

04-09-2023
Court No.2
Sh/2.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.P.A. 1268 of 2023

With

C.A.N. 1 of 2023

With

C.A.N. 2 of 2023

Kalidas Ghosh. Petitioner.

**Re: Application for vacating interim order (CAN
2 of 2023.**

Mr. Satrajit Sinha Roy.

..For the Petitioner.

Mr. Hirak Barman,

Mr. Momenur Rahaman.

For the State.

Mr. Swarup Paul,

Mr. Deborshi Dhar.

For the respondent nos.4,5 and 6

The order dated August 29, 2023 speaks for itself.

Today the application for vacating and/or discharging of the interim order dated August 23, 2023 is appearing in the list for consideration.

Mr. Satrajit Sinha Roy, learned counsel for the writ petitioner appears on physical mode today. At the outset he prays for leave to file an affidavit in opposition, affirmed on September 4, 2023 to this vacating application. He submits that a copy has already been served upon the vacating applicants through their learned advocate Mr. Swarup Paul. For the ends of justice, leave is granted to file the said affidavit-in-opposition and the same is taken on record.

This is an interlocutory application filed by the petitioner praying for discharge and/or vacating and/or setting aside of the interim order dated August 23, 2023 passed by a co-ordinate Bench. The co-ordinate Bench while passing the said interim order has also granted leave to the vacating applicants, namely, the respondent nos.4,5 and 6 in the main writ petition to file the vacating application.

The vacating application was taken up for consideration on August 29, 2023 when at the instance of the writ petitioner and on its prayer the hearing was adjourned and was fixed today to grant the writ petitioner a **meaningful opportunity** to defend this application.

In the writ petition a letter of award (LOA) dated July 15, 2022 was under challenge by the writ petitioner. The Letter of Award was awarded in favour of the vacating applicants for selection of Service Provider for Establishment, Operation, Maintenance and Management of Mechanized laundry Facility at North Bengal Medical College and Hospital, West Bengal. The petitioner was an aspirant in the tender.

At the threshold the point of maintainability of the writ petition has raised at the instance of the vacating applicants, was dealt with by the co-ordinate Bench and ultimately the order was passed on July 11, 2023. While passing the order the co-ordinate Bench after discussing everything was of the view that the writ petition was required to be heard on affidavits and accordingly, directions were made upon the parties to file and exchange their respective affidavits. The

observation was made that **the letter of award which has been issued in favour of the private respondents being the vacating applicants herein shall abide by the result of the writ petition. No interim order was passed.**

No appeal was carried out by the writ petitioner from the said order of the co-ordinate Bench dated **July 11, 2023 (Annexure P-1 at page 9 to the vacating application)**. Thereafter the petitioner took out the interlocutory application being CAN 1 of 2023 with the following prayers:-

"In the above facts and circumstances your petitioner prays most humbly that Your Lordship will be graciously be pleased to stay the REP No. PPP/NIT/4/2021 dated 7th Octobe5 2021 issued by the Respondent no.2.

And

Pass an ad-interim order of stay of the Letter of Award dated 15th July 2022 issued the Respondent no.2 in favour of the respondent nos.4,5 and 6

And

Pass such other and/or further order(s)/direction(s) as may deem fit and proper."

The said interlocutory application filed by the petitioner was taken up by the Co-ordinate Bench on **August 10, 2023** and was disposed of with **an observation that " in the order passed on July 11, 2023 in the writ petition, since the Court has recorded that the impugned Letter of Award**

issued in favour of the private respondents shall abide by the result of the writ petition no further order was required to be passed in the said interlocutory application filed by the petitioner, Annexure P-2 at page 13 to the vacating application.” No appeal was preferred from the said order dated August 10, 2023.

It is pertinent to note that the vacating applicants have filed their affidavit-in-opposition on August 10, 2023 as would be evident from the order dated August 10, 2023 and has served upon the writ petitioner. The writ petitioner has not filed its affidavit-in-reply thereto as **on August 23, 2023**. Similarly the State respondents have also not filed their affidavit-in-opposition within the due time and the time was extended on August 10, 2023.

