

(2002) 08 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2311 of 2002

Maheswari Enterprises and Ambika Enterprises (Joint Venture)	APPELLANT
Vs	
Mahanadi Coalfields Limited and Another	RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Citation : (2002) 2 OLR 349

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : R.K. Rath and N.R. Rout, for the Appellant; Suraj Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—By this writ petition, the petitioner seeks to assail the validity of the decision of the Mahanadi Coalfields Limited communicated in letter dated 22.1.2002 at Annexure-1 debarring it from submitting any tender for a period of one year from 7.1.2002.

2. The case of the petitioner briefly stated is that the Mahanadi Coalfields Limited (in brief "M.C.L.") invited tenders for the work called "Drivage of two inclines of Cross Section 5m x 3m and Length 410m for Natraj Project, Talcher Area; MCL". Pursuant to the invitation, the petitioner submitted its tender which was accepted by the M.C.L. and letter of intent was placed with the petitioner on 16.10.2001. The M.C.L. however, while placing the letter of intent imposed conditions beyond the scope of the tender and insisted the petitioner to execute the work which were not covered by the tender documents. The petitioner, accordingly, protested by insisting that the M.C.L. cannot travel beyond the scope of the work identified in the tender documents. The M.C.L. without heeding to the objection illegally terminated the contract and the earnest money deposited by the petitioner was forfeited. Besides taking the aforesaid illegal actions, the M.C.L. also debarred the petitioner from submitting any tender as communicated in the impugned letter dated 22.1.2002. The contention of the petitioner is that the impugned

decision amounts to imposition of penalty having civil consequences and it could not have been done without giving an opportunity of hearing to it.

3. The opposite parties have filed their counter affidavit. Their case is that the petitioner's offer was the lowest (L-I) and the same was accepted. It, however, delayed execution of the work on some plea or other and demanded double of the quoted amount. In the circumstances, finding no other way, the contract was rescinded and the earnest money deposit was forfeited and it was debarred from participating in any tender of the M.C.L. for one year. According to the opposite parties, the notice dated 19/20.11.2001 made it sufficiently clear that M.C.L. was going to take "further necessary action", but the petitioner neither took up the work nor sent any reply.

4. Cancellation of the contract and consequent forfeiture of earnest money deposited by the petitioner are different aspects from debarring it from submitting tender in M.C.L. At this stage it is relevant to quote the offending decision communicated to the petitioner in letter dated 22.1.2002 at Annexure-1 :

"1. M/s. Maheswari Enterprises and Ambika Enterprises (Joint Venture) either alone or jointly as Joint Venture are debarred from all tenders in MCL for a period of one year from 07.01.2002....."

As held by the Supreme Court in Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the other side for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair-play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

The same view was taken by the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, A Bench of this Court in Kalinga Institute of Industrial Technology Vs. State of Orissa and Another, has held that blacklisting a person entails in civil consequences and before he is blacklisted, he should be given an opportunity to represent his case.

5. It is an admitted fact that before the petitioner was blacklisted, no opportunity was given to it to represent its case. Learned Counsel appearing for the opposite party by referring to Annexures-A/3 and A/4 submitted that notice to show-cause was issued before the contract was cancelled and therefore, further notice is not necessary. The above submission is based on misconception of fact as well as law. Annexures-A/3 and A/4 are two letters addressed to the petitioner with regard to letter of intent and petitioner's unconditional acceptance. They have got nothing to do with the blacklisting. As the decision of blacklisting the petitioner visits with civil consequences, it is clearly penal in nature and minimum observance of the principle of natural justice is a "must". As it was not followed before the impugned decision was taken, the same is vitiated which is

hereby quashed.

The writ petition is allowed.

Pradip Mohanty, J.

6. I agree.