

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.1134 of 2026
with
IA No. C.A.N. 1 of 2026

MASIBUL HASSAN

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. P.S. Deb Barman, Adv.,
Mr. Srikantha Dutta, Adv.,
Ms. Debangana Dey, Adv.

For the State : Mr. Sirshendu Bandopadhyay, Adv.

For respondent nos.2 to 5 : Mr. Sunil Kumar Gupta, Adv.,
Mr. Hasibul, Adv.

For the applicant in IA No. : Mr. Mrityunjoy Chatterjee, Adv.,
C.A.N. 1 of 2026 Mr. Manas Das, Adv.,
Mrs. Suchismita Chakraborty, Adv.,
Mr. Arindam Poali, Adv.

Hearing concluded on : 12.02.2026

Judgment on : 05.03.2026

Kausik Chanda, J.:-

The present writ petition raises questions touching upon the formation of contracts in tender matters, the binding nature of tender conditions, the doctrine of waiver in government contracts, and the limits of judicial review under Article 226 of the Constitution of India in matters arising out of contractual engagements with statutory authorities.

2. The petitioner seeks to assail an e-auction notice dated January 6, 2026 issued by Murshidabad Zilla Parishad inviting bids for settlement of Balia Shyampur Ferry Ghat for a period of three years. The grievance of the petitioner is founded upon the assertion that, pursuant to an earlier auction process initiated on October 3, 2024, a concluded and binding contract had come into existence in his favour for a tenure of three years commencing from December 19, 2024 and ending on December 18, 2027. It is contended that the issuance of the impugned auction notice during the subsistence of such alleged contractual tenure is arbitrary, illegal, and violative of his vested contractual rights.

3. The factual backdrop, in brief, is that Murshidabad Zilla Parishad, being a statutory body constituted under the West Bengal Panchayat Act, 1973, issued an e-auction notice dated October 3, 2024 for temporary settlement of the said ferry ghat for a period of three years. The notice stipulated, inter alia, that the successful bidder would be required to deposit the lease rent for the first year within a prescribed period and to tender lease rent for the second and third years with an

annual enhancement of 10%. It further mandated submission of a Bank Guarantee commensurate with the lease rent agreed for the third year, having a validity of two years and six months.

4. The petitioner participated in the auction and emerged as the highest bidder by quoting Rs. 26,74,828/- for the first year, substantially above the base rate. Thereafter, by a Letter of Acceptance dated November 18, 2024, the petitioner was informed that his bid had been accepted. The said letter required him to deposit the full value of the first year's lease rent within fifteen days, to execute an agreement on non-judicial stamp paper, and to submit a Bank Guarantee of Rs. 32,36,540/- along with the agreement. The letter expressly stipulated that failure to comply with the conditions would entail cancellation of the auction and forfeiture of the earnest money.

5. The petitioner deposited the first year's lease rent within time. He, however, could not deposit the Bank Guarantee or execute the agreement. Subsequently, by a communication dated December 20, 2024, the Zilla Parishad intimated that the ferry ghat had been temporarily settled in his favour for a period of three years from December 19, 2024 to December 18, 2027. The said communication reiterated the requirement of immediate submission of the Bank Guarantee. The execution of the agreement was, however, not insisted upon.

6. It is an admitted position that the petitioner did not furnish the Bank Guarantee as required. Instead, he addressed successive

communications seeking extension of time to submit the same. On his request, by a letter dated January 3, 2025 from the Zilla Parishad, time was extended till March 19, 2025. Even within the extended period, the petitioner failed to comply with the requirement. Thereafter, by a communication dated April 23, 2025 from the Zilla Parishad, the tenure of settlement was reduced to one year, i.e., up to December 18, 2025. The petitioner continued in possession during the first year upon payment of lease rent. After expiry of the said period, by a letter dated January 2, 2026, a temporary extension up to January 31, 2026 was granted to ensure continuity of ferry services. Eventually, the impugned fresh auction notice dated January 6, 2026 was issued, giving rise to the present writ petition.

7. The central question that falls for determination is whether, in the facts of the case, a concluded contract for a period of three years had come into existence between the petitioner and the Zilla Parishad.

8. It is well settled that an auction notice is merely an invitation to offer. The bid submitted by a participant constitutes an offer, and acceptance thereof by the authority may result in a binding contract, provided such acceptance is absolute and unqualified. Section 7 of the Indian Contract Act, 1872 mandates that, in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. If the acceptance is conditional or subject to fulfilment of specified stipulations, the contract remains inchoate until such conditions are satisfied.

9. In the present case, the Letter of Acceptance dated November 18, 2024 cannot be read in isolation. It expressly required not only deposit of the first year's lease rent but also execution of a formal agreement and submission of a Bank Guarantee of a specified amount and duration. The furnishing of the Bank Guarantee was not portrayed as a mere procedural formality; rather, it was an integral financial safeguard embedded in the tender conditions. The language employed in the Letter of Acceptance makes it clear that non-compliance would result in cancellation and forfeiture.

