

(2013) 09 MP CK 0147
In the Madhya Pradesh High Court
Case No : W.A. No. 130 of 2013

Skynet Creations

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 09 MP CK 0147

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : S.S. Kushwah, for the Appellant; Deepak Khot, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard. The appellant has filed this appeal against the order dt. 15.2.2013 passed by the learned Single Judge in W.P. No. 924/2013

2. Respondent No. 1-Municipal Corporation issued a notification and invited applications for the purpose of allotment of erection of hoardings at certain places. The petitioner submitted its bid in pursuance to the aforesaid advertisement and he also deposited security of Rs. 5 lac with the Municipal Corporation. His bid was found highest and it was accepted by the Corporation. He was directed to deposit the amount in accordance with the terms and conditions of the contract. The appellant did not deposit the amount neither he had executed the agreement as per the terms and conditions of the contract. Thereafter, the Commissioner, Municipal Corporation Gwalior vide order dt. 19.1.2013 forfeited the amount of security of the appellant and also blacklisted the appellant.

3. Against the aforesaid order, the appellant filed a Writ Petition before the Writ Court. Learned Writ Court dismissed the Writ Petition vide impugned order after holding that there was no violation of any statutory provision or fundamental right or legal right of the appellant.

4. Learned counsel for the appellant has submitted that the appellant be permitted to submit a representation in regard to forfeiture of security money and the order of blacklisting of the appellant be quashed because no opportunity of hearing was provided to the appellant before passing the order of blacklisting.

5. From the perusal of the order dt. 19.1.2013, it is clear that the appellant was directed to deposit the amount in accordance with its bid within a period of seven days. The appellant did not deposit the aforesaid amount. Thereafter, again the appellant was directed to deposit the amount but the appellant repeatedly did not deposit the amount neither executed the agreement. Hence, the Commissioner passed the order dt. 19.1.2013, by which the earnest money deposited by the appellant is forfeited and the appellant has been blacklisted. Before passing the order of blacklisting no show cause notice was issued to the appellant.

6. Hon"ble Supreme Court in the case of Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, has held as under in regard to observance of rule of natural justice before passing the order:-

In the letter dated April 17, 1968, the crucial words are "after debarring you as a defaulter". They take their colour from the context and so construed the words "debarring you as a defaulter" could be understood as conveying no more than that action with reference to the "contract in question" only was under contemplation. There are no words in the notice which could give a clear intimation to the appellant that it was proposed to debar him from taking any contract whatsoever in future under the P.W.D. A perusal of the appellant's reply also shows that by the word "debarring" the appellant understood as debarring him from executing the contract in question after declaring him a defaulter and then getting the same work done by other agencies at his risk and loss. Therefore, the letter dated April 17, 1968 did not give any clear notice to the appellant that action to debar him from taking, in future, any contract whatsoever under the P.W.D. was in contemplation. The appellant was thus not afforded adequate opportunity to represent against the impugned action which was necessary before blacklisting him.

7. Hon"ble Supreme Court further in the case of M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, has held as under:-

11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

8. Because no specific show cause notice was issued to the appellant before passing the order of blacklisting, hence, the order of blacklisting of appellant is contrary to law.

9. In regard to second part of the order of forfeiture of earnest money, counsel for the appellant has submitted that the appellant be given liberty to submit a representation before the authority against the aforesaid order. He does not press the appeal in regard to passing the order of forfeiture of earnest money on merits.

10. Hence, the appeal is disposed of with the following directions:-

(i) The order dt. 19.1.2013 passed by the Commissioner, Municipal Corporation in regard to blacklisting of the appellant is hereby quashed. The appellant is given liberty to submit representation in regard to forfeiture of earnest money.

(ii) The order passed by the learned Single Judge is modified to the extent indicated above.

No order as to costs.