

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 18204 of 2023

**M/s. Greentech Environ Management Private Limited
and another**

Vs.

The State of West Bengal and others

For the petitioners	:	Ms. Reshmi Ghosh, Mr. Soumya Sarkar Chini
For the State	:	Mr. Jayanta Samanta, Ms. Arpita Mandal
For the KMDA	:	Mr. Sirsanya Bandopadhyay, Mr. Avishek Guha, Ms. Akansha Chopra
Hearing concluded on	:	02.08.2023
Judgment on	:	08.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1-company deals with bio-remediation and bio-mining of municipal and legacy waste. The petitioner no. 2 is its director.
2. The petitioner no. 1 participated in a tender floated by the Kolkata Metropolitan Development Authority (KMDA) and turned out successful. Consequently, the petitioner no. 1 was awarded work contracts in respect of several districts, all dated February 17, 2021. The work contracts pertain to bio-mining of legacy waste and land

reclamation of dumpsites utilizing scientific method. The petitioner no. 1 is still working under the said contracts.

3. After performing the work for some time, on September 6, 2021, a certificate was issued by the Chief Engineer, Sewerage, Drainage and Solid Waste Management Sector, KMDA. The said document certified, inter alia, that the petitioner no. 1 had successfully completed bio-remediation of legacy waste quantity of 6.10 Lakh Metric Tons “up to 31.07.2021” at the sites across West Bengal, as mentioned therein. It was further stated that the certificate-issuing authority was satisfied with the performance of the petitioner no. 1 “so far”.
4. However, on June 23, 2023, the respondents issued a show-cause notice to the petitioner as to why the said certificate would not be cancelled.
5. The petitioners gave a written reply to the show-cause on June 26, 2023.
6. However, the respondents, vide communication dated July 27, 2023, revoked the certificate and requested the petitioners to return the original certificate within seven days.
7. Being thus aggrieved, the petitioners have preferred the present challenge.
8. Learned counsel for the petitioners argues that valuable rights flowing from the certificate have accrued in favour of the petitioners and the respondents cannot, unilaterally, withdraw such rights. The respondents, it is argued, are also barred by the principle of Estoppel.

9. It is contended that the grounds cited in the show cause notice are not valid in law. Moreover, the impugned cancellation of the certificate is devoid of reasons. In such context, learned counsel appearing for the petitioners cites *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers*, reported at (2010) 4 SCC 785.
10. Learned counsel next argues that the respondents themselves issued the credential certificate upon completion of a substantial portion of the work by the petitioners in respect of several districts. Even now, the respondents do not dispute the veracity of the facts stated in the certificate. Hence, the impugned cancellation is bad in law and ought to be set aside.
11. It is alleged that the impugned order is violative of Article 19 of the Constitution of India.
12. Learned counsel for the respondent-authorities contends that the petitioners do not have any statutory or Constitutional right to have a certificate issued in their favour. Although the respondents initially issued the certificate-in-dispute, the same was being misused by the petitioners. Learned counsel denies that the certificate was a 'completion' certificate or a 'credential' certificate. However, the petitioners have been rampantly using the said certificate as credential/completion certificate for participating in other tenders before several authorities in different states.
13. It is contended that the petitioners, on the basis of the certificate, have been claiming around that the same was a credential certificate

and should be treated as proof of completion of work by the petitioners under the tender floated by the present respondents.

- 14.** Queries were raised by such other tendering authorities in several states as to the credibility of the said certificate issued by the respondents, for which the latter's goodwill is suffering.
- 15.** For example, it is submitted, tendering authorities from Cuttack sought to clarify doubts regarding the certificate, which was produced by the petitioners in a tender floated by the said authorities to claim completion of similar work, as contemplated in the said tender, for the respondents.
- 16.** It is argued by the respondents that the doctrine of Estoppel is not attracted, since the petitioners did not perform any act on the basis of the certificate, but would have participated in other tenders in any event, even if the certificate was not issued.
- 17.** Since the petitioners have no statutory right to claim a certificate, the respondents, it is argued, can at any time revoke the same at their discretion.
- 18.** Upon hearing learned counsel for the parties, it is to be first considered whether any statutory or Constitutional right of the petitioners has been violated by the impugned cancellation. The respondents are right in arguing that the petitioners do not have any such right in the first place to enforce issuance of a certificate.
- 19.** However, the mere fact of the petitioners not having a right to have such a certificate is an insufficient defence in the present case, since the factual developments here have crossed the stage of directing the

issuance of a certificate. Here, the petitioners are not seeking any direction on the respondents to issue a certificate. The respondents, in the present case, issued the certificate of their own volition. The petitioners have acted on the basis of such issuance by participating in several tenders floated by different authorities in several states, claiming credentials on the basis of such certificate which would satisfy the conditions of the said tenders. As such, the defence against Estoppel, on the ground that the petitioners did not act on the basis of the certificate, is lame.

- 20.** The petitioners fully acted on the basis of the certificate by participating in subsequent tenders on the strength of the said certificate, and might not have participated in those tenders at all if the certificate was not issued.
- 21.** The purpose of a certificate, addressed “To Whom It May Concern”, is obviously not a personal communication but intended to be used before other authorities.
- 22.** Hence, the respondents cannot escape the rigour of Estoppel *ex facie*. The bar would apply, however, in the facts of the case, and with the rider that if the respondents, for subsequent reasons and following due process of law and natural justice, find any irregularity committed on the basis of the certificate or abuse thereof, may take valid steps in law in that regard.
- 23.** In the instant case, the matter does not rest there. Here, the respondents cannot be said to have cancelled the certificate ‘unilaterally’ or ‘at their sweet will’, since a proper show-cause notice

and right of reply was given to the petitioners, which was availed of by the petitioners by giving a written reply.