10. The subsequent communication dated December 20, 2024, while mentioning settlement for three years, reiterated the necessity of submitting the Bank Guarantee. The tenor of the documents indicates that the settlement was conditional and subject to compliance with the stipulated requirements. The mere mention of a three-year tenure cannot override the explicit condition precedent.

11. The conduct of the petitioner assumes significance. On multiple occasions, he sought extension of time to furnish the Bank Guarantee. Such repeated requests demonstrate that he himself treated submission of the Bank Guarantee as a mandatory obligation. A party cannot, after acknowledging a contractual stipulation and seeking indulgence for non-compliance, subsequently contend that the condition was either non-essential or stood waived.

12. The doctrine of waiver, in the context of public contracts, demands clear, conscious, and intentional relinquishment of a known right.

Waiver cannot be lightly inferred against a statutory authority charged with safeguarding public revenue. Extension of time to comply with a condition cannot, by itself, constitute waiver of the condition. The extension granted till March 19, 2025 was a concession; it did not obliterate the obligation. When the petitioner failed to comply even within the extended time, the Zilla Parishad curtailed the tenure to one year. Such action is inconsistent with any intention to waive the requirement.

13. The petitioner has argued that, since the tender conditions specifically mentioned non-payment of lease rent as a ground for cancellation but did not expressly state that failure to furnish the Bank Guarantee would result in termination of the lease, the authority could not rely upon such failure to curtail the tenure. This submission does not merit acceptance. The requirement of the Bank Guarantee was embedded in the tender conditions and reiterated in the Letter of Acceptance dated November 18, 2024, which clearly stipulated that, in the event of failure to submit the Bank Guarantee, the auction would be treated as cancelled. A condition precedent, by its very nature, must be fulfilled before rights crystallise.

14. The petitioner has also placed reliance on a judgment of the Bombay High Court reported at **(2001) 3 Mh. L.J. 415 (Cotton Corporation of India Ltd., Bombay v. Alagappa Cotton Mills, Rajapalayam)**. The said decision turned upon its own facts, where acceptance was not conditional in the sense contemplated under Section

7 of the Contract Act. In the present case, the acceptance was explicitly conditional upon submission of the Bank Guarantee and execution of the agreement. The ratio of the said decision is, therefore, distinguishable.

15. The reduction of tenure to one year by communication dated April 23, 2025 was never challenged at the relevant point of time. The petitioner acquiesced in such reduction and continued to operate the ferry ghat during the curtailed tenure. The said tenure expired by efflux of time on December 18, 2025. The subsequent extension was clearly in the nature of a stop-gap arrangement to ensure that public utility services were not disrupted pending fresh settlement. Such temporary arrangements, dictated by administrative exigency, cannot ripen into enforceable rights extending beyond their limited purpose.

16. It must be remembered that the ferry ghat is a public utility, and the Zilla Parishad is entrusted with the responsibility of managing it in a manner that protects public interest and revenue. The requirement of a Bank Guarantee equivalent to the third year's lease rent is a fiscal safeguard. Courts exercising jurisdiction under Article 226 do not ordinarily interfere with decisions relating to contractual matters unless such decisions are vitiated by arbitrariness, mala fides, or violation of statutory provisions. No material has been placed before this Court to demonstrate that the impugned auction notice is actuated by mala fide or that it is arbitrary in the Wednesbury sense.

17. The petitioner's claim ultimately rests upon the assertion of a vested contractual right extending till December 18, 2027. For the reasons discussed above, this Court is unable to hold that any such vested right came into existence. At best, the petitioner had a provisional and conditional arrangement which stood curtailed to one year and thereafter expired. In the absence of a subsisting contractual right, the challenge to the fresh auction notice cannot be sustained.

18. For all the aforesaid reasons, this Court holds that no concluded contract for a period of three years came into existence between the petitioner and Murshidabad Zilla Parishad owing to non-fulfilment of a mandatory condition precedent, namely submission of the stipulated Bank Guarantee. There was no waiver of such condition by the authority. The impugned e-auction Notice dated January 6, 2026 does not suffer from illegality or arbitrariness warranting interference in exercise of writ jurisdiction.

19. By the time the writ was filed, the curtailed one-year tenure had expired on December 18, 2025. The temporary extension dated January 31, 2026 was only to avoid disruption of public service. It has already been observed that no three-year concluded contract had ever crystallised between the parties. In the aforesaid facts, without a vested contractual right, the petitioner has no enforceable claim to seek further extension to submit the Bank Guarantee.

20. The petitioner's prayer to allow him to deposit the Bank Guarantee now and to extend the tenure for two more years cannot be accepted

because conditions precedent must be fulfilled at the relevant time, not at the convenience of the petitioner. Allowing post-expiry compliance would violate tender equality and fairness, and it would amount to rewriting the tender conditions.

21. C.A.N. 1 of 2026 is an application for the addition of a party on behalf of a bidder in the fresh tender process initiated by the notice dated January 6, 2026. In view of the discussion above, no order needs to be passed in the said application.

22. **W.P.A. No.1134 of 2026**, along with **IA No. C.A.N. 1 of 2026**, is, accordingly, dismissed. Interim order dated January 21, 2026, stands vacated. In the facts and circumstances, there shall be no order as to costs.

23. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)