IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 14531 of 2026

Century Infra Limited & Ors.
Vs.
Union of India & Ors.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Deepan Sarkar
Mr. Yash Singh
Mr. Jishnujit Roy
Mr. Shourya Samanta
Mr. Devesh Bose

....For the petitioners.

Mr. Kishore Dutta, Sr. Adv.
Mr. Snehashis Sen
Mr. Abhishek Banerjee

....For the respondent no. 2.

Mr. Saptangshu Basu, Sr. Adv.
Mr. Krishna Raj Thaker, Sr. Adv.
Mr. Rajarshi Dutta

Mr. Deepak Kumar Jain

....For the respondent no. 4.

Hearing Concluded On : 29.06.2026

Judgment Delivered On : 29.06.2026

Judgment Uploaded On : 30.06.2026

Krishna Rao, J.:

1. This is the second round of litigation of the same e-tender notice for "land inside CME Compound at 8, Garden Reach Road, Kolkata, being plot no. 130/25(A), on long term lease of 30 years, on *"as is where is basis"*, without renewal option, against payment on annual rent/ upfront basis dated 5th November, 2025.

2. On the earlier occasion, the private respondent no. 4 had filed a writ petition being WPA No. 7776 of 2026 (City Mall Vikash Pvt. Ltd. & Anr. vs. The Union of India & Ors.) praying for a direction upon the respondents to permit the respondent no. 4 herein and other bidders to participate in the abovementioned tender from the stage of bidding as at 10.40 p.m.

3. This Court by a judgment dated 23rd April, 2026, dismissed the writ petition. Being aggrieved with the judgment dated 23rd April, 2026, the private respondent preferred an appeal being MAT No. 857 of 2026 and the Hon'ble Appellate Court had disposed of the said appeal by holding that the Appellate Court is not inclined to interfere with the order passed by this Court as this Court has already held that it is upto the Port Trust to decide the issue raised by the respondent no. 4, it is for the Port Trust to decide the fate of the bidding process in accordance with law and inform the fate of such decision to the respective parties.

4. After the order passed by the Appellate Court, the respondent no. 3 has issued the impugned communication informing that the respondent authorities have decided to continue the e-auction held on 26th March, 2026 by conducting an extended e-auction amongst the techno-commercially qualified bidders as per the following parameters:

- *Proposed leased Area : 44,790 square meter.*
- *Reserved/ Base Price for the extended e-auction : Rs. 4,72,67,214/- per annum (excluding taxes) and requested to participate in the extended e-auction scheduled to be held on 29th June, 2026 at 12.00 P.M. through MSTC e-auction portal.*

5. Mr. Abhrajit Mitra, Learned Senior Advocate appearing for the petitioners submits that the Port Trust illegally and arbitrarily has decided to continue the e-auction held on 26th March, 2026 by conducting an extended e-auction though the e-auction process which was already completed on 26th March, 2026 wherein the petitioners are the highest bidder.

6. Mr. Mitra submits that it is the admitted case of the private respondent no. 4 that on 26th March, 2026, on the date of e-auction, the private respondent no. 4 could not participate in the e-tender process at 10:40 P.M. and this Court by the judgment dated 23rd April, 2026, has also held that the private respondent no. 4 failed to utilize the four minutes from 22:45 hours to 22:49 hours and thus the respondents cannot claim to be allowed to participate in the bid process from the stage of bidding at 10:40 hours.

7. Mr. Mitra submits that the Hon'ble Appellate Court has not interfered with the judgment passed by this Court dated 23rd April, 2026, and only the Appellate Court held that it is upto the Port Trust to decide the fate of the bidding process in accordance with law and inform the fate of such decision to the respective parties. He submits that the Port Trust authorities had only two options either to accept the tender of the petitioners by issuing work order or to cancel the tender but the Port Trust Authorities by ignoring the findings of this Court in the judgment dated 23rd April, 2026, wherein this Court has categorically held that the respondents have accepted the bid amount from the petitioners herein and it is upon the Port Trust authorities to issue allotment order to the petitioners or to take further decision to cancel the tender process if the authorities find it difficult to accept the bid amount of the petitioners herein.

