IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 26288 of 2026

Rajia Engineering

Vs.

The State of West Bengal & Ors.

Mr. Sk. Md. Galib

Mr. Monajit Chakrabarti

....For the petitioner.

Mr. Rivu Dutta

Mr. Swastik Saha

....For the State.

Mr. Sanjay Saha

Mr. Raju Mondal

Ms. Indrani Mukherjee

....For the respondent no. 6.

Hearing Concluded On : 13.10.2026

Judgment Delivered On : 16.11.2026

Judgment Uploaded On : 16.11.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for a mandamus directing the respondent nos. 2 to 4, to take immediate steps in issuing the Work Order in connection with Request For Proposal (hereinafter referred to as "RFP").

2. The Department of Irrigation and Waterways, Government of West Bengal, had invited RFP for selection of contractor for the work of Dredging/de-silting/removal of river bed materials from New Cossey River. The tender was invited on the basis of the recommendation of the expert body, which conducted survey and recommended for dredging for improvement of the health of the concerned river. Subsequent to inviting the tender, it was detected that the stretch, for which the tender was invited for dredging, was overlapping some of the auction sand block by WBMDTCL. Accordingly, the Department of Irrigation and Waterways invited further RFP for selection of Contractor for dredging/de-silting of river bed materials, keeping distance between the dredging site and sand mining blocks.

3. The petitioner has participated in the bidding process in response to the RFP. In the auction process, the petitioner was found to be in serial no.1 with a highest bid value of Rs. 5,86,58,035/-. On 15th March, 2026, Letter of Acceptance (hereinafter referred to as "LOA") was issued in favour of the petitioner for the work of dredging/de-silting/removal of riverbed materials from New Cossey River from Tituan to Shyampur.

The petitioner was requested to contact with the Executive Engineer, West Midnapore Division and to execute an agreement as stipulated in the RFP by submitting performance security of Rs. 29,33,035/- with an additional performance security of Rs. 1,17,32,139/- in the form of Bank Guarantee in favour of Executive Engineer, West Midnapore Division. The petitioner has submitted Standard Covering Letter for Letter of Guarantee for an amount of Rs. 29,33,035/- and Rs. 1,17,32,139/- on 17th March, 2026 in favour of the Executive Engineer.

4. Mr. Sk. Md. Galib, Learned Advocate, representing the petitioner submits that even after issuance of RFP and depositing security guarantees, the respondent authorities failed to issue work order to the petitioner without any reason. The petitioner has made several requests to the respondent authorities for issuance of work order so as to enable the petitioner to complete the work within the time period but the respondent authorities failed to issue work order and accordingly, the petitioner has filed the present writ petition.

5. Mr. Galib submits that in the LOA, the time to complete the work is only 18 months but unless and until the work order is not issued to the petitioner, it is not possible for the petitioner to complete the work within the time prescribed in the LOA.

6. Mr. Galib submits that the petitioner came to know that one Sek Abdul Mahatab had filed a Public Interest Litigation being W.P.A. (P) No. 287 of 2026 challenging the alleged illegality of issuance of multiple Request

for Proposal for the purpose of dredging/de-silting/removal of river bed materials from New Cossey River from Tituan to Shyampur for a length of 15.90 Km in Block – Debra, Paschim Medinipur under "No Cost to State Exchequer" basis. The petitioner immediately intervene in the said writ proceeding and objected for grant of any interim order and the Hon'ble Division Bench refused to grant any interim order in the said Public Interest Litigation and directions were issued for exchange of affidavits.

7. Mr. Galib submits that the respondent authorities have the knowledge that the Hon'ble Division Bench has not passed any interim order but inspite of the same, the respondent authorities failed to issue work order to the petitioner though the petitioner has submitted performance security of Rs. 29,33,035/- with an additional performance security of Rs. 1,17,32,139/- in the form of Bank Guarantee in favour of the Executive Engineer, West Midnapore Division on 17th March, 2026.

8. The petitioner has relied upon the judgment in the case of ***Mihan India Limited Vs. GMR Airports Limited and Others*** reported in ***(2022) 19 SCC 69*** and submits that after issuance of LOA and accepting performance security as well as additional performance security amounts to a concluded contract.

9. Mr. Galib further relied upon the judgment in the case of ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others*** reported in ***(2024) 15 SCC 461*** and submits that the respondent

authorities have not taken any decision for cancellation and without taking any decision, the respondent authorities inspite of receipt of performance security and additional performance security, have deliberately not issuing the work order to the petitioner.

