10.05.2023
Sl.No. 6-7
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2596 of 2022
With
CAN/1/2022

Sushanta Kumar Ghosh
VS
State Bank of India & Ors.
With
WPA 2597 of 2022
With
CAN/1/2022

Simul Sarkar
VS
State Bank of India & Ors.

Mr. Debasish Ghosh
Mr. Nilanjan Adhikari
...for the appellant

Mr. Swarup Banerjee
Mr. Hari Charan Yadav
...for the respondent no. 1

As the questions of fact and law are common in these two cases, I dispose of them by this common judgment and order.

In each of these writ applications, the writ petitioner is a valuer. For several years dating back to at least 2007 they have been valuing the properties belonging to borrowers or guarantors for the purpose of advancement of loan by the respondent bank.

The bone of contention is one property. It seems that this property was valued by each of these writ petitioners over a period of time, initially for advancement of loan and thereafter for renewal of loan facilities.

It further appears that from or about 2016 the writ petitioners stopped receiving orders from the bank to value properties. An application for information under the Right to Information Act, 2005 by Sushanta Kumar Ghosh one of the petitioners was replied to by the respondent bank by its letter dated 23rd November, 2019 to the effect:

"With reference to your application dated 04/09/2019 received by us on same date and our interim reply vide letter PREM/RTI/530 dt. 27/09/2019, please find the required information as under:

You were not considered for empanelment or otherwise as you were engaged as a valuer for a property of Sri Upanand Roy who stands as the guarantor for two loans in the name of Khokhan Roy and Maa Traders. It appears that the location of the mortgaged property was not properly identified by Shri S. K. Ghosh empanelled valuer and RTI applicant. The loans were subsequently turned bad because of wrongful identification of mortgaged property, leading to fraudulent assessment and the matter is under DRT proceedings, the status of which are given below.

1. TOA/43/2017 DRT Siliguri, SBI Vs. Khokhan Roy Pending for judgement.
2. TOA/45/2017 DRTT Siliguri, SBI Vs. Khokhan Roy, judgement pronounced (copy enclosed).

Please treat this as final reply to the above mentioned RTI app[lication.

02. In case you are not satisfied with our above stated reply, as per section 19(1) of the Right to Information Act, 2005, you may appeal to the First Appellate Authority & General Manager, Network – I, State Bank of India, LHO, 1, Strand Road, Kolkata-700001 within 30 days from the date of receipt of this letter.

03. Please acknowledge receipt."

Similar was the fate of the writ petitioner Simul Sarkar.

Learned counsel for the petitioners submit that this letter of the respondent bank took his clients by surprise because neither in any civil proceeding started by the bank nor in any criminal proceedings such fraudulent conduct of the writ petitioners had been established. Only show cause notices were issued but they have not been adjudicated upon. Neither any criminal proceedings have been initiated.

On the above cause of action, these writ applications were filed.

Learned counsel for the respondent bank took me in detail through the facts and reiterated that because of the distrust and suspicion upon them created in the minds of the bank's senior officers, the work of valuation of property was not given to the writ petitioners.

However, I find that in paragraph 3(i) of the affidavit-in-opposition filed by the bank in WPA 5853 (W) of 2020 (Sushanta Kumar Ghosh Vs. The State Bank of India and Ors.) the following averments have been made:

"In response to the petitioner's application dated 04.09.2019 under the Right to Information Act, 2005 the respondent bank replied vide its letter dated 23.11.2019 (Annexure-P-11 to the writ petition) stating that the loan account of borrower Sri Khokan Roy declared bad loan due to wrongful identification of the mortgaged property in the said loan account while conducting the valuation of said property by the writ petitioner. Thus the writ petitioner on his own volition wanted to be imputed with the reasons of his non empanelment afresh, whereas the respondent bank had not issued him any stigmatic letter of termination from the panel or blacklisted him or put his name in the caution list of the IBA. In fact, the instant case was not of any black listing or termination. The respondent bank has otherwise lost confidence in the writ petitioner as a valuer to entrust any work involving huge public money which the respondent Bank is custodian of."

It is admitted by learned counsel for the respondent bank that a process has been initiated for empanelment of valuers or applications for empanelment of valuers for empanelment are being considered by the bank.

There is no decision, in a properly constituted proceedings that the writ petitioners are guilty of fraudulent valuation of property on the basis of which loan or enhancement of loan facility was granted to any borrower. On the contrary, the bank has stated in their affidavit that the writ petitioners were not issued "any stigmatic letter of termination from the panel or blacklisted or put his name in the caution list of the IBA".

The assertion of the deponent of the said affidavit that "it is absolute discretion of the respondent bank to empanel any one as a valuer which cannot be enforced in any manner" is not tenable.

In any administrative action a statutory body is required to act fairly, impartially, without malice and arbitrariness. The discretion has to be used in this manner.

In the above circumstances, an application for empanelment made by one of the petitioners, provided it is made by 31st May, 2023, has to be accepted by the bank. If the bank is engaging or empanelling any valuer, the said application has to be considered strictly on its merits without the decision of the bank being clouded or influenced by any information or allegation against the applicant which is unsubstantiated in any judicial or departmental decision of the bank: namely, that the writ petitioners are guilty of "wrongful identification of mortgaged property or fraudulent assessment thereof".

Such principle is to be maintained in considering the past conduct of a candidate.

In the case of the writ petitioners a reasoned decision is to be made within 4 weeks of receipt of the application.

Both the writ applications along with the connected applications are, accordingly, disposed of.

Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(I. P. Mukerji,J.)