

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side**

Present :- Hon'ble Justice Amrita Sinha

WPO 960 of 2024

**Octavius Plantations Ltd. & Anr.
Vs.
Shyama Prasad Mookerjee Port & Ors.**

For the writ petitioners	:-	Mr. Abhrajit Mitra, Sr. Adv. Mr. D.N. Sharma, Adv. (vc) Mr. Ankit Agarwal, Adv. Mr. Nilay Sengupta, Adv. Mr. Sujit Banerjee, Adv.
For respondent nos. 1 to 3	:-	Mr. Suhankar Nag, Adv. Mr. Abhishek Banerjee, Adv.
For respondent no. 6	:-	Mr. S.K. Mehta, Adv. Mr. Anurag Bagaria, Adv. Mr. Devansh Southalia, Adv.
Heard on	:-	14.02.2025
Judgment on	:-	28.02.2025

Amrita Sinha, J.:-

1. The writ petition relates to a notice inviting tender dated 2nd August, 2021 published by the Port inviting bids for allotment of vacant land on long term lease of thirty years on 'as is where is' basis without renewal option, against payment of annual rent or upfront, to willing bidders through e-tender cum e-auction.
2. The petitioners participated in the tender process and emerged as the H1 bidder. Earnest money deposited by the petitioners was accepted

by the Port, but the possession of the offered land could not be handed over to the petitioner in view of a restraint order passed by this Court on 23rd November, 2015 in WP 22362 (W) of 2015 and WP 25193 of 2015. The Court directed that the Port shall be at liberty to issue advertisement offer for allotment of the subject premises in favour of the suitable bidder, but the final order of allotment shall not be issued without obtaining leave of the Court.

3. In the pending writ petition an application was made by the Port seeking leave to issue the letter of allotment in favour of the writ petitioner no. 1 herein who was selected by the Port being the highest bidder. The said writ petition was finally heard by the Court and vide judgment dated 28th February, 2023 the same stood dismissed.
4. On dismissal of the aforesaid writ petition the restraint order upon the Port stood vacated but the Port was not in a position to issue allotment letter in favour of the petitioners as the validity period of the tender notice expired in the meantime. The Port had no other alternative but to float a fresh tender on 1st November, 2023. The petitioners, for reasons best known to them, did not participate in the tender process. The respondent no. 6 submitted its bid and was selected as the H1 bidder. The respondent no. 6 paid the consideration price and advance rent in April, 2024 and possession was delivered in favour of the private respondent on 17th April, 2024. In June 2024, lease deed was executed in favour of the private respondent.

5. The instant writ petition was filed in September, 2024 praying for a direction upon the Port to set aside the notice inviting tender dated 1st November, 2023 and to declare all consequential steps taken thereunder as null and void. Prayer has also been made to issue letter of appointment in favour of the petitioners and to hand over actual physical possession of the subject land upon execution of formal contract with the petitioners.
6. It has been submitted that as the petitioners were accepted as the successful bidder in the earlier tender, the authority ought not to have cancelled the same whimsically, without any reason, thereby frustrating the claim of the petitioners.
7. It has been contended that as the Port accepted the offer of the petitioners and also accepted the earnest money deposit from the petitioners, accordingly, the same has to be treated as a valid contract and the Port is bound to issue allotment letter in its favour.
8. It has been stressed that prior to cancelling the earlier tender, an intimation ought to have been given to the petitioners as the petitioners were already selected as the highest bidder and earnest money deposit was accepted from them. Only the formal letter of allotment of land was wanting. At such a stage, the authority could not have floated fresh tender on unilateral cancellation of the earlier one.

9. Only because of the reason that higher rate of rent may be available, the authority ought not to have proceeded with a fresh tender by illegal cancellation of the earlier one. The petitioners were never made known of the decision of the Port regarding cancellation of the earlier tender and, as such, the petitioners were not aware of floating of the fresh tender.
10. In support of the submission that the Court ought to exercise its power of judicial review to ascertain as to whether the cancellation of the earlier tender was proper or not and whether the Port may be permitted to go ahead with the subsequent tender, the petitioners rely on the judgment of the Hon'ble Supreme Court in the matter of ***Subodh Kumar Singh Rathour -vs- Chief Executive Officer & Ors.*** reported in ***2024 SCC Online SC 1682*** wherein the Court was of the opinion that cancellation of contract deprives a person of his valuable right and is a very drastic step often due to significant investment made by the parties during the subsistence of the contract.
11. The submission and the prayer made by the petitioners are strenuously opposed by the respondents.
12. According to the Port, there was no other option but to go for a fresh tender in 2023 as the earlier tender of the year 2021 could not be finalised within its validity period of 180 days. The Port did not cancel the subject tender but the said tender died a natural death after expiry of 180 days from the closing date of submission of the tender.

The validity period could have been extended by the Port in response to a request made by the bidder. In the instant case, there was no request made for extension of the validity period of the tender. The last date of submission of the bid was 2nd September, 2021 and the tender was valid till March, 2022. Leave was also sought for by the Port in the pending writ petition where order was passed restraining the Port from issuing the letter of allotment to the highest bidder, but the Port was unable to obtain any order permitting issuance of letter of allotment in favour of the successful bidder. The writ petition stood dismissed in February, 2023, but in the meantime, the validity of the tender expired.