8. Mr. Mitra submits that after the judgment passed by this Court dated 23rd April, 2026, the Port Trust authorities by an email dated 29th May, 2026, informed the petitioners that subsequent to the consent of the petitioners, the revision of the area of the subject plot, the annual rent quoted by the petitioners in the e-auction has been worked out on a proportionate basis at a rate of Rs. 4,72,67,214/- per annum excluding the applicable taxes and as per the request of the Port Trust authorities, the petitioners by an email dated 2nd June, 2026, has confirmed the annual rent amounting to Rs. 4,72,67,214/- but instead of issuance of the work order, the Port Trust authorities had issued the impugned communication by extending the e-auction by fixing the reserve price of Rs. 4,72,67,214/- per annum.

9. Mr. Mitra in support of his submission, has relied upon the judgment in the case of ***Sorath Builders vs. Shreejikrupa Buildcon Limited & Anr.*** reported in ***(2009) 11 SCC 9*** and submits that where bidders who fulfil pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values.

10. Mr. Mitra has relied upon the judgment in the case of ***Abhay Kumar Patel & Ors. Vs. State of Bihar & Ors.*** reported in ***2026 LiveLaw (SC) 14*** and submits that changes in the eligibility criteria and procedure after initiation of the recruitment process, is well settled as the rules of the game i.e. the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

11. Mr. Mitra has relied upon the judgment in the case of ***Golden Food Products India vs. State of Uttar Pradesh & Ors.*** reported in ***2026 SCC OnLine SC 24*** and submits that if a valid bid has been made which is above the reserve price there should be a rationale or reason for not accepting it. The decision to discard the highest bid must have a nexus to the rationale or the reason.

12. Mr. Kishore Dutta, Learned Senior Advocate appearing for the Port Trust authorities submits that the Hon'ble Appellate Court by the order dated 8th June, 2026, has passed an order by giving liberty to the Port Trust to decide the fate of the bidding process in accordance with law and inform such decision to the respective parties and accordingly, the authorities have taken the decision to continue the e-auction held on 26th March, 2026 by conducting an extended e-auction amongst the techno-commercially qualified bidders.

13. Mr. Dutta submits that as per sub-clause (h) of Clause 5 of the tender document provides that SMP, Kolkata, reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part as the case may be, without assigning any reason thereof and thus in terms of the said clause, the authorities had taken the decision to extend the e-auction amongst the techno-commercially qualified bidders.

14. Mr. Dutta submits that in the previous writ petition, it was the specific case of the Port Trust Authorities that the private respondent no. 4 unable to participate in the live e-auction bid after 10:40 hours and if the private respondent is intending to pay the higher bid amount then the Port Trust authorities will consider the same in accordance with law. He submits that taking into consideration of the said aspect, the Port Trust authorities by fixing the basic price of Rs. 4,72,67,214/-, decided to conducting an extended e-auction held on 26th March, 2026, amongst the techno-commercially qualified bidders i.e. the petitioner no. 1 and the private respondent.

15. Mr. Dutta submits that in the previous writ petition, the issue whether the respondent can extend the period for conducting e-auction in terms of sub-clause (h) of Clause 5 is not decided either by this Court or by the Appellate Court. As per the decision taken by the Port Trust authorities, the petitioners will also get an opportunity to quote its bid amount.

16. Mr. Saptangshu Basu, Learned Senior Advocate along with Mr. Krishna Raj Thaker, Learned Senior Advocate, representing the respondent no. 4 submits that even after the judgement passed by this Court dated 23rd April, 2026, the Port Trust authorities has not closed the tender and further communication was made with the petitioners and again on 29th

May, 2026, the rate quoted by the petitioners was reviewed and the bid amount quoted by the petitioners was enhanced from Rs. 4,57,28,982/- to Rs. 4,72,67,214/-.

17. Mr. Basu submits that the Hon'ble Appellate Court has given liberty to the Port Trust authorities to take decision and to communicate the same to the parties and accordingly the respondent authorities have taken decision by allowing both the parties to participate in the extended e-auction with the revised base price of Rs. 4,72,67,214/-, thus the petitioners will also get an opportunity to quote its price in the extended e-auction process.

18. Mr. Basu submits that the Port Trust authorities have passed the order in accordance with sub clause (h) of Clause 5 of the tender document which provides extension. Mr. Basu submits that in the earlier round of litigation this Court has not decided whether the Port Trust authorities can extend the period of e-auction. He submits that the petitioners by a letter dated 25th June, 2026, admitted that the petitioners will participate in extended e-auction process and thus the petitioners cannot challenge the same after admission.

