

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 16962 of 2023

Sri Amitava Chowdhury
Vs,
State of West Bengal & Ors.

Mr. Partha Sarathi Byhattacharyya,
Mr. Mani Shankar Chattopadhyay,
Mr. Raju Bhattacharyya
...for the petitioner

Mr. Asish Kumar Guha,
Mr. Rajendra Chaturvedi
...for the State

1. Learned Senior Counsel appearing for the petitioner contends that the petitioner is a dealer in Knapsack Sprayer and other products. The petitioner never participated in a tender floated by the respondent-authorities. However, in the said tender process, as per the tender document itself, one of the yardsticks was that the products manufactured by the petitioner were to be used by the participants.
2. Upon learning that one of the participants was erroneously claiming that the petitioner's brand was being used, whereas the said participant was using spurious products, the petitioner contacted the respondent-authorities to

indicate that the petitioner had nothing to do with such products.

3. However, all on a sudden, the respondent-authorities, vide the impugned order dated June 22, 2023, debarred the petitioner from participation in any tender floated by any agency or parastatals under the administrative control of Department of FPI&H for a period of five years from that date.
4. It is argued that the petitioner had nothing to do with the tender and, as such, the blacklisting of the petitioner, which affects the business of the petitioner all over the country, was arbitrary and entirely unwarranted.
5. Learned counsel appearing for the State places reliance on the communication made to the petitioner by the respondent-authorities, seeking quotation from the petitioner as to his brand products.
6. Since the petitioner stonewalled the said efforts, the petitioner was blacklisted.
7. It is further pointed out that the petitioner has already given a representation to the respondent-authorities in the same context, which has not yet been considered.
8. A perusal of the documents annexed to the writ petition indicates that the petitioner was merely

concerned that its brand name was being misused by one of the participants in a tender process floated by the respondent-authorities.

9. Neither was the petitioner a participant or bidder in the said tender process, nor was the petitioner in any manner interested in participating in the same, more so, since the petitioner is a manufacturer and dealer and could not participate directly in the tender.
10. As such, the allegation of the respondents that the petitioner did not concede to the respondents' offers to give his quotation was an invalid ground for blacklisting the petitioner.
11. Since the question of blacklisting only arises when a particular bidder in the tender process is guilty of any of the offences as enumerated in the tender, in the absence of any such participation by the petitioner at all, there arose no question of the petitioner being blacklisted by the respondent-authorities.
12. The impugned action of blacklisting appears to be more of a mala fide attempt on the part of the respondents to tarnish the image of the petitioner, just because the petitioner chose not to respond to the respondents' offer to give quotation regarding his products having the brand name of the petitioner.

13. It is entirely the petitioner's choice as to whether or not to participate in a particular tender process. Moreover, the petitioner, being the manufacturer and dealer of the brand name, the quality of which was endorsed by the respondents themselves by enumerating in the tender document itself that it was the petitioner's brand of products which is required to be used by bidders, there could not arise any question of blacklisting the petitioner in the manner as done.

14. Hence, since the respondents had no occasion even to issue a show cause for the purpose of blacklisting, the order of blacklisting without hearing the petitioner, in any event, is palpably *de hors* the law and in violation of natural justice.

15. The said action, being patently arbitrary and mala fide, cannot survive the scrutiny of Court under Article 227 of the Constitution of India.

16. Hence, W.P.A. No. 16962 of 2023 is allowed, thereby setting aside the impugned order of blacklisting, dated June 22, 2023 and/or any action, if taken on the basis thereof.

There will be no order as to costs.

17. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.