10. Mr. Rivu Dutta, Learned Advocate, representing the State submits that though the LOA is issued in favour of the petitioner but work order could not be issued to the petitioner as the department was examining and adopting a revised mechanism for carrying out dredging/ desilting/ removal of river bed materials. The Department, with the concurrence of the Finance Department, subsequently decided to adopt the "Revenue Sharing Method" in place of the of the earlier "Volume Sharing Method", particularly for dredging works undertaken for flood-management purposes.

11. Mr. Dutta submits that the department communicated the decision to the concern authorities by a letter dated 9th June, 2026, informing that the appropriate level of I&W Department decided that henceforth all the proposed dredging/de-silting/removal of river bed materials are to be carried out under e-auction platform of "Revenue Sharing Method" instead of "Volume Sharing Method" at No Cost to the State Exchequer Model.

12. Mr. Dutta submits that the competent authority by a letter dated 3rd August, 2026, directed that issuance of work order may be withheld till further order. He submits that by a letter dated 3rd September, 2026,

the department decided in principle to cancel the identified ongoing works under the "Volume Sharing Method" and process the balance works under the "Revenue Sharing Method" for which work order is not issued to the petitioner.

13. Mr. Dutta has relied upon the judgment in the case of ***Subodh Kumar (supra)*** and submits that if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy, such consideration be treated as *bona fide*.

14. The issue raised in the present writ petition whether the action of the respondent authorities by not issuing work order to the petitioner, though LOA is issued in favour of the petitioner and the petitioner has submitted performance security of Rs. 29,33,035/- and additional performance security of Rs. 1,17,32,139/- on 17th March, 2026, is arbitrary.

15. There is no dispute with regard to issuance of LOA dated 15th March, 2026 in favour of the petitioner and the petitioner has submitted performance security of Rs. 29,33,035/- and additional performance security of Rs. 1,17,32,139/- on 17th March, 2026.

16. It is the specific case of the respondent authorities for non-issuance of Work Order to the petitioner is that after issuance of LOA in favour of the petitioner, the department has examined mechanism for carrying out dredging/de-silting/removal of river bed materials and with the concurrence of the Finance Department, it is decided to adopt "Revenue

Sharing Method" in place of the earlier "Volume Sharing Method" with respect to dredging works undertaken for flood-management purposes.

17. The respondent authorities have submitted report along with a copy of order dated 3rd September, 2026, issued by the Secretary–in-Charge, Irrigation and Waterways Department with the concurrence with the Finance Department and with the approval of the Competent Authority which reads as follows:

> *"With a view to retrieve carrying capacity of rivers and drainage channels, lost due to siltation over the years, Irrigation & Waterways Department has been carrying out dredging for flood management adopting the Volume Sharing Method of WBMDTCL since early 2025, by selecting agencies through e-auction.*
>
> *2. Unlike WBMDTCL, Irrigation & Waterways Department has no stackyard for keeping the government share of the dredged material. A portion of the government share of the dredged material is used for embankment repair as per direction of the concerned Engineer-in-Charge and the balance portion of the same is supposed to be taken away by the dredging contractor by paying the government a revenue per unit volume as per existing Rates as applicable, if not otherwise used by other government departments/organizations like PWD.*
>
> *3. There is always a probability of the left-out, government share of the dredged material, lying beside the river bank/embankment to be re-deposited on the river bed during heavy rainfall. Also due to lack of stackyard, pilferage of the stacked material is almost unavoidable.*
>
> *4. Considering this uncertainty, Irrigation & Waterways Department, with the concurrence of the State Finance Department, has promulgated the tender document of e-auction, adopting revenue sharing method of dredging vide memo no-73(9)-IRC-IW-16099/15/2024/Deptt. of IW[E-1097188],*

dated 20.02.2026 with subsequent direction vide memo no-237-IRC-IW-14011(33)/2/2025-SECTION(IW)-Dept. of IW (Computer No-E-1177380), dated 09.06.2026 to follow the Revenue Sharing Method only for dredging work with a view to Flood Management. The main advantage of this method is that there is no requirement of any government stackyard as the total dredged material except a very nominal volume, is taken away by the dredging agency by paying a revenue per unit volume apart from statutory taxes like Royalty, Cess etc. on entire dredged material. It emerges from the recent e-auction process of Revenue Sharing Method for some stretches of rivers across the state, that potential of revenue generation is much higher than the Volume Sharing Method. As such the State is making a huge loss under the volume sharing method, which, is against the public interest.

5. Considering above, it has been decided in principle in the department to cancel all the 59 no. of ongoing dredging works under Volume Sharing Method (the list is at Annexure-I which were Auctioned and grounded prior to promulgation of Revenue Sharing Method), in the public interest, referencing clause-11.1.1(b)-poor performance and 11.1.1(i)-loss of public interest of the tender document and to re-auction the balance portion of each work following the Revenue Sharing Method.

