

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 13062 of 2023

Bijli Matshya Utpadan Group & Anr.

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Anjan Bhattacharya
Ms. Anita Shaw
Ms. Salma Sultana

For the State : Mr. Chandi Charan De, Id. Addl. Govt. Pleader
Mr. Anirban Sarkar

Heard on : January 7, 2025

Judgment on : January 7, 2025

Aniruddha Roy,J.

On the prayer of the petitioners leave is granted to the petitioners to file a supplementary affidavit. The supplementary affidavit filed today in Court is taken on record.

Learned Additional Government Pleader Mr. De submits that, he shall not file any affidavit-in-opposition to the supplementary affidavit or to the writ petition and he shall proceed on the basis of the existing records.

Accordingly, the writ petition is taken up for final consideration.

Facts:

1. The last order passed by this Court on **November 18, 2024** speaks in detail.
2. A tender process was held on **September 6, 2021** by way of publishing a tender notice at **page 21** to the writ petition for granting lease of a water body. The petitioners were the successful bidders. After being declared as successful bidder, the petitioners paid a sum of **Rs.55,250/-** on **April 26, 2022, annexure P-6** at **page 36** to the writ petition which was equivalent to **25%** of the lease rental. The balance **75%** was to be deposited within three months as per **Clause 7** of the said tender notice dated **September 6, 2021** (for short, the tender notice). The petitioners have not deposited the said balance 75% of the lease rental. The petitioners claim for issuance of mandamus directing the State authority to accept the said balance 75% of the lease rental from the petitioners and to complete the formality by issuing necessary documents of lease in favour of the petitioners in respect of the self-same water body.

Submissions:

3. Mr. Anjan Bhattacharya, learned counsel appearing for the petitioners submits that, though the initial payment equivalent to 25% of the lease rental was paid by the petitioners on April 26, 2022 but the possession certificate in respect of the water body has not been issued to the petitioners till date. The petitioners at all material time were and still are ready and

willing to deposit the said balance 75% lease rental under the lease covenant and to obtain the possession certificate in respect of the water body.

4. Learned counsel Mr. Bhattacharya appearing for the petitioners referring to the interparty correspondence exchanged during the period between **May 2022 till November 2024** at **pages 5 and 9 to 15** to the supplementary affidavit submits that, the petitioners were all along vigilant and diligent in pursuing their rights and requested the State authority to accept the said balance 75% of the lease rental and thereupon to issue possession certificate in respect of the water body in favour of the petitioners.

5. Learned counsel for the petitioners then submits that, throughout the period since **April 26, 2022** the local miscreants have obstructed the access of the petitioners to the said water body and as a result thereof the petitioners could not utilize the same. Such fact was brought to the notice of the State authority. The State authority by its communication dated **July 5, 2022** at **page 7** to the supplementary affidavit issued instruction upon the jurisdictional police authority to provide police protection to the petitioners for peaceful user of the water body by them. The communication dated **July 29, 2022** at **page 8** to the supplementary affidavit shows that the lease was for a tenure of five years.

6. Mr. Bhattacharya then refers to an order of a co-ordinate bench dated **April 29, 2024** passed in **W.P.A. 13065 of 2023** and submits that, under the similar circumstance the co-ordinate bench directed the State authority to accept the balance lease rental. He submits that, the petitioners are

placed in the same class as those of the petitioners in **W.P.A. 13065 of 2023**. Therefore, an identical direction may be passed by this Court also.

7. Mr. Chandi Charan De, learned Additional Government Pleader at the threshold refers to **Clause 7** of the lease covenant from the said tender notice and submits time being the essence of the covenant and since the time stood expired and the petitioners failed to deposit the said balance 75% of the lease rental, under **Clause 7** of the said tender notice the amount already deposited equivalent to 25% of the lease rental stands forfeited and the water body is now free for being further tendered to the public at large and no objection in this regard would be accepted. The petitioners will have no further right to participate in a fresh tender.

8. With reference to the said order dated **April 29, 2024** passed by the co-ordinate bench in **W.P.A. 13065 of 2023** learned Additional Government Pleader has already made his submissions on **November 18, 2024** and the same being reiterated once again that he has received instruction from his clients not to concede or to give any concession in this writ petition especially in view of operation of **Clause 7** of the said tender notice at **page 21** to the writ petition.

9. In the light of the above submissions learned Additional Government Pleader submits that, this writ petition is totally devoid of any merit and should be dismissed.

Decision :

10. After considering the rival submissions of the parties and upon perusal of the materials on record, at the outset this Court is of the view that, the transaction by and between the parties under the said tender notice is purely commercial in nature. The law is well settled that the tender covenants in a commercial contract/transaction has to be construed strictly in its letter and spirit. Equity has a very little role to play there.

11. **Clause 7** of the said tender notice dated **September 6, 2021** at **page 21** to the writ petition is written in Bengali, the English version of the said Clause in its true construction, according to this Court, stipulates the following terms:

- (i) *The successful bidder shall have to deposit 1/4th of the lease rental by way of demand drafts immediately;*
- (ii) *The balance lease rental of 75% shall have to be deposited within three months;*
- (iii) *The successive yearly lease rental shall have to be deposited at the beginning of every year;*
- (iv) *At every stage the deposit shall be by way of demand draft;*
- (v) *In default, the amount deposited by the successful bidder shall be forfeited in favour of the state without any further notice and the water body shall be free for further arrangements;*
- (vi) *No objection will be accepted in this regard and*

(vii) The rejected bidders shall not be eligible to participate further in the tender process relating to the water body.

12. On a true and proper construction of **Clause 7** of the tender notice this Court is of the view that, when the petitioners have defaulted and failed to deposit the balance 75% of the lease rental within **three months** from **April 26, 2022**, the date of the initial deposit of 25% , the default clause embodied under **Clause 7** became operative. Time was the essence. The documents showing that the petitioners were allegedly resisted by the local miscreants to use the water body is of no consequence. Save and except the exchange of correspondence with the State authority there is no other material before this Court to show that petitioners have taken steps in accordance with law against such alleged miscreants. The communication issued by the State authority to the jurisdictional police authority dated **July 5, 2022** at **page 7** to the supplementary affidavit would merely show, at the highest, that the State authority requested the police authority to provide police protection for user of the water body by the petitioners. None of these incidents would have any bearing or relevance in not depositing the said 75% of the lease rental by the petitioners within the stipulated time under **Clause 7** of the tender notice. The communication shows that they came into existence much after **April 26, 2022** and beyond three months there from.

13. The law is well settled that, this constitutional Court in exercise of its power under judicial review cannot alter or modify the tender terms which has otherwise been accepted and acted upon by and between the parties.

The present transaction being commercial one, the tender terms has to be and should be read strictly in its true spirit and sense.

14. In view of the foregoing reasons and discussions this Court is of the firm view that this writ petition is totally devoid of any merit.

15. Accordingly, this writ petition **W.P.A. 13062 of 2023** stands **dismissed**, without any order as to costs.

16. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)