

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 22399 of 2019

**Joyanti Electronics, represented by Sri. Kartick Maji (Bauri)
Vs.
The West Bengal State Electricity Distribution
Company Limited and others**

For the petitioner	:	Mr. Biswaroop Bhattacharya, Mr. Soumik Ganguly, Mr. S. Nandy
For the WBSEDCL	:	Mr. Sujit Sankar Koley
For the respondent no.6	:	Mr. Kishore Mukherjee
Hearing concluded on	:	07.03.2022
Judgment on	:	14.03.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner is an enlisted contractor under the West Bengal State Electricity Distribution Company (WBSEDCL) for certain allotted categories and was engaged in several projects undertaken by the WBSEDCL.
2. It is alleged by the petitioner that the WBSEDCL, *vide* its Office Order No.1171 dated February 7, 2017, specifically decided that when there is dearth of suitable contractors or agencies, such kind of jobs may be awarded to agencies and/or contractors having provisional

enlistment, after verifying their credentials and performances, in consultation with authorities of a rank not below that of Additional Chief Engineer and Zonal Manager. A copy of the said Officer Order is annexed as Annexure P-5 to the writ petition.

3. The petitioner, in the capacity of a small scale contractor and general order supplier of materials of equipment and also an enlisted contractor under the Distribution Wing of the WBSEDCL, having Renewal Enlistment No.:- Distribution Enlistment – R/2018-19/149, was not only provisionally enlisted as a contractor of the WBSEDCL long back but was also subsequently extended in such capacity for the years 2015-16, 2016-17, 2017-18 and 2018-19. The copies of the relevant licences, Renewal of Enlistment and other related documents are annexed collectively as Annexure P-1 to the writ petition.
4. The Divisional Manager, Bishnupur (O & M) Division of the WBSEDCL decided to deploy an enlisted agency and/or contractor for R & M Work of 33 KV and 11 KV HTOH lines emanating from Ramsagar 33/11 KV Substation.
5. The petitioner contends that, time and again, the petitioner wrote to the respondent-authorities requesting the petitioner's selection for such work. However, the respondents took no initiative in that regard till the date of allotment of such work. Copies of such representations are also annexed and collectively marked as Annexure P-6 to the writ petition.
6. Subsequently, the petitioner learnt that the Divisional Manager, Bishnupur Division (respondent no.3 herein), by his impugned Memo

No. BSPD/2RSO/1231 dated October 3, 2019, issued Work Order in favour of respondent no.6 (M/s. Ghosh Construction) in connection with the said R & M work at Ramsagar and had directed respondent no.6 to commence maintenance work immediately after causing necessary inspection. Such Work Order is annexed as Annexure P-7 to the writ petition.

7. Learned counsel for the petitioner submits that the Work Order itself reveals that respondent no.6 was selected pursuant to prayers made on his behalf *vide* Receipt No.6995 dated January 9, 2019 and Receipt No.2072 dated July 3, 2019, *vide* Approval No.533 dated July 16, 2019. No tender process was initiated for such selection.
8. In terms of credentials and performance, the petitioner contends to be far more eligible for the work-in-question than respondent no.6. The petitioner was also engaged as a sub-contractor of a turn-key agency, which constructed the said Ramsagar 33 KV line and 11 KV line and associate works of line as well as for Ramsagar 33/11 KV Substation Switchyard Electrical Works and had specific practical knowledge about the said substation, which has to be maintained as per the Work Order.
9. The present writ petition has been preferred, challenging the Memo No. BSPD/2RSO/1231 dated October 3, 2019 issued by respondent no.3 engaging respondent no.6 and seeking ancillary reliefs.
10. Learned counsel appearing for the petitioner vociferously contends that false allegations have been made against the petitioner in the affidavit-in-opposition filed respectively by respondent nos. 1 to 5 and

respondent no.6 in the writ petition. Learned counsel points out that, in paragraph no.4 of the affidavit-in-opposition used by respondent no.6, it has been stated that the respondent-authorities duly rejected the petitioner's application on the ground that the writ petitioner is a miscreant involved in illegal activity at Ramsagar Substation and that the writ petitioner approached several unemployed youth with the promise to give them job of maintenance work in the Substation in lieu of substantial amounts of money taken by the petitioner from them. The said persons have already informed the same to the Superintendent of Police, Bankura, Inspector-in-Charge of the Bishnupur Police Station, along with the Regional Manager, Divisional Manager and Zonal Manager of the WBSEDCL. Copies of such purported complaints by local people have been annexed collectively as Annexure-A1 to the opposition.