19. Mr. Basu submits that this is a commercial contract and the Port Trust authorities will be commercially benefited if the parties are allowed to participate in the extended e-auction process.

20. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the petitioners. The only issue whether the impugned communication dated 24th June, 2026, issued by the respondent no.3 by extending the e-auction process is sustainable under law.

21. As per the tender notice dated 5th November, 2025, the last date and time of submission of offline Techno-Commercial Bid and price bid through online and submission of hard copies of MOA into the specified box was till 5:00 P.M. on 5th December, 2025. The e-auction process was started on 26th March, 2026 from 12:00 noon through MSTC e-auction portal. Both the petitioners and the private respondent have participated in the live bidding process. During live bidding process through online mode at 10:40 P.M., the computer system of the private respondent suffers technical glitch and the private respondent was automatically logged out of the MSTC e-auction portal and the private respondent unable to participate in the remaining portion of live bidding process. The petitioners at 22:41:34 hours have quoted the bid amount of Rs. 4,45,10,628/-.

22. The respondent no.3 filed writ petition being WPA No. 7776 of 2026 praying for the following reliefs:

> *"**a.** A writ and/or in nature of Mandamus commanding the respondents to permit the petitioner no. 1 company to participate in the said*

tender auction being NIT No. SMP/KDS/LND/131-2025 dated November 5, 2025;

b. *A writ and/or in nature of Mandamus commanding the respondents to conduct a fresh auction between the petitioner no. 1 company and the other bidder from the stage of the bidding as at 10:40 pm;*

c. *A writ and/or in nature of Mandamus commanding the respondents not to take any steps in the auction without conducting the fresh bidding between the petitioner no. 1 company and the other bidder from the stage of the bidding as at 10:40 pm;*

d. *A writ and/or in nature of Prohibition, from closing the auction process;*

e. *A writ and/or in nature of certiorari do issue calling upon the respondents and their agents to certify and transmit the records in connection with the said auction being NIT No. SMP/KDS/LND/131-2025 dated November 5, 2025, so that conscionable justice may be rendered;*

f. *Any other writs and/or orders and/or directions for granting complete justice and remedy;*

g. *Rule NISI in terms of the prayers above;*

h. *Interim and Ad – Interim order(s) in terms of prayers above;*

i. *Such further or other order and/or orders be passed, direction and/or directions be given as your Lordships may seem fit and proper."*

23. This Court by a judgment dated 23rd April, 2026, dismissed the writ petition holding that:

*"**16.** It is admitted by the petitioners that suddenly around 10.40 P.M. after almost 10 hours 40 minutes of active participation by the*

petitioners, the petitioners' computer system suffered a technical glitch. Clause 16 of General Information to the bidders provides that neither SMP, Kolkata nor MSTC shall be responsible for any problem at the bidders' end like failure of electricity, disruption of internet connection, any trouble with bidder's PC etc., which may cause inconvenience or prevent the bidder from bidding in the e-tender-cum-e-auction.

***17.** As per the bid history produced by the respondent no. 2, it reveals that the private respondent has participated in the last bid at 22:41:34 and put the bid amount of Rs. 44,51,0628/-. The respondent no. 2 also produced the e-mail dated 30th March, 2026 wherein it reveals that at 22:40 hours to 22:45 hours, the petitioners could not participate in the e-auction process due to computer glitch in the computer of the petitioners. The private respondent has quoted his final bid amount at 22:41:34 hours. The system of the petitioners restored at 22:45 hours and the bidding window remain open for about 4 minutes but even after the restoration of the connection of the petitioners at 22:45 hours, the petitioners have not placed their bid amount during this four minutes and accordingly at 22:49:34 hours, the respondent no. 2 officially closed the e-bidding process.*

