

(2013) 11 CAL CK 0058

Calcutta High Court

Case No: W.P. No. 33397 (W) of 2013

G and S Construction

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 25, 2013

Citation: (2014) 1 CHN 663

Hon'ble Judges: S. Banerjee, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S. Banerjee, J.

The petitioner complains of the failure of the respondent authorities to consider the petitioner's bid following a tender notice dated July 9, 2013. The present petition is a sequel to W.P. 23150 (W) of 2013 wherein the petitioner complained of the cancellation of the petitioner's contract by the West Bengal Power Development Corporation without affording the petitioner any opportunity to explain the petitioner's version. That extreme step was taken by the Corporation on the basis of complaints said to have received by the Corporation. The order disposing of W.P. 23150 (W) of 2013 on August 5, 2013 observed that though the steps taken by the Corporation against the petitioner should only have been taken after affording the petitioner an opportunity of hearing, since it was evident from the notice of cancellation that the petitioner had apparently submitted false certificates as to the petitioner's credentials, the order of termination was not interfered with; but the petitioner was left with the choice to make a written representation explaining the petitioner's stand on the allegations and the Corporation was required to deal with the same within the time stipulated by the relevant order.

2. Upon the written representation being made, the Corporation dealt with the same by a detailed order of August 23, 2013, inter alia, concluding that in view of the finding of false documents having been filed in support of the petitioner's credentials, "you have lost the credibility and the trust required to be imposed in

such transaction."

3. The petitioner has not challenged the decision and the cancellation of the previous contract stands undisturbed. In the tender process initiated for some other work (since the tender notice was issued prior to the cancellation being issued to the petitioner), the petitioner's bid has not been accepted and it is such action which is questioned in the present proceedings. It is submitted on behalf of the Corporation that in view of the finding against the petitioner in the reasoned decision of the Corporation dated August 23, 2013, the Corporation cannot be faulted for not wanting to do business with the petitioner.

4. There is no doubt that the Corporation is an authority within the meaning of Article 12 of the Constitution and the Corporation is obliged to act fairly and without being arbitrary or capricious. As much as the Corporation enjoys a right to not do business with any person, the Corporation as a statutory body or an organ of the State is required to act objectively and not reject a future bid of a contractor who is perceived to be tainted without first blacklisting such contractor. The process of blacklisting, as has now been judicially recognised, has to be under a procedure where the person proposed to be blacklisted has to be informed by the issuance of a show-cause notice and such person afforded an opportunity to deal with the matter before a decision of blacklisting is taken.

5. In the present case, notwithstanding the adverse finding against the petitioner, there is no order of blacklisting which has been passed. A statutory body or an organ of the State cannot, in effect, blacklist a contractor without expressly taking a decision in such regard in accordance with the procedure recognised in law.

6. In view of the admitted position as aforesaid, the decision of the Corporation to not consider the petitioner's bid is set aside and the Corporation is directed to consider the petitioner's bid and treat the petitioner fairly and on an equal footing with the other bidders, subject to the eligibility criteria for the relevant process that the petitioner may possess. There should be no overt or covert discrimination against the petitioner on the ground of the finding recorded in the document of August 23, 2013.

7. Nothing in this order will prevent the Corporation from proceeding to blacklist the petitioner on any ground available to the Corporation; but only after following the due process therefore as judicially recognised.

8. W.P. 33397 (W) of 2013 is allowed as above without any order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.