- 11.** It has further been contended by respondent no.6 that the Assistant Engineer (Technical), Bishnupur Division also complained against the writ petitioner regarding the petitioner and its associates having blocked the front gate of the Substation and keeping the same under lock and key, demanding the Work Order of maintenance and repair in the Ramsagar Substation.
- 12.** On the other hand, the respondent nos.1 to 5, in paragraph 6 of their affidavit-in-opposition, have alleged that contractors are engaged for the purpose of maintenance and associated jobs by resorting to tender process or on the basis of Rate Contract carried out by the WBSEDCL allegedly from time to time. Issuance of amended orders

took care of the revision of the Rate Contracts and extension of the orders as per exigencies.

- 13.** In paragraph 10 of the affidavit-in-opposition, the respondent nos. 1 to 5 have alleged that the petitioner, by illegal means and for unlawful gain, collected huge money from local villagers assuring them to provide permanent job in the power house of WBSEDCL. A particular complaint has also been annexed as Annexure-R1 to the affidavit-in-opposition of respondent nos.1 to 5.
- 14.** In paragraph 11 thereof, the petitioner has been alleged to be a dishonest person doing illegal activity with a gang of 15 hooligans with a specific vehicle, the number of which has been mentioned in the affidavit-in-opposition, and was allegedly “expelled” from the WBSEDCL.
- 15.** Moreover, it has been stated categorically in paragraph 14 of the affidavit-in-opposition of respondent nos. 1 to 5 that the question of consideration of the petitioner’s prayer does not and cannot arise at all as the petitioner is a corrupt contractor, which has subsequently come to the knowledge of the respondents and that the credential and integrity of the petitioner is in question and that the petitioner has failed to establish the requisite credential to be engaged for the work-in-question. It has further been contended in the affidavit-in-opposition that the petitioner has no authority or *locus standi* to move the writ petition against the engagement of the private respondent.
- 16.** Learned counsel for the petitioner contends that the above allegations are merely bald allegations, without being backed up by any concrete

evidence. Since such allegations have been sought to be used as an excuse for the unlawful appointment of respondent no.6, it is for the respondents to establish such complaints beyond reasonable doubt.

17. It is submitted that there is absolutely no transparency in the procedure of selection adopted by the WBSEDCL.
18. That apart, the petitioner has virtually been blacklisted, as is evident from the abovementioned allegations in the affidavits-in-opposition, without issuing any show cause or giving any opportunity of hearing at all to the petitioner, behind the back of the petitioner.
19. It is submitted that no criminal case is pending against the petitioner to the best of the petitioner's knowledge.
20. Learned counsel places reliance on the judgment of *Bharat Singh and others Vs. State of Haryana and others*, reported at (1988) 4 SCC 534. In paragraph 13 thereof, it was held by the Supreme Court that when a point which is ostensibly a point of law, is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the court will not entertain the point. The Supreme Court drew a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit in such context.

- 21.** Learned counsel for the petitioner next cites the judgment of *UMC Technologies Private Limited Vs. Food Corporation of India and another*, reported at (2021) 2 SCC 551 and *Erusian Equipment Chemicals Ltd. Vs. State of West Bengal and another*, reported at (1975) SCC 70, in support of the proposition that a party, prior to being blacklisted, is entitled to a notice and to be heard. In the absence of such opportunities, natural justice is violated, along with the right to equality guaranteed under Article 14 and the right of carrying on business under Article 19(1)(g) of the Constitution of India.
- 22.** Learned counsel appearing for the respondent no.6 contends that the respondent no.6 came to know about the allegations levelled against the petitioner from the respondent nos. 1 to 5-authorities.
- 23.** Learned counsel for the respondent nos.1 to 5 contends that the affidavit-in-opposition affirmed by the said respondents contains several documents which substantiate the allegations made against the petitioner.
- 24.** Learned counsel appearing for the respondent nos. 1 to 5 further argues that since the maintenance and repair jobs-in-question are allotted on an urgent basis, it is not possible to float regular tenders and/or resort to any such time-consuming process in selecting the enlisted contractors. However, it is reiterated that respondent no.6 is also an eligible enlisted contractor having the requisite credentials for undertaking the work-in-question.