- 24.** The show-cause notice has three important features:
- 25.** First, it denies that the certificate can be treated as a credential certificate.
- 26.** Secondly, it alleges that the petitioners' submission of the certificate as credential certificate to various organizations during participation in tender is enough to create a doubt in the mind of the officials of the organizations and affects the image of the KMDA in the public domain.
- 27.** Thirdly, the petitioners have used the certificate instead of bringing it to the notice of the competent authority of KMDA for appropriate course of action.
- 28.** The first stand taken by the KMDA is arguable. A certificate issued by the authorities "To whom it may concern" is obviously a general certificate addressed to the world at large and speaks for itself. Whether the contents of the same satisfy the conditions of a particular tender document is entirely for the tenderer to consider in each case. There is a distinction between 'credential' and 'completion'. 'Credential' refers to antecedents. The petitioners can very well claim that they have completed the work up to the stage as indicated in the certificate.
- 29.** The petitioners, however, cannot claim that the certificate indicates that the entire work awarded to them has been done. Thus, it cannot be a 'completion' certificate, since it indicates that only a part of the work was done till the date of its issuance.

- 30.** A perusal of the certificate shows that the petitioners have successfully completed “bio-remediation” (which, admittedly, is only a component of “bio-mining”, for which the work was assigned), that too, only up to July 31, 2021.
- 31.** The KMDA, as per the last line of the certificate, express their satisfaction with the petitioners’ performance “so far”.
- 32.** Hence, the certificate is self-explanatory. It does not claim to be either a credential certificate or a completion certificate, but stands for what it is.
- 33.** Coming to the petitioners’ argument that the impugned cancellation is devoid of reasons, in the cited judgment of *Assistant Commissioner (supra)*, the Supreme Court was primarily dealing with judicial orders. In such context, it was observed that recording of reasons is an essential feature of dispensation of justice and that reasons are the soul of orders.
- 34.** The above principle was laid down in the context of orders of a judicial or quasi-judicial nature having some impact on the concerned party. In the present case, however, the respondents were merely cancelling a certificate voluntarily issued by themselves. The petitioners did not have a statutory right to get such certificate in the first place. Thus, detailed reasons, as required in a judicial order or an administrative order taking penal action against someone, are not expected in the impugned cancellation.

35. The show-cause notice sufficiently disclosed the allegations and the impugned order recorded dissatisfaction on the reply given by the petitioners.
36. Thus, the argument of dearth of reasons, *per se*, cannot be a factor vitiating the impugned cancellation.
37. The remaining issue is, whether the KMDA is suffering in any manner from the alleged misuse of the certificate issued by it, by the petitioners, before other tenderers.
38. There is some justification in the argument of the KMDA that there is scope of misreading the certificate-in-question as a completion certificate, although it does not *ex facie* claim to be so. Such misunderstanding can arise, particularly, on the following counts:
39. First, the certificate speaks about the petitioners having “successfully set up” and “operating” the concerned facilities for “bio-remediation and bio-mining” of legacy waste, although the petitioners have not done any substantial work of bio-mining till the date of issuance of the certificate. The work consists of two periodic components – 3 months for machine installation and the rest for bio-mining. Hence, as on the date of issuance of the certificate, that is, September 6, 2021, only about 7 months had elapsed from the issuance of the work orders on February 17, 2021. The first 3 out of the said 7 months were stipulated for machine installation. Thus, the actual contractual work could only have been done for merely 4 months.
40. Secondly, between the two charts given in the certificate, inconspicuously sat a sentence which indicated that only bio-

remediation was completed, that too, up to July 31, 2021, which is 2 months earlier than the issuance of the certificate. This takes the actual period of work done to only 2 months.

- 41.** The expression “so far” at the bottom of the certificate merely qualifies the contents above it, so does not have any particular significance.
- 42.** The conspicuous placement of two charts in the certificate, the first of which covers the total volume of the work (not even a small fraction of which was done by the petitioners in reality at that point of time), evidently gives an impression, at first glance, if produced as a ‘credential’ or ‘completion’ certificate before any tendering authority, that the petitioners completed the entire job.
- 43.** In any event, completion of only two effective months of bio-remediation work, which is a miniscule part of the total work contemplated under the tender floated by the KMDA, cannot serve any effective purpose for the petitioners, unless the same is intended to be abused as a completion certificate. So, it cannot be said that any vital right of the petitioners is being taken away by cancellation of the certificate.
- 44.** Thus, the bar of Estoppel, taken in proper perspective, is substantially diluted, since no valuable right could have accrued in favour of the petitioners on the basis of the certificate, nor could the petitioner claim to use the certificate as a ‘completion’ certificate since, admittedly, only a small part of the work was done at the stage of issuance of the same.

- 45.** Thus, to avoid unnecessary misunderstanding and abuse of the certificate, the KMDA was justified in cancelling the same.
- 46.** The show-cause was, in fact, sufficient, since it disclosed categorically the grounds of proposed cancellation. The reply given thereto was not sufficient to dispel the apprehension of misuse of the certificate, particularly since the same has already been used by the petitioner before several tendering authorities as credential/completion certificate.
- 47.** However, the already-accrued rights in favour of the petitioners, in respect of tenders where the petitioners have already produced the certificate, cannot be retrospectively curtailed.
- 48.** Accordingly, WPA No. 18204 of 2023 is disposed of without interfering with the impugned order cancelling the certificate-in-dispute. However, it is made clear that the certificate shall be treated to be valid, for whatever it is worth, in respect of tenders where the petitioners have already participated by production of the said certificate.
- 49.** There will be no order as to costs.
- 50.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)