

13.4.2022
Court No. 19
Item No. 5
sn

WPA 5688 of 2022

ICS Chemical Industries & Anr.
Vs.
Kolkata Municipal Corporation & Ors.

Mr. Zeeshan Haque
Mr. Zubeen Pandey
...for the petitioners

Mr. N.C. Bihani
Mr. Purnasis Bhuniya
..for the KMC

The petitioner no.1 is aggrieved by the comment made by the Kolkata Municipal Corporation, while rejecting the petitioner no.1 at the technical evaluation ground. The petitioner no.1 participated in a tender process notified by the Kolkata Municipal Corporation.

As per the terms and conditions governing the tender a declaration on a non-judicial stamp paper of Rs.10/- has to be submitted stating, inter alia, that the applicant was not debarred/de-listed/black listed, by government undertaking or statutory body.

In this case, the petitioner no.1 duly submitted the declaration. Thereafter, the Corporation was informed that by an order dated January 13, 2022, the Commissioner of Durgapur Municipal Corporation, had debarred the petitioner no.1 from participating in any future tenders of the Durgapur Municipal Corporation, for a period of five years from

the date of issuance of the order. Upon coming to know of such order, the competent authority of the Kolkata Municipal Corporation wrote a letter to the petitioner no.1 enquiring about such order of debarment, issued by the Durgapur Municipal Corporation. A copy of the letter was also forwarded to the petitioner no.1. Such letter was written by the Corporation on March 11, 2022. The petitioner no.1 answered to the said letter and intimated the KMC, that the petitioner was not debarred or delisted by the Durgapur Municipal Corporation.

Yet, the petitioner no.1, did not intimate the Corporation that the debarment had been withdrawn and the petitioner no.1 was requested not to participate in any future tenders of the Durgapur Municipal Corporation, for a period of five years. Such information was given by the Durgapur Municipal Corporation upon a query made by the Kolkata Municipal Corporation.

The petitioner no.1 is aggrieved by the comment uploaded by the KMC, in its portal, while rejecting the bid of the petitioner no. 1. The reasons for such rejection was mentioned as debarment by the Durgapur Municipal Corporation.

The grievance of the petitioner no. 1 is as follows :-

a) Clause 8 of the Notice Inviting Tender required a declaration as to whether there was any debarment/ de-listing /black listing, and the declaration given by the petitioner no.1 was correct in view of the withdrawal of the debarment by the Durgapur Municipal Corporation.

b) Requesting the petitioner no.1 not to participate in any tender floated by the Durgapur Municipal Corporation for a period of five years, did not amount to black listing/de-listing/debarment.

c) The comment mentioning 'debarment by the Durgapur Municipal Corporation' in the portal of the Kolkata Municipal Corporation, was misleading and would cause irreparable injury to the petitioner no.1, in all future tenders floated by other authorities.

d) The name of the petitioner no.1 does not appear in the Website of the Central Procurement Process.

Mr. Bihani, learned advocate for the Kolkata Municipal Corporation submits that the final bid has been opened. He further submits that the lowest bidder will be selected after the reverse action is concluded. He next submits that the Corporation had enquired from the petitioner no.1, about such debarment, but the petitioner no.1, at that point of time, did not supply the order, by which the debarment was withdrawn and, instead, a request

was made asking the petitioner no.1 not to participate in any tender to be floated by the Durgapur Municipal Corporation for the succeeding five years on and from January 13, 2022. He further submits that the tendering authority reserves the right to cancel the technical bid, if the tendering authority receives an intimation that a particular bidder has been asked by a particular Municipal Corporation not to participate in tender processes of the said Corporation for a period of five years. The eligibility of the petitioner no.1 may be considered on such basis and the KMC may not allow such a bidder to participate, in its tender.

Mr. Bihani further submits that the request of such a nature by the Durgapur Municipal Corporation would operate as an implied de-listing of the petitioner no.1, from its position of a contractor of the Durgapur Municipal Corporation, for five years. He further submits that the Durgapur Municipal Corporation has not come forward to clarify the reasons and the actual situation which led to the decision of the Corporation of stopping the petitioner no.1 from participating in any tender of the Durgapur Municipal Corporation for a period of five years.

Mr. Bihani submits that the comment on the portal was uploaded in order to make the petitioner

no.1 aware of the reasons as to why the petitioner no.1 was disqualified at the technical evaluation round. Mr. Bihani urges that in any event, the petitioner no.1 has not suffered any prejudice by such disqualification, as the petitioner no.1 would not qualify in the financial round, not being the lowest bidder.

Heard the learned advocates for the respective parties.

There is no dispute with the fact that the petitioner no.1 was debarred by the Commissioner, Durgapur Municipal Corporation, for a period of five years from January 13, 2022. Thereafter, the Durgapur Municipal Corporation modified the expression 'debarment' and substituted the same by requesting the petitioner no.1, not to participate in any tender process of Durgapur Municipal Corporation, for a period of five years from date. In the reading of the court, the petitioner no.1 has been prevented by Durgapur Municipal Corporation from participating in any tender of the said Corporation for a period of five years. Such decision of the Durgapur Municipal Corporation, has not been challenged by the petitioner no.1. The present tendering authority, namely, the Kolkata Municipal Corporation, was within its right to consider the decision of the Durgapur Municipal Corporation in

the light of Section 8 of the Notice Inviting Tender specially because, the decision of the Durgapur Municipal Corporation can be interpreted to be a temporary measure to stop the petitioner no.1 from participating in any tender under the Durgapur Municipal Corporation, for a period of five years.

However, in the absence of the use of the expression 'debarment' by the Durgapur Municipal Corporation, the comment uploaded by the Kolkata Municipal Corporation amounts to a mis-information. Such comment in respect of the bid of the petitioner no.1, shall be restricted to instant the tender process and will not operate as a general observation for all times to come. Such expression shall not operate as a declaration of debarment and shall not be used against the petitioner no.1.

The documents filed by the Kolkata Municipal Corporation, are taken on record.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)