- 25.** Upon considering the materials-on-records and the arguments of counsel, it is noticed that serious allegations have been levelled against the petitioner to justify the exclusion of the petitioner from being considered for awarding the work-in-question.
- 26.** It remains undisputed that the petitioner was closely connected with the setting up of the Substation-in-question of WBSEDCL and would be a natural choice for looking after the maintenance and repair work of such Substation, in view of the special knowledge of the petitioner, by dint of the work done by it, as regards the technicalities and nitty-gritties of the concerned Substation and electrical lines emanating therefrom.
- 27.** The excuse put forward by the respondent nos. 1 to 5 as regards urgency cannot be a cover for the selection process being as opaque as it is.
- 28.** In fact, contradictory arguments have been made on behalf of the respondent nos. 1 to 5. Learned counsel, while arguing the matter, specifically plead the urgency involved for not resorting to tender process with regard to the selection of candidates for the maintenance work of Substations. Yet, in paragraph no. 6 of their affidavit-in-opposition, respondent nos. 1 to 5 categorically state that work orders are issued for such jobs either by tender process or on the basis of Rate Contract carried out by the WBSEDCL from time to time. An elaborate system of revision and extension with regard to Rate Contracts has also been pleaded in paragraph no.6 of the said affidavit-in-opposition. The WBSEDCL claims to frame policies on the

basis of which civil works are awarded/placed through Rate Contract basis, which are allegedly revised from time to time to meet the exigencies that arise.

- 29.** However, upon query of court, it has been candidly admitted by learned counsel for the WBSEDCL that the Rate Contracts/Work Orders are issued for certain specific periods of time. As such, urgency, *ipso facto*, cannot be a reason for not adopting a transparent procedure of selecting candidates from amongst the eligible contractors to be engaged for the work of maintenance and repair of the Substations.
- 30.** Apart from making contradictory claims regarding floating tenders, which have not been established by any cogent document, the WBSEDCL has utterly failed to demonstrate any transparent basis of engagement of agency (contractor) on “selective basis” as mentioned in Clause 1.2.1 of the Office Order No.17 dated May 15, 2018 annexed to their affidavit-in-opposition.
- 31.** In Clause 3.1 thereof, such engagement for operation and maintenance has been stipulated to be done by engaging agency/contractor when it is found absolutely necessary and the company’s personnel cannot be deployed from the existing strength after exploring all possible re-arrangement. Although repair and maintenance work intrinsically involves urgency, such exigency is only limited on a case-to-case basis in specific instances, as and when such exigent circumstances arise.

- 32.** However, the award of such contracts or work cannot be linked directly with such exigency, since such work orders are issued for specific time periods, which are fixed beforehand. Hence, sufficient leeway is available to the WBSEDCL to undertake a tender process and/or adopt an open system of appointment from well in advance prior to the expiry of the existing contracts.
- 33.** Undoubtedly, each job of maintenance/repair may involve urgency; however, such urgency does not affect the selection process which, in the present case, is absolutely translucent, without any explanation being offered by the WBSEDCL, which is a public company.
- 34.** That apart, the extreme allegations levelled against the petitioner have not been substantiated by any order of a competent criminal court convicting the petitioner of any offence whatsoever. Mere complaints, without any further corroboration, purportedly made against the petitioner, cannot be the sole basis of making such bald allegations against any person.
- 35.** In the present case, not only are such allegations demeaning but those palpably affect the goodwill of the petitioner in his work-sphere adversely and tantamount to blacklisting of the petitioner without any opportunity of showing cause or hearing being given to the petitioner.
- 36.** As per the cited judgments of the Supreme Court, such a course of action has been strongly deprecated by the Supreme Court time and again.
- 37.** As far as the allegations made by respondent no.6, who could not have any occasion to get hold of the complaints lodged by “local

people” against the petitioner, unless they were the henchmen of respondent no.6 itself or the respondent no.6 was working hand-in-glove with the concerned officials of the distribution licensee.