***20.** This Court finds that it is the admitted case of the petitioners that the computer system of the petitioners suffered technical glitch at 10.40 hours due to which the petitioners could not participate in the further e-bid process but from the report submitted by the respondent no. 2, it reveals that at 22:45 hours, the system of the petitioners restored and the petitioners got the four minutes time to participate in the bid by putting the bid amount but the petitioners have not utilized the said four minutes and accordingly, 22:49:34 hours, the respondent no. 2 officially closed the auction. Clause 16 of the tender document also specified that neither the respondent no. 2 nor the respondent no. 3 shall be responsible for any problem at the bidder's end like failure of* *electricity, disruption of internet connection, any trouble with bidders PC etc., which may cause inconvenience to prevent the bidders from bidding in the e-tender of e-auction, thus this Court is of the view that there is no fault on the part of the respondents, accordingly, the issue no. 1 is decided against the petitioners.*

21. *As regard to the issue no. 2, Clause 23 of the tender document provides that after finalization of the tender through e-tender or e-auction, the allotment letters will be made to the successful bidders by hard copy, and successful bidders shall be required to formally accept the terms and conditions of the allotment of the lease and remit requisite advance annual rent. The respondents have accepted the bid amount. It is upon the respondent no. 3 to issue allotment order to the private respondent or to take any further decision to cancel the tender process if the authorities found any difficulty to accept the bid amount of the private respondent. Mere the allotment letter is not issued to the private respondent, will not create any right upon the petitioners to participate in the tender process from the stage at 10.40 p.m. on 26th March, 2026 along with other bidders, which is already closed at 22:49:34 hours.*

22. *The petitioners have admitted that due to technical glitch in the computer of the petitioners, the petitioners could not participate in the e-tender process after 10:40 hours but this Court has already held that the petitioners failed to utilize the four minutes from 22:45 to 22:49 hours, thus the petitioners cannot claim that if the work order is not issued, the petitioners can be allowed to further participate in the bid process from the stage of the bidding at 10:40 p.m.*

23. *Considering the above, this Court did not find any merit in the present writ petition. Accordingly,* ***WPA No. 7776 of 2026*** *is* ***dismissed****. No order as to costs."*

24. Being aggrieved with the judgment date 23rd April, 2026, the respondent no.4 filed appeal being MAT No. 857 of 2026 and the Hon'ble Appellate Court has disposed of the appeal by passing the following order:

> *"**1)** We are not inclined to interfere with the order of His Lordship.*
>
> ***2)** The writ Court could not have interfered with the bidding process once it was over as it was not within the domain of the writ Court to decide whether the appellants should be allowed to re-bid/bid afresh on account of any technical glitch which the appellants may have faced. Admittedly, the technical glitch, if at all, was at the end of the appellants and not on the part of the MSTC Ltd., that is, the platform which held the process on behalf of the Port Trust. His Lordship had rightly left it open to the Port Trust to take a decision whether to proceed on the bid received or not. The auction was held in respect of a land belonging to the Port Trust.*
>
> ***3)** Mr. Basu, learned senior advocate submits that a representation has been filed before the port authorities by the appellants and the same may be directed to be considered.*
>
> ***4)** As His Lordship has already held that it is upto the Port Trust to decide the issue raised by the appellants, it is for the Port Trust to decide the fate of the bidding process in accordance with law and inform the fate of such decision to the respective parties. The decision of the Port Trust will reach the parties expeditiously. The question of hearing being granted to the parties does not arise. The representation is already before the Port Trust.*
>
> ***5)** Accordingly, the appeal and the connected application are disposed of."*

25. The case of the Port Trust authorities is that in terms of the order passed by the Hon'ble Appellate Court and taking into consideration of sub-clause (h) of Clause 5 of the tender document, has issued the impugned communication on 24th June, 2026, by extending the e-auction schedule amongst the techno-commercially qualified bidders for the proposed area 44.790 sq. mtrs. on the base price of Rs. 4,72,67,214/- on 29th June, 2026, at 12.00 P.M. through the MSTC e-auction portal. Sub-clause (h) of Clause 5 of the tender document reads as follows:

> *"**5(h)** SMP, Kolkata reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part, as the case may be, without assigning any reason thereof."*

26. By the judgment dated 23rd April, 2026 in WPA No. 7776 of 2026, this Court held that the respondent no.4 admitted that due to technical glitch in its computer, the respondent no.4 could not participated in e-tender process after 10:40 P.M. but at 10:45 P.M (22.45 hours), the connection was restored and bidding window was remain open for over 4 minutes i.e. up till 22:49:34 hours but the respondent no.4 has not placed any bid amount during the said four minutes when the bidding process was on till 22:49:34 hours.

