

02.01.2026
Court No.25
D/L No.52
S. Gayen

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 26440 of 2025

**K. D. Resources Private Limited & Anr.
Versus
Damodar Valley Corporation & Ors.**

Mr. Kanishk Kejriwal (through VC)
...for the Petitioners

Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Prosun Mukherjee
Mr. Deepak Agarwal
...for the DVC

1. By an order dated 10th October, 2025 the contract of the petitioners was terminated on the ground of default with immediate effect with penal action including forfeiture of SDBG, an invocation of risk purchase, if any. Subsequent to the termination, the petitioners have participated in the separate tender. The DVC has rejected the technical bid of the petitioners on 29th October, 2025 on the ground that as per the GeM ATC Clause 38 Vol-II ITB offer of the bidder cannot be considered as the earlier tender awarded to the petitioners was terminated due to contractor failure.
2. Learned counsel for the petitioners submits that the earlier tender was terminated not on the ground of poor performance. He submits that the respondents have issued the letter of termination inspite of having knowledge that the stoppage of work at Hirakud

Railway Siding was by local authorities and not because of any default on the part of the petitioners.

3. Learned counsel for the DVC submits that in the present writ application, the petitioner have not challenged the rejection of the technical bid of the second tender, only the petitioners have prayed for staying of the rejection of the technical bid and to allow the petitioners to participate in the tender process.
4. Mr. Sabyasachi Chowdhury, learned Senior Advocate appearing for the DVC submits that in the present writ petition the petitioners have admitted that the petitioner No.1 did not oppose the termination of the contract as the same has already been become impossible to execute and the petitioners requested confirmation on the process of termination in the given circumstances. He submits that the petitioners accepted the termination. Now he cannot challenge the termination at the later stage.
5. He submits that the technical bid of the petitioners is rejected on the ground of poor performance of the petitioners with respect of the earlier work awarded to the petitioners which covers under Clause 38(b) of the tender document.
6. Heard the learned counsel for the respective parties. This Court finds that the petitioner have prayed for an interim order wherein, the technical bid of the

petitioners was rejected on the ground that earlier contract was terminated. The authorities have taken the recourse of Clause 38(b) of the bid documents of the DVC. Clause 38(b) reads as follows:-

“38. b) Records of poor performance during the last five years across DVC, as on the date of publication of Bidding Documents, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out;”

7. The previous tender of the petitioners was terminated on the ground of default of the petitioners on 10.10.2025. The order of termination is challenged in the present writ petition only after when the technical bid of the petitioners was rejected by the respondents in a subsequent tender process. Clause 38(b) of the tender document categorically stipulates that if an applicant meets the eligibility criteria at QR, he shall be subject to disqualification if bidder or any of the constituent partner is found to have records of poor performance during the last five years across the DVC, as on the date of publication of the bidding document.

8. In the present case, the previous tender of the petitioner is terminated on 10.10.2025 on the fault of the petitioners.
9. Considering the above, this Court finds that the petitioners have not made out any *prima facie* case and convenience and inconvenience in their favour. Accordingly, the prayer for interim order is refused.
10. Though the respondents are appearing and the copy of the writ petition has already been served, the respondents are directed to file affidavit-in-opposition within a period of three weeks and reply, if any, be filed within two weeks thereafter.
11. Let the matter appear on 5th February, 2026 under the heading "Adjourned Motion".
12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Krishna Rao, J.)