e-tender for providing Webcasting solution published by the office of the Chief Electoral Officer, West Bengal in the year 2024, the petitioners applied for the same. A work order in connection with the General Election to the Lok Sabha, 2024 was issued in favour of the petitioners. A regular contract was executed between the Chief Electoral Officer, West Bengal and the petitioner no.1.

3. The petitioners submit that upon satisfactory completion of the work in terms of the work order, payment was disbursed on 2nd January, 2025, albeit with certain deductions.
4. The petitioners prayed before the authority for releasing the performance bank guarantees as the work stood completed and payment received by the petitioners. Several communications took place by and between the parties but the bank guarantee and the earnest money deposit (EMD) was not released.
5. The cause of action for filing the instant writ petition is a notice dated 7th July, 2025 issued by the Additional Chief Electoral Officer, West Bengal directing the petitioners to show sufficient reasons why the EMD and the bank guarantee should not be forfeited and appropriate penalties including blacklisting be imposed.
6. The petitioners contend that the aforesaid act of the authority in issuing the impugned notice is arbitrary. After satisfactory conclusion of the work and on disbursing payment, the authority ought to have released the bank guarantee and the EMD. Just prior to the expiry of the bank guarantee the authority, with mala fide intention, has issued the impugned notice.
7. It has been argued that the clarifications sought for by the impugned notice were all available before the authority as the parties communicated with regard to the same and some of the communications are also annexed to the writ petition. Violation of Articles 14, 19 and 21 of the Constitution has been pleaded. It has been contended that the authority is hell bound to invoke the bank guarantee and forfeit the EMD contrary to the contract entered into between the parties.

8. It has been argued that even though there is an arbitration clause in the contract pursuant to which the petitioners performed the work, but the writ jurisdiction has been invoked as the arbitrary act on the part of the authority has been challenged. Existence of the arbitration clause ought not to be the reason to relegate the matter before the authority as the petitioners apprehend that they may not get proper justice from the authority as the authority has already made up its mind to penalise the petitioners.
9. Prayer has been made to quash the impugned notice dated 7th July, 2025 and to direct the respondent authority to return the EMD and the bank guarantees illegally withheld by them.
10. In support of the submission that the writ petition will be maintainable in respect of a contractual matter despite existence of the arbitration clause, the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Union of India & Anr. vs. Vicco Laboratories*** reported in ***(2007) 13 SCC 270*** paragraph 31.
11. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Unitech Limited & Ors. vs. Telengana State Industrial Infrastructure Corporation (TSIIC) & Ors.*** reported in ***(2021) 16 SCC 35: 2021 SCC Online SC 99*** paragraph nos. 39, 39.5 and 39.6.
12. Learned senior counsel representing the respondent, Chief Electoral Officer, opposes the prayer of the petitioners. It has been submitted that the writ petition ought not to be entertained as the same arises out of a contractual dispute. The contract provides for an arbitration clause. There are factual issues involved which cannot be adjudicated in the writ proceeding. The impugned notice is a mere show cause where no issues have been adjudicated

by the authority. Issuance of show cause notice does not give rise to any cause of action for which the writ petition can be filed.

13. It has been submitted that the authority has noted several faults in the execution of work by the petitioners for which certain amount of payment has been deducted from the bills paid to the petitioners. It has been argued that several deficiencies of the petitioners have been mentioned in the impugned notice which are required to be answered. The petitioners ought to reply to the notice and if the reply is found to be satisfactory, then penalty may not be imposed. Prayer has been made to dismiss the writ petition.
14. In support of the submission that the writ petition will not be maintainable, the respondents rely on the same paragraph of the same decision delivered by the Hon'ble Supreme Court in the matter of Vicco Laboratories (supra). Reliance has also been placed on the judgment delivered by the Division Bench of this Court in the matter of **Indian Oil Corporation Limited & Ors. vs. Saumajit Roy Chowdhury** reported in **(2025) SCC Online Cal 2197** paragraph nos. 17, 20 and 21.
15. I have heard and considered the submissions made on behalf of both the parties and have perused the documents placed before this Court.
16. The impugned notice requesting the petitioners to show sufficient reasons indicates many factual issues for which clarification has been sought for from the petitioners. It is only after response is given to the said notice that the authority will arrive at a conclusion whether to forfeit the EMD and the bank guarantee and whether to impose any penalty or not. As on date no decision has been taken by the authority imposing any penalty or taking coercive step against the petitioners.

17. The dispute in question, admittedly, arises out of a contract entered by and between the parties. Whether the authority could have issued a notice to show reasons prior to taking any punitive action against the petitioners is a matter to be decided upon interpretation of the terms and conditions of the contract.
18. The Hon'ble Supreme Court in *Vicco Laboratories (supra)*, inter alia, laid down that normally, the writ Court should not interfere at the stage of issuance of show cause notice. Interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that the notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication is necessary, interference is ruled out. The Court also held that where show cause notice is issued either without jurisdiction or in an abuse of process of law, the writ Court would not hesitate to interfere at the stage of issuance of show cause notice.
19. In the instant case it does not appear that the authority acted without jurisdiction. No case alleging abuse of the process of law has been made out. The respondent authority is one of the parties to the contract. The bank guarantee in favour of the respondent authority is still active, and the respondent authority being the beneficiary may take step to invoke and encash the same in accordance with law.
20. The petitioners assert that the action of the authority is arbitrary. The aforesaid submission of the petitioners cannot be accepted by the Court. Prima facie it does not appear that the authority acted arbitrarily. Whether the authority could have acted in the manner in which it has acted is required to be adjudicated by the competent forum which is certainly not the writ Court.

21. In Unitech Limited (supra) the Court reiterated that writs are maintainable for asserting contractual rights against the State or its instrumentalities. It was also held that presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases and it needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The Court held that the State and its instrumentalities are not exempt to act fairly.
22. To decide as to whether the action of the authority is fair or not, various factual aspects are required to be verified. There are several disputed questions of facts and for adjudication of the same evidence may also be required to be taken. Such factual aspects cannot be conclusively decided by the writ Court.
23. In Saumajit Roy Chowdhury (supra) the Hon'ble Division Bench of this Court relied upon the exceptions carved out by the Hon'ble Supreme Court in the judgment delivered in the matter of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai*** reported in ***(1998) 8 SCC 1*** and held that writ petition will not be maintainable when the contractual agreement provides for an efficacious alternate remedy.
24. In the case at hand the petitioners have entered into a contract with the respondent authority and assert rights flowing from the said contract. The authority has called for a response from the petitioners with regard to certain issues. At this stage, it does not appear that any of the fundamental rights of the petitioners have been infringed requiring interference by the writ Court.
25. In view of the discussions made hereinabove, the Court is not inclined to exercise jurisdiction in the matter. The writ petition is accordingly fails and is hereby dismissed.

26. However, since the petitioners approached the Court immediately after the notice to show cause was issued and the writ petition remained pending till the last date within which a reply was to be given by the petitioners, accordingly, the Court directs the respondent authority to permit the petitioners to submit their reply to the notice dated 7th July, 2025 within 21st July, 2025. If the petitioners file the reply within the aforesaid extended time period, then the authority shall proceed to consider the same. If no reply is filed, the authority shall proceed accordingly.
27. All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.
28. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)