13. For selecting a suitable candidate fresh tender had to be floated in the year 2023. The notice inviting tender was widely published on 15th November, 2023 in two leading newspapers; Sanmarg and the Times of India. The said notice was also uploaded in the official website of the Port and also in the website of MSTC for e-auction.
14. In response to the open advertisement, the private respondent participated in the tender process and its offer being the highest, was selected as the successful bidder. Offer letter was allotted in favour of the private respondent and possession of the plot was handed over in April, 2024. Since then, the private respondent is in possession of the subject premises and is carrying out business therefrom.

15. It has been submitted that there was no requirement of giving any formal intimation to the writ petitioners either regarding cancellation or regarding issuance of fresh notice for holding e-auction. The same is because the earlier notice inviting tender was not cancelled by the Port and the subsequent notice inviting tender was published in two daily newspapers.
16. Learned advocate representing the private respondent submits that on getting information of the notice inviting tender, the private respondent submitted its bid and was selected as the highest bidder. The Port had already issued offer letter on acceptance of the price paid and handed over possession of the subject plot.
17. It has been submitted that the petitioners were all along aware of the subsequent advertisement for tender but deliberately did not participate in the said process as the petitioners were not interested in the same because of the higher rate of rent applicable to the subsequent tender.
18. The respondents pray for dismissal of the writ petition.
19. I have heard and considered the rival submissions made on behalf of both the parties.
20. It appears that the petitioners participated in the tender held in the year 2021 and was found to be the highest bidder. In view of the interim order passed by the Court restraining the Port from issuing final letter of allotment in favour of the successful bidder, the Port was

unable to issue allotment letter and hand over possession to the petitioners. The notice inviting tender contained a validity period; which is, 180 days from the closing date of submission of the tender. Though there was a provision for extension of the offer, but as no request was made from any of the bidders, accordingly, the tender expired automatically due to efflux of time. Immediately on expiry of the validity period, the offer given by the petitioners also stood lapsed.

21. The Port may not have given a formal intimation regarding lapse of the offer of the petitioners, but the said non-communication will not revive the lapsed offer. It was for the petitioners to have made a request to the Port to extend the validity period, but as there was no request from the bidder, the offer has to be treated as a closed one with no scope for reviving or renewing the same.
22. The petitioners ought to have followed up their offer with the Port immediately after dismissal of the pending writ petition which stood in the way of issuing the letter of allotment in favour of the petitioners. The writ petition stood dismissed by the Court in February, 2023, but there was no communication from the end of the petitioners. The Port proceeded to float fresh tender in November, 2023.
23. The advertisement of notice inviting tender appears to have been widely published in two leading daily newspapers and also in the official portal of the Port and MSTC. Had the petitioners been so interested to obtain allotment of land in the Port area, they ought to

have been alert and vigilant as regards the advertisements published by the authority. Advertisements are made public only to bring the same to the notice of those who are interested. The private respondent placed its offer in response to the advertisement made and being the highest bidder was offered the letter of allotment. A formal contract has also been executed between the Port and the private respondent.

24. Submission of the petitioners that there was a valid contract in between the parties as the Port finalised, approved and accepted the offer of the petitioners, cannot be accepted by the Court. Though it is true that the bid/offer by the petitioners was accepted by the Port but, admittedly, the contract between the parties did not materialize and formal contract could not be executed because of the restraint order of the Court. Had there been no impediment on the part of the Port to issue the letter of allotment, then things would have been otherwise. The Port did not have any right to finalise the offer in view of the pending restraint order despite the fact that the petitioners' bid was found to be the highest.

25. A contract becomes valid only after the same is accepted and admitted by both the parties. In the instant case, final acceptance from the Port could not be made and, as such, the contract between the petitioners and the Port never came into existence at all. The same cannot be treated as a validly concluded contract. No right whatsoever accrued in favour of the petitioners as formal contract was not executed by and between the parties. Mere payment of the earnest money deposit does

not create any right in favour of the petitioners in the absence of a validly executed contract.

26. The notice inviting tender had a clause regarding acceptance of the Port's allotment letter. The clause mentions that after finalisation of the tender through e-tender cum e-auction, the hard copy of the allotment letter will be issued to the successful bidder. The successful bidder shall be required to formally accept the terms and conditions of the allotment of lease and remit requisite advance annual rent or upfront with advance nominal rent for the first year, if applicable, security deposit, cost of valuation, if any, etc. within the period as will be specified in the allotment letter, failing which the allotment shall stand cancelled and the earnest money deposit by the bidder shall stand forfeited. Possession of the plot of land/structure/property will be handed over after completion of the required formalities including payment specified in the letter of allotment.
27. Here, none of the above formalities apart from payment of the earnest money deposit was complied. Therefore, it cannot be taken that there was any form of contract in between the parties.
28. The submission of the petitioners that there has been unilateral cancellation of the earlier tender, also cannot be accepted. It does not appear that the petitioners have any right to proceed with the earlier tender which expired long back. There is no scope of reviving an offer which could not be finalized due to legal complications. Thereafter

fresh contract has been executed and the parties have acted in furtherance of the same. The Port and the private respondent shall be bound by the terms and conditions of the subsisting contract.

29. Hence, the prayers made by the petitioners cannot be allowed in the facts and circumstances of the instant case.

30. The writ petition fails and is hereby dismissed.

31. 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.)