38. Learned counsel appearing for the respondent no.6 argues that the respondent no.6 learnt about the allegations against the writ petitioner from the respondent nos. 1 to 5. Strangely, however, paragraph nos. 4 and 5 of its affidavit-in-opposition, which contain the bulk of such bald allegations, are affirmed to be true to the best of the knowledge of respondent no.6 and not “true to records” or “submissions”. Such a stand is patently *mala fide* and inherently contradictory.
39. In any event, it is for the first time in the writ petition that the respondents have disclosed that the petitioner is so corrupt that the petitioner has failed to establish the requisite credentials to be engaged for the work-in-question.
40. The respondent nos. 1 to 5, in paragraph no.14 of their affidavit-in-opposition, have gone to the extent of alleging that the question of consideration of the petitioner’s prayer does not and cannot arise at all as the petitioner is a “corrupt contractor” which has allegedly come to the knowledge of the respondents subsequently. The credential and integrity of the petitioner have been alleged to be in question in paragraph no. 14 of the affidavit-in-opposition filed by respondent nos.1 to 5.
41. However, orders under Section 144 of the Code of Criminal Procedure, which are general in nature, and purported complaints

lodged by unknown persons who have not come forward to corroborate the stand of the respondents in any manner whatsoever before this court, cannot be, by any stretch of imagination, sufficient basis to blacklist the petitioner behind the petitioner's back without giving any prior opportunity of showing cause and/or hearing to the petitioner.

42. From the above scenario, it is crystal clear that the selection process adopted by the WBSEDCL for repair and maintenance work of Substations, even as per the own averments of respondent nos. 1 to 5 in the writ petition, are totally opaque and not open to public scrutiny as behoves the issuance of such work orders by public authorities. Despite its autonomy, the WBSEDCL is a public concern, looking after public interest. Hence, the WBSEDCL cannot avoid public accountability insofar as its engagement of contractors/sub-contractors is concerned.
43. The objection as to *locus standi* of the petitioner has no basis whatsoever, since the petitioner categorically claims to have been associated closely with the process of installation and setting up of the Substation and the lines emanating therefrom, which, *per se*, confers sufficient credentials on the petitioner at least to come within the zone of consideration for the award of maintenance and repair work of such Substation and its allied installations.
44. By flouting all norms of Natural Justice, respondent nos.1 to 5, in conjunction with respondent no.6, have violated the fundamental rights guaranteed to the petitioner under Article 14 and Article

19(1)(g) of the Constitution of India. Thus, the engagement of the respondent no.6 is suspect and cannot stand the scrutiny of judicial review.

- 45.** Accordingly, W.P.A. No. 22399 of 2019 is allowed, thereby setting aside and quashing Memo No. BSPD/2RSO/1231 dated October 3, 2011 issued by respondent no. 3 selecting respondent no.6 for the Work Order-in-question.
- 46.** Respondent nos. 1 to 5 shall, within a week from date, initiate the process of inviting public bids/tenders for the purpose of entrusting fresh work orders in respect of the remaining balance tenure of the respondent no. 6, after May 31, 2022, for maintenance and repair of R & M work of 33 KV and 11 KV HTOH lines emanating from Ramsagar 33/11 KV Substation and allied works of maintenance and repair. In view of the exigent nature of the work, the entire tender process shall be concluded by the respondent nos. 1 to 5 by May 31, 2022.
- 47.** It is made clear that all eligible contractors, including the petitioner and respondent no.6, shall be permitted to participate in the tender/bid process, subject to compliance of requisite formalities and satisfaction of credentials required for such job.
- 48.** In order to avoid unnecessary inconvenience and imminent public hazard, considering the nature of the work-in-question, respondent no.6 is permitted to carry out the repair and maintenance work till the conclusion of the tender process and issuance of fresh Work Order, which shall, mandatorily, be done on or before May 31, 2022.

- 49.** However, in view of the damages and loss of goodwill suffered by the writ petitioner, respondent nos. 1 to 5 and 6 shall pay costs of Rs. 20,000/- each, that is, Rs. 20,000/- to be paid by the respondent nos.1 to 5 and an equivalent amount payable by respondent no.6, within March 31, 2022, to the petitioner without prejudice to the rest of the directions issued above.
- 50.** It is, however, further clarified that this order shall not prevent respondent nos. 1 to 5 from taking steps in accordance with law against the petitioner, if any misconduct and/or serious deficiency of service of the petitioner in executing its prior jobs in favour of the WBSEDCL is proved in accordance with law and/or from taking out appropriate proceedings before the competent criminal forum with regard to any allegation that the respondents might have against the writ petitioner. If such proceedings are instituted, those will reach their culmination in accordance with law, without being prejudiced in any manner by any of the observations made herein.
- 51.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)