6. This order should be carried out forthwith and an Action Taken Report is to be sent to the Department within 7 days from the date issue of this order. The EMD and Performance Security of each work are to be refunded to the respective agency without taking any punitive action. All the aforesaid stretches shall be processed immediately for auction under "Revenue Sharing Method" with a minimum reserve price as fixed by the Department.

7. This issues with the concurrence of the Finance Department vide their U.O.No.-PPP/2026-2027/0009, dated 21/08/2026.

8. This is issued with the approval of the Competent Authority."

18. In the case of ***Mihan India Limited (supra)***, the Hon'ble Supreme Court held that:

> *"**35.** As per the above discussion, we do not have any hesitation to hold that letter dated 7-3-2019 is an LoA after selecting GAL as the highest bidder and it acquired the status of concessionaire. It was only the concession agreement required to be executed and there was no fault on the part of GAL in complying with the provisions of RFP. The conduct of the appellant MIL also indicates that concession agreement is required to be executed by concessionaire (GAL). Thus, after proposal of the highest revenue share on issuing the letter of acceptance and also as reflected by conduct, it has become a concluded contract.*
>
> ***49.** It appears the objection has been raised analysing the terms of RFQ and RFP issued by the department on the basis of which the bidding process was completed. In our view, the said objection/clarification is suffering from the vice of arbitrariness and without any justification. In view of the discussion made above regarding objections/clarifications of MoCA in Paras 5(i) to (iii) in the proceedings dated 30-8-2019 are arbitrary, unreasonable and without any justification, submitted by the authorities even before this Court. Therefore, all these queries are violative of Article 14 of the Constitution.*
>
> ***51.** For dealing the fourth objection of the meeting dated 30-8-2019 of MoCA and 14-10-2019 of PMIC, the Court knows its limitation and is reluctant to interfere because they are not expert to analyse the financial viability, but the Court can see the justification of the issue in a matter where after following the procedure established by law, LoA was issued in favour of GAL. Awaiting long, when the concession agreement was not executed, GAL knocked the door of the Court and thereafter the order of annulling of the bidding process has been passed, which is quashed by the High Court. In such circumstances, we have to examine whether the defence taken by the authorities is just and reasonable or suffers from vice of arbitrariness on the pretext of loss to public exchequer.*

60. *Now, as per the material available and discussed hereinabove, it is clear that the appellants were aware of the procedure which is being adopted. After completion of the bidding process, GAL was declared as a selected bidder on offering highest revenue share and on issuance of LoA, it has been declared as a concessionaire and at the stage of execution of the concession agreement, all these formalities are not relevant and it amounts to arbitrary exercise of the power by the authorities which is not permissible under law. The said approach is fortified with the view taken in the judgment of this Court in Union of India v. Dinesh Engg. Corpn., wherein while dealing with the rejection of bid of the respondent therein by the Railways in a tender floated for procurement of certain items of spare parts for use in GE governors, this Court has held that power to reject bids cannot be exercised arbitrarily merely because the Railways has the power to do so. Any arbitrary exercise of power to reject bids has been held violative of Article 14.*

62. *Bare perusal of the abovestated case law in light of the facts of the instant case makes it clear that merely having the power of rejection of bids does not entitle authorities to exercise the said power arbitrarily. While discussing the applicability of Clauses 2.16.1, 3.3.1 and 3.3.5, it is made clear that in pre-bid procedure prior to acceptance, the bidding process may be annulled otherwise after issuance of LoA, the annulment cannot be done. The authorities further acted arbitrarily relying upon the GoM's letter dated 16-3-2020 in reference to PMIC's meeting dated 14-10-2019 in which re-tendering was directed. Re-tendering was not possible without ignoring the bid already accepted. Therefore, the order of annulment has been directed applying Clause 2.16.1 arbitrarily.*

63. *As discussed hereinabove, while explaining the scope of Chapters 1, 2 and 3 of RFP, it is clear that Chapter 2 deals with the bidding instructions which are general in nature. Clause 2.16 deals with the rejection of bid which is a situation prior to acceptance of the bid. After Chapter 2, in Chapter 3 evaluation of bid starts. While evaluating those bids in Clause 3.3.1, if the*

provision of Clause 2.16.1 has not been invoked and the bidder whose bid has been adjudged as responsive in terms of Clause 3.3.1 and who offered the highest revenue share would be a selected bidder. In the present case, the selection of the bidder was complete. Thereafter, LoA was issued as per Clause 3.3.5 and by issuance of draft of concession agreement, it has been declared as a concessionaire. At that stage, Clause 2.16.1 for annulment of the bidding process would not apply. It appears to us that as per the objections raised in the meeting dated 30-8-2019 held by MoCA, clause (iv) in Para 5 persuaded the MIL and GoM to pass the order of re-tendering."