27. The Port Trust authorities have taken the shelter of Sub-Clause (h) of Clause 5, the word "or to extend the tender". Sub-clause (b) of Clause 5 reads as follows:

> *“**5(b)** After the closing time of event has passed, no bid will be accepted by the system. Hence, bidders are advised to make final submission of their bids well within time.”*

28. Clause 12 of the evaluation criteria of the tender document reads as follows:

> *“**12.** The scheduled closing time of e-auction shall be automatically extended, in case a techno-commercially qualified bidder submits a bid within eight minutes of scheduled closing time of e-auction. For example, if the scheduled closing time is at 17.00 hrs and a bid is submitted at 16.54 hrs, the e-auction will not be close at 17.00 hrs but would be extended till 17.02 hrs, closing time for e-auction shall be extended till 17.09 hrs. This extension will go on till no bid is received for eight whole minutes.”*

29. To extend a tender means to officially change a procurement deadline or process. This generally refers to two scenarios : *extending the bid submission deadline or extending the validity period*. In the present case, in the first round of litigation, the respondent no.4 requested the respondent authorities to permit the respondent no.4 to participate in the e-tender auction from the stage of bidding as at 10:40 PM. In the said proceeding, it was the specific case of the MSTC, the respondent no.5 herein that in the absence of any technical glitch at the side of the MSTC, the respondent no.4 cannot claim any benefit for allowing the respondent no.4 to participate in the said tender any further, and the said submissions of the respondent no.5 supported by the judgment of the Hon’ble Supreme Court in the case of ***Maharashtra Housing***

Development Authority Vs. Shapoorji Pallonji & Co. Pvt. Ltd. reported in ***(2018) 3 SCC 13***.

30. If the submissions of Mr. Dutta and Mr. Basu is taken into consideration that the Port Trust authorities have extended the e-auction period on the basis of sub-clause (h) of Clause 5 of the tender document, then it would amount to change of view of the MSTC who has conducted online auction and ignoring the findings of the judgment passed by this Court dated 23rd April, 2026.

31. After the judgment passed by this Court dated 23rd April, 2026, the Port Trust authorities have further negotiated with the petitioners and revised the total area of the land from 48,258 Sq. Mtrs. to 44,790 Sq. Mtrs. and the amount from Rs. 4,45,10,628/- to Rs. 4,72,67,214/-. In the communication dated 29th May, 2026, the Port Trust authorities have requested the petitioners to confirm its unconditional acceptance of allotment of the revised plot at the revised annual rent with extra taxes within 5 days from the receipt of the said proposal. The petitioners by a communication dated 2nd June, 2026, confirmed the same. The Hon'ble Appellate Court has taken up the appeal preferred by the respondent no.4 herein on 8th June, 2026 but the Port Trust authorities have not brought the said fact before the Hon'ble Appellate Court.

32. This Court by the judgement dated 23rd April, 2026, held that it is upon the Port Trust authorities to issue allotment order to the petitioners or to take any further decision to cancel the tender process if the authorities find any difficulties to accept the bid amount of the petitioner herein. The said findings of this Court were duly affirmed by the Hon'ble Appellate Court.

33. The Port Trust authorities have now taken contrary view by extending the e-auction amongst the techno-commercially qualified bidders by altering the proposed leased area and base price from the original tender. It is the settled law that the authorities cannot change the rules of the game in the middle or after the process has commenced.

34. By the judgment dated 23rd April, 2026, this Court already dismissed the prayer of the respondent no. 4 for conducting a fresh auction between the petitioner and the respondent no. 4 as at 10:40 P.M. Now the Port Trust authorities indirectly by avoiding the judgment of this Court allowing the private respondent no. 4 to participate in the same tender process.

35. In view of the above, this Court finds it is difficult to accept the decision taken by the Port Trust authorities by a communication dated 24th June, 2026 by conducting an extended e-auction process amongst the techno-commercially qualified bidders. The decision taken by the Port Trust authorities dated 24th June, 2026, is set aside and quashed. The Port Trust authorities are directed to take appropriate decision in terms of the judgment dated 23rd April, 2026, passed by this Court and the order passed by the Hon'ble Appellate Court dated 8th June, 2026.

36. WPA No. 14531 of 2026 is **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)