The petitioner then all on a sudden without any notice on August 23, 2023 mentioned the writ petition for fixing the same for hearing in view of alleged urgency shown by them, as submitted on behalf of the petitioner today. **Though it was a fact that petitioner did not file affidavit-in-reply as on August 23, 2023.**

Upon such mentioning the co-ordinate Bench expressed its desire to take up the writ petition for consideration at about 3P.M. as submitted by the learned counsel appearing for the petitioner today. Immediately a **notice dated August 23, 2023, Annexure P-3 at page 15** to the vacating application was issued and served upon the learned advocate on record for the vacating applicants, being the respondent nos. 4,5 and 6 to the writ petition. The

said notice was received on behalf of the vacating applicants at about **1:20 P.M.** as would be evident from **page 15** to the said vacating application. The writ petition was then taken up for consideration at about **3 P.M.** by the co-ordinate Bench when after hearing the writ petitioner in presence of learned State counsel, Mr. Rahaman the order dated August 23, 2023 was passed. The said order also records that the co-ordinate Bench has granted liberty to the respondent nos.4,5 and 6, the vacating applicants to file vacating application as they have stated that they have not got any time to prepare in this matter.

Hence, this vacating application.

Mr. Swarup Paul, learned counsel appearing for the vacating applicants submits that the said interim order was passed on August 23, 2023 without any application being filed on behalf of the writ petitioner and totally ex-parte as against his clients. The petitioner mentioned in the morning when no notice whatsoever was served upon the vacating applicants and the matter was fixed by the co-ordinate Bench at 3 P.M.

Referring to the previous two orders dated July 11, 2023 and August 10, 2023, Mr. Paul learned counsel submitted that the previous co-ordinate Benches after considering the case made out in the writ petition on a *prima facie* view refused to pass any interim order save and except the observation that the Letter of Award shall abide by the result of the writ petition. The petitioner took out CAN 1 of 2023 further seeking injunction, when the co-ordinate Bench

reiterating its previous observation refused to pass any interim order. None of these orders were challenged in appeal.

The petitioners have received the tender for running and maintenance of the mechanized laundry in the Government Hospital. The vacating applicants have been working at North Bengal Medical College and Hospital pursuant to the Letter of Award received by them under the tender and the learned counsel appearing for the petitioner submits that they are in the process of working and by virtue of this ex parte interim order dated August 23, 2023 the entire work under the tender with the North Bengal Medical College and Hospital has been stalled.

Learned counsel submits that both on fact and law any further existence of the said ex parte interim order dated August 23, 2023 shall prejudice the working of the vacating applicants under the tender. He submits that, inasmuch as the said ex parte interim order should be discharged and/or vacated and/or set aside forthwith. He further submits that the ex parte interim order was passed when the matter was not even in the cause list. The same was without any reason.

Mr. Satrajit Sinha Roy, learned counsel appearing for the writ petitioner in defence to the said vacating application has filed affidavit-in-opposition today, the same is taken on record as recorded above. Mr. Sinha Roy, learned counsel appearing for the petitioner submits that it was true that as on August 23, 2023 his client has not filed Affidavit-in-reply but

today he has come up with an affirmed affidavit-in-reply and prayed for leave to file the same today. He submits that there was a gross illegality on the part of the respondent no.3 issuing the letter of award. Referring to **Clause-5 from Bid Due Data sheet at page 27 to the writ petition** he submits that the **Bid Due data** for uploading of documents was originally fixed on **November 29, 2021**. He then referred to **Clause-11 from page 96 to the writ petition** and submitted that under the tender terms the validity of Bid was fixed for **180 days** from the **Bid Due date**. He then referred to **page 155 to the writ petition** which is a notice dated **October 27, 2021** to show that **the original Bid Due date for uploading of documents which was fixed on November 29, 2021 was amended and extended till December 8, 2021**. He submits that, such an extension was made by the authority in terms of **Clause 2.13 at page 115 to the writ petition**. He submits that, the offer of the vacating applicants were accepted as L-I bidder after expiry of the said 180 days period. He further submits that the contract was then not concluded even after expiry of the bid. He referred to **page 325** to the writ petition this regard. On the basis of such argument the ex parte interim order was passed.

He submits that upon consideration of all these, the ex parte interim order was passed. In the event the said ex parte interim order stands vacated the right of the writ petitioner will be totally diminished in the writ petition. He prayed for continuation of the said ex parte interim order dated August 23, 2023.