19. In the case of ***Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited and Another Vs. Shishir Realty Private Limited and Others*** reported in ***(2022) 16 SCC 527,*** wherein the Hon'ble Supreme Court held that :

*"**60.** Ultimately, we need to consider whether there was any illegality or unfairness in the aforesaid transaction. The learned Senior Counsel representing the appellants have submitted that allowing sub-division of plots with change in land use, had caused substantive loss to the State largesse, as many people would have shown a proclivity to buy land with different land use. On the contrary, the learned Senior Counsel representing the respondent lessees have stated that the allotment, change in land use and transfer have taken place in accordance with law. There is no substantial deviation as sought to be projected by the appellants herein. The appellants herein have sought to invoke the doctrine of promissory estoppel to argue that CIDCO could not have walked out of the bargain, merely because of the possibility of larger profits. It is pertinent to note that, CIDCO has failed to prove any losses suffered.*

***61.** When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money*

> *cannot be used to forego contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. The courts need to have a broader understanding of public interest, while reviewing such contracts."*

20. The respondents finds that at present river/reservoir dredging with no cost approach is ongoing by the West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL), Irrigation and Waterways Directorate (I&WD) and District Administrations at 81 locations for a total length of 625 Km. (volume around 5.30 Crore Cum) adopting "Volume Sharing Method". The I&WD has no stackyard for keeping shared dredged material. The respondent authorities proposed for new approach of dredging for flood-management as "Revenue Sharing Method" instead of "Volume Sharing Method". The respondent authorities are of the view that if "Revenue Sharing Method" is adopted, dredging/ de-siltation/ removal of such river bed materials having conglomeration of different kinds of river bed materials, can be done by paying royalty and other statutory taxes as per nature of the dredged materials.

21. A "Volume Sharing Method" refers to a framework or algorithm used to distribute economic profits, savings or benefits among multiple participants, such as employees, business stakeholders or members of an energy community, based on their specific contributions. "Revenue Sharing Method" is a business arrangement where a predetermined percentage or formula of gross top-line income is distributed among

multiple stakeholders, participants, partners or contributors. The profit sharing, which distributes money only after all operating costs, expenses, and taxes are subtracted. The Revenue Sharing Method distributes a slice of the total incoming revenue as soon as a sale is made.

22. The judgments relied by the petitioner in the case of ***Mihan India Limited (supra)*** and ***Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited (supra)*** are distinguishable from the facts of the present case. In the preset case, the respondent authorities after issuance of LOA in favour of the petitioner before issuance of work order and execution of agreement have re-examined the matter for adopting revised mechanism for carrying out dredging/ de-silting/ removal of river bed materials and taken decision to adopt "Revenue Sharing Method" instead of "Volume Sharing Method".

23. In the case of ***Subodh Kumar Singh Rathour (supra),*** the Hon'ble Supreme Court held that:

> *"**131.** We caution the public authorities to be circumspect in disturbing or wriggling out of its contractual obligations through means beyond the terms of the contract in exercise of their executive powers. We do not say for a moment that the State has no power to alter or cancel a contract that it has entered into. However, if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy then such considerations must be bona fide and should be earnestly reflected in the decision-making process and also in the final decision itself. We say*

> *so because otherwise, it would have a very chilling effect as participating and winning a tender would tend to be viewed as a situation worse than losing one at the threshold."*

24. Considering the above facts and circumstances of the case, this Court finds that the Request For Proposal was processed on the basis of "Volume Sharing Method" and after issuance of LOA, the respondent authorities have re-examined the matter and decided to adopt "Revenue Sharing Method" and issued an order dated 3rd September, 2026. The respondent authorities have taken a conscious policy decision by adopting "Revenue Sharing Method" instead of "Volume Sharing Method".

25. Admittedly, no agreement is entered between the petitioner and no work order is issued in favour of the petitioner and in the meantime, the respondents have taken a policy decision, thus no order can be passed for issuance of work order in favour of the petitioner.

26. The petitioner has submitted performance security of Rs. 29,33,035/- and additional performance security of Rs. 1,17,32,139/- on 17th March, 2026 but now the respondents have changed the policy decision for which work order is not issued in favour of the petitioner, accordingly, the respondent authorities are directed to return the amount submitted by the petitioner being performance security and additional performance security within one month from the date of receipt of this order with interest at the rate of 12% per annum from 17th March, 2026 till the payment is made to the petitioner.

27. WPA No. 26288 of 2026 is **disposed of**.

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.)