

12.07.2022
RP/Ct. 2
sl no. 23

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction**

**WPA 714 of 2022
Abhijit Dasgupta
Vs.
Union of India & Ors.**

Mr. Nabankur Paul

.... For Petitioner

Mr. Sudipto Kumar Mazumdar, Ld. Asst. ASG

Mr. Ajoy Kumar Singhanian

Mr. Sourab Kar

.... For UOI

Petitioner has challenged the Office Order dated 2nd March, 2022, issued by the 3rd respondent whereby Enlistment Authority (ADJ, Region, Kolkata) accepted the recommendation of the Empowered Committee and ordered that the petitioner is debarred from participating in the tender process in CPWD for a period of two years from the date of issue of that order and the same was approved by the Additional Director General (Region, Kolkata).

Mr. Paul, learned advocate for the petitioner submits that a coordinate Bench of this Court after setting aside the order dated September 21, 2021 by virtue of which the petitioner was removed from the list of CPWD enlisted contractor, which was the subject matter of challenge in WPA 2113 of 2021, granted liberty to the concerned authority to hear the petitioner afresh as also any other interested party including the parties on whose

complaint the proceedings may have been initiated and thereafter a reasoned order shall be passed and communicated to all concerned. He submits that the impugned order dated March 2, 2022 was passed without giving him an opportunity of hearing. He, thus, submits that the impugned order is liable to be set aside on the ground of violation of the principles of natural justice.

Mr. Singhania, learned advocate appearing for the Union of India submits that a show cause notice as per Clause 13 of the Enlistment Rules 2021 was issued on January 21, 2022 to the petitioner. He further submits that the Empowered Committee after considering various documents as well as reply of the petitioner to show cause notice dated 28.01.2022 found the petitioner's reply to be unsatisfactory, and also found that the petitioner has failed to execute the work and also executed the work unsatisfactorily and therefore the said committee in its meeting held on February 16, 2022 recommended that the petitioner be debarred from participating in the tender process in CPWD for a period of two years and such recommendation was accepted by the Enlistment Authority. Thus, according to Mr. Singhania it is not a case of violation of the principles of natural justice.

Heard the learned advocates for the parties and perused the materials on record.

Mr. Singhania, learned advocate for the Union of India failed to satisfy the Court that an opportunity of hearing was granted to the petitioner before issuing the Office Order dated March 2, 2022.

An order declaring a contractor from participating in the tender process operates harshly against him. The fundamental right to carry on trade, business or profession is infringed by such order and the same is no doubt penal in nature.

It is well settled that before penalizing a person such person is to be given an opportunity of hearing. However, in the instant case the petitioner has been debarred from participating in the tender process for a period of two years without giving him an opportunity of hearing. Thus, this Court is of the considered view that the principles of natural justice has been grossly violated in the instant case for which the order dated March 2, 2022 is liable to be set aside and the same is accordingly set aside and quashed. However, the respondent authorities will be at liberty to take a decision afresh by passing a reasoned order upon giving an opportunity of hearing to the petitioner pursuant to the show cause notice dated 21st January, 2022 which is appearing at page 432 of the writ petition and to communicate the same to the petitioner. At the time of hearing it will be open to the petitioner to raise all issues, both factual as

well as legal including the authority of the respondent to issue such show cause notice.

With the above direction, WPA 714 of 2022 stands disposed of. There shall be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all usual formalities.

(Hiranmay Bhattacharyya, J.)