
(2000) 09 CAL CK 0071
In the Calcutta High Court
Case No : C.P. No. 11760 of 1996

Kalyan Banerjee

APPELLANT

Vs

Kamarhati Municipality and Others

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : AIR 2001 Cal 21 : (2001) 3 ARBLR 146

Hon'ble Judges : Pranab Kr. Chattopadhyay, J

Bench : Single Bench

Advocate : Sk. Abu Sultan, for the Appellant; Samir Ghosh and Swaran Kumar De, for the Respondent

Judgement

Pranab Kr. Chattopadhyay, J.—In the present writ petition it has been submitted by the petitioner that the respondent Kamarhati Municipality placed after on the writ petitioner for printing daily collection challans. Such order we placed by issuing an indent which is annexure "D" to the writ petition. According to the petitioner in spite of supply of the printing materials to the Municipality no payment has been released and the municipal authority by a notification dated 19th July, 1996, being annexure "J" to the writ petition came to the conclusion that the petitioner tried to deceive the municipality creating a financial trap and for the said reason the enlistment of the petitioner as a supplier of the municipality was also cancelled. All the purchase/supply orders already issued to the petitioner but not being carried out were also treated as cancelled. Kamarhati Municipality also black listed the petitioner as an enlisted contractor/supplier of the Municipality.

2. On behalf of the Municipality, Mr. Swapan Kumar. We, filed affidavit-in-opposition, wherein it has been admitted that the writ petitioner on 29th March, 1996 supplied 25485 pieces printed form in loose sheets instead of 2500 Nos. Books Containing 100 pages in deviation of the tender notice as also requisition made by the Municipality. It had been specifically mentioned in the tender

document being annexure "A" to the writ petition that non-compliance of indent order will be liable for forfeiture of the earnest money and the tenderer will be considered as black listed. In the instant case the petitioner admittedly failed to supply tendered articles strictly in terms of the indent order as mentioned in Annexure "D" to the writ petition though a substantial part of the order placed with the petitioner by the Municipality was supplied by the petitioner and was accepted by the Kamarhati Municipality. Before black listing the petitioner, the authorities of the Municipality should have issued a show cause notice to the petitioner giving an opportunity of hearing as a person affected by the order of black listing has a right of being heard and making representations against the order even if the rules did not provide so expressly as the order has civil consequences for future business of person concerned. Following the principles laid down by the Supreme Court of India in case of Raghunath Thakur Vs. State of Bihar and Others, and also following the judgment of the Supreme Court of India in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another,

3. I am of the view that the petitioner was entitled to an opportunity of hearing before issuance of the order of black listing by the Chairman, Kamarhati Municipality on 19th July, 1996 which is annexure "C" of the writ petition, in spite of the fact that Municipality was empowered to black list a tenderer on the ground of non-compliance of indent order which has been specifically mentioned in Clause 9 of the tender document dated 18th February, 1995 in annexure "A" to the writ petition. Though the aforesaid provisions of black listing tenderer has been mentioned in the tender document but the Chairman of the Kamarhati Municipality cannot straightway black list a tenderer without following the principles of natural justice. It has been specifically held by the Supreme Court of India in case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, that a person before being black listed must be given an opportunity of hearing but the Municipal authority in the instant case did not comply with the aforesaid requirements of the principle of natural justice. Accordingly, I have no other option but to set aside the impugned notification; dated 19th July, 1996 in annexure "J" to the writ petition so far it relates to the black listing of the petitioner is concerned. The said notification dated 19th July, 1996 issued by the Chairman, Kamarhati Municipality being annexure "J" to the writ petition is set aside. Admittedly, the Kamarhati Municipality had received a substantial part of the tendered articles from the petitioner and utilised the same. Accordingly, the Municipality cannot be permitted to withhold and/or refuse payment to the petitioner in respect of the articles supplied by the petitioner against the tender. Therefore, I direct the Kamarhati Municipal authorities to make necessary payments to the petitioner in respect of the articles already supplied by the petitioner and received by the Municipality in connection with the indent order being annexure "D" to the writ petition within a period of 8 weeks from the date. I make it clear that the Municipal authorities would be at liberty, to proceed against the petitioner for black listing upon giving

the petitioner a reasonable opportunity of hearing.

4. This disposes of the writ petition.

5. There will be, however, no order as to costs.