

(2014) 04 CAL CK 0117

Calcutta High Court

Case No: A.P.O. No. 347 of 2013, G.A. No. 593 of 2014 and W.P. No. 969 of 2013

Cotton Casuals (India) Pvt. Ltd.

APPELLANT

Vs

West Bengal Industrial
Development Corporation Ltd.RESPONDENT

Date of Decision: April 3, 2014**Citation:** (2014) 3 WBLR 650**Hon'ble Judges:** Arun Mishra, C.J; Joymalya Bagchi, J**Bench:** Division Bench**Advocate:** Joydeep Kar and Sourav Sengupta, Advocate for the Appellant; R.N. De,
Advocate for the Respondent

Judgement

Joymalya Bagchi, J.

The intra court appeal is directed against the judgment and order dated 25th September, 2013 whereby the appellant challenge to the cancellation of a tender process by the West Bengal Industrial Development Corporation LTD. (WBIDC in short) was dismissed. The appellant had applied for a plot at Chingrighata in the proposed garment apparel manufacturing centre. The appellant participated in the auction and was found to be the highest bidder in respect of module D-103 and D-104 in the auction. The appellant also made deposit of the earnest money in respect of the said modules. About an year after such auction, by impugned order dated 9th August, 2012, the auction was cancelled and decision was taken to invite fresh bids in respect of such allotment.

2. Such decision was challenged before the learned Single Judge. Learned Judge by the impugned order dismissed the writ petition on the ground that the order of cancellation had not prejudiced the appellant. Learned Judge further directed that the appellant would be at liberty to seek refund of the earnest deposit tendered by it along with interest at the rate of 6 per cent per annum from January 1, 2013 payable within a fortnight thereof. The appellant was also give liberty to participate in the fresh tender and seek transfer of the deposited earnest money to his credit in

respect of the new tender process, if he chose to participate therein.

3. Learned Counsel appearing for the appellant submitted that the decision to cancel the earlier auction and to seek fresh bids was arbitrary, whimsical and not informed with reason.

4. Under such circumstances, this Court called upon WBIDC to file an affidavit disclosing the circumstances in which decision was taken to cancel the earlier bid for fresh tender. Pursuant thereto, affidavit was filed on behalf of WBIDC.

5. Learned Counsel appearing for the WBIDC submitted that such decision was taken in public interest, more particularly, as the appellant was single bidder in respect of the modules in question. He further submitted that the action of WBIDC was not discriminatory as the entire auction was scrapped.

6. We have considered the rival submissions of the parties.

7. Judicial review in contractual matters does not empower the Court to substitute its decision in place and stead of the concerned authority. WBIDC in its wisdom decided to cancel the earlier auction and call for fresh tenders.

8. It is true that the appellant was the highest bidder in respect of modules D-103 and D-104. However, he was not singled out for discrimination as the entire tendering process including that of modules D-103 and D-104 was cancelled as a policy decision. Therefore, the decision of WBIDC to cancel the entire process and seek fresh bids cannot be said to be biased or discriminatory qua the appellant.

9. It appears that in the earlier auction, in respect of most of the modules, single application had been received. Under such circumstances, we find that WBIDC had taken decision to cancel the earlier auction en bloc.

10. It is not for the Court to question the wisdom of WBIDC to seek fresh tender in the aforesaid factual backdrop. Such decision cannot be said to be either discriminatory of the appellant or intended to favour someone else. Neither can it be said to be contrary to public interest or so arbitrary or irrational that no responsible authority could have reached the same necessitating interference in judicial review, [see [Michigan Rubber \(India\) Ltd. Vs. The State of Karnataka and Others,](#)]

11. Money deposited by the appellant has been directed to be refunded with interest by learned Single Judge. Hence, interest of the appellant has been adequately taken care of in the facts and circumstances of the case.

12. Learned Counsel appearing for the appellant relied on *Urban improvement Trust, Kota v. Om Prakash Sharma & Ors.*, (2010)5 SCC 333.

13. The authority cited on behalf of the appellant is factually distinguishable.

14. In the cited report, authority had been taken five and half years after deposit of earnest money to reject offer of the bidder whereas in the instant case such decision had been taken within a year.

15. That apart, in the instant case the appellant was the sole applicant in respect of modules D-103 and D-104 and WBIDC in public interest took decision to scrap the entire auction and invite fresh bids. Such decision cannot be said to be discriminatory nor contrary to public interest.

16. For the aforesaid reasons, we affirm the judgment and order passed by the learned Single Judge.

17. The appeal and connected application are dismissed. The parties shall bear their respective costs.

Arun Mishra, C.J.

I agree.