After considering the rival contentions of the parties and on perusal of the materials on record this Court, at the threshold, reiterates the admitted facts. There was no application filed by the writ petitioner on which the ex parte interim order was passed. There was no notice served by the writ petitioner upon the vacating applicants before mentioning the matter on August 23, 2023. The affidavits as directed by the coordinate Bench were not filed save and except the affidavit-in-opposition filed by the vacating applicants on August 10, 2023. The writ petitioner has not filed its affidavit-in-reply thereto as on date when the ex parte interim order was passed. The writ petition was therefore, not at all ready for hearing on affidavits as on August 23, 2023. After the matter was fixed at 3 P.M., the notice was served upon by the learned advocate on record for the writ petitioner upon the learned advocate on record for the vacating applicants at about **1-20 P.M.** The vacating applicants were represented and prayed for an opportunity to make submission as they were not prepared on that date. Though the interim order was passed without granting any meaning full opportunity to the vacating applicants, however, the vacating applicants were granted opportunity to file vacating application.

From the submissions made on behalf of the parties referring to various pages of the writ petition as referred to above, it is also an admitted position that the Bid Due Date for uploading of documents was originally fixed on November 29, 2021 and was extended till December, 8, 2021. The validity of Bids was 180 days from the Bid Due date.

In the light of the above facts, this Court now proceeds to discuss the legal proposition while adjudicating this vacating application.

It is true that, the provisions laid down in The Code of Civil Procedure, 1908 (in short CPC) shall have no strict application while adjudicating a writ petition. This Court has its own Writ Rules. However, to maintain a grammar and to follow the guidelines the provisions very often are borrowed and taken support from the CPC. But there is no strict rule in this regard. A writ Court in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India exercises its equitable jurisdiction. Similarly, for granting or refusing the order of injunction is also the equitable jurisdiction of the Court. It is settled law that, the person who seeks equity must approach the Court of equity with a clean hand.

Previously on two occasions the interim relief were refused, save and except the observation of the co-ordinate Bench that the Letter of Award shall abide by the result of the writ petition. None of these two orders were carried out into appeal by the writ petitioner.

There is no doubt and it is equally settled that, even if an order of injunction is refused by the Court the party seeking it can apply again before the Court in the self-same proceeding but has to demonstrate the changed circumstance under which such an equitable relief in the nature of injunction or stay is warranted. Such principle is also applicable in a writ proceeding.

Admittedly, when the interim order was passed on August 23, 2023 there was no application filed by the writ petitioner to demonstrate any change in circumstance or subsequent development which would warrant passing of such interim order. Admittedly, the writ petition was mentioned without any prior notice to the vacating applicants but then when the writ petition was fixed **at 3 P.M.** a notice was served at **1-20 P.M.** as narrated above. **No meaning full opportunity of hearing,** in such circumstance, was granted before passing the said interim order. The interim order was passed in high prerogative writ jurisdiction of this Court.

Inasmuch as, the contention of the writ petitioner with regard to the extension of the Bid Due date ***prima facie***, is not convincing to this Court for the reasons that once such period was extended, as narrated above, the time could not and cannot be considered as **essence of the contract** any further.

Be that as it may, today this Court is considering the vacating application filed on behalf of the respondent nos.4,5 and 6 in the writ petition. Though the submission made on behalf of the learned counsel appearing for the vacating applicants that his clients are already in motion with the work progress of the mechanized laundry at the North Bengal Medical College and Hospital under the said tender, the same is denied and disputed by the learned counsel for the writ petitioners but this can be taken only at the time of hearing of the writ petition and more so the interim

order was passed without any such contention on record even if such contention is taken to be on account

Now comes the conduct of the writ petitioner before a Constitutional Court of equity. The equity demands to obtain an equitable relief in the nature of an injunction and more so in a high prerogative writ jurisdiction, the party seeking such relief must come with a clean hand and in a proper manner. The act and conduct of the petitioner as discussed above, while placing the matter on August 23, 2023 was surreptitious and behind the back of the vacating applicants, who had been declared as L-I bidder under the tender. Inasmuch as on previous two occasions on refusal to pass interim orders, the petitioner did not prefer any appeal therefrom.

In view of the foregoing discussions and reasons the interim **order dated August 23, 2023 stands discharged, vacated and set aside.**

Considering the conduct of the petitioner for abusing the process of law, the petitioner shall pay costs which is assessed at Rs.50,000/- to be paid to the **State Legal Services Authority, West Bengal**, positively within a period of **seven working days** from today.

Learned Registrar, Circuit Bench, Jalpaiguri is requested to communicate this order and serve the same upon the State Legal Services Authority, West Bengal immediately.

With the above observations this vacating application being **CAN 2 of 2023 stands allowed.**

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties expeditiously subject to compliance of all requisite formalities.

(ANIRUDDHA ROY,J.)