

14.03.2024
Item No.11
BR

WPA 7002 of 2024
Dipak Kumar Sarkar
-vs-
State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee
... for the petitioner.

Mr. Lalit Mohan Mahata, AGP
Mr. Rudrajnil De.
... For the State.

Mr. Atanu Biswas,
... for the respondent nos. 8 to 11.

The petitioner took part in response to an e-auction notice dated 21st February, 2024 published by the Kalna Municipality for settlement of ferry ghat. Submission of the tender document was required to be made online.

According to the terms and conditions of e-auction, the successful bidder would have to deposit the entire 100 per cent bid amount within the next three working days from finalisation of the e-auction, otherwise the bid will be treated as cancelled and the earnest money should be forfeited in favour of the municipality. The successful bidder was also required to execute a written agreement within the next three days from finalisation of e-auction order at their own cost.

The bid of the petitioner was accepted. However, the petitioner failed to deposit the entire bid amount within the stipulated time period i.e. within 16th January, 2024. Only the earnest money was deposited by him.

On 17th January, 2024 the petitioner intimated the municipality that he was not in a position to deposit such amount within such short period of time. He requested the municipality to cancel his bid.

Kalna Municipality, by a communicating letter dated 24th January, 2024, intimated the petitioner that the municipality took a decision to forfeit the earnest money and to blacklist him for a period of five years.

The petitioner is aggrieved by the same and challenges the same in the instant writ petition.

It has been submitted that there is no provision in the auction notice for blacklisting a bidder. The only provision that is mentioned is forfeiture of the earnest money deposited in the event 100% bid amount is not deposited within three working days from finalization of e-auction.

It has been submitted that blacklisting has been done without affording an opportunity of hearing to him. There has been violation of the principle of natural justice in passing the order of blacklisting which is going to affect his business and livelihood. The blacklisting is disproportionate to the default of the petitioner.

In support of the submission that the blacklisting ought not to have been done, the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***M/s Daffodills Pharmaceuticals Ltd. V. State of Uttar Pradesh***, reported in ***AIR Online 2019 SC 1770***.

Prayer has been made by the petitioner to permit him to participate in the fresh auction process which has already been initiated by the municipality for settlement of the ferry ghat. Today is the last date for submission of bid.

The prayer of the petitioner is opposed by the learned advocate representing the State respondents and the municipality.

Learned advocate representing the municipality relies upon the documents to highlight the conduct of the petitioner in placing his bids in the auction process which stood cancelled.

It appears therefrom that the petitioner recklessly quoted exorbitant amount after each and every bid. There was a jump of approximately Rs. 50,00,000/- at every stage. Lastly as the quoted amount got extremely inflated, the petitioner failed to deposit the same and after the date for payment was over, he prayed for cancellation of his bid.

The municipality, immediately on conclusion of the auction, that is on 13th January, 2024, issued the letter of acceptance of the bid to the petitioner. In reply, the petitioner mentioned the following: “please note that I have no business interest or relation with you. Therefore, please refrain from sending unwarranted communications to me and thus cluttering my mail box.”

The municipality submits that the conduct of the petitioner is such that the municipality took the decision to blacklist him so that he cannot participate in any of the business with the municipality.

It has, however, been candidly admitted that the provision for blacklisting was not mentioned in the auction notice but it has been submitted that the fact of blacklisting was made aware to the petitioner on the date of the auction at the time of issuance of the letter of acceptance on 13.01.2024.

Learned advocate representing the State respondents relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Kulja Industries Limited -Vs- Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors*** reported in ***(2014) 14 SCC 731***.

It has been submitted by the respondents that if the petitioner is permitted to participate in the auction process for settlement of the same ferry ghat, then similar situation may arise and the Municipality will fall in problem once again because of non settlement of the ferry ghat.

Prayer has been made for dismissal of the writ petition.

I have heard the submissions made on behalf of all the parties.

Admittedly, it appears that there is no provision for blacklisting in the auction notice but the petitioner was made aware of the blacklisting at the time of issuance of the letter of acceptance.

I have perused the auction summary showing the bids placed by the petitioner at the time of auction. The contents of the communication made by the petitioner after he was communicated the letter of acceptance has been noted hereinabove.

The prayer of the petitioner for permitting him to participate in today's auction process

cannot be accepted by the Court. The conduct of the petitioner does not instill any confidence in the mind of the Court that he would be able to act responsibly at the time of placing the bids so that the ferry ghat can be settled in a proper way. On account of the irresponsible conduct of the petitioner in inflating the bid amount and thereafter failing to deposit the amount quoted, the municipality had to suffer enough loss on account of non settlement of the ferry ghat.

The response of the petitioner to the letter of acceptance of bid addressed to the Municipality also cannot be appreciated. Any person who intends to do business with the municipality ought not to have replied to the letter of the municipality in such a derogatory manner.

With regard to the blacklisting, as there is no provision in the e-auction notice, accordingly, prior to taking a decision to blacklist the petitioner from participating in any further auction/ tender the Municipality ought to have given the petitioner reasonable opportunity of hearing.

Blacklisting the petitioner contrary to the terms and conditions of the auction notice and without granting prior opportunity to disclose his stand amounts to violation of principles of natural justice and, accordingly, the same is liable to be set aside and hence, set aside.

However, it is made clear that the municipality may take a decision in the matter only after giving opportunity of hearing to the petitioner. The direction to forfeit the earnest money is in terms of the condition of the auction notice and, as such, the same is not interfered with by the Court.

The writ petition stands disposed of.

The documents handed over by the learned advocate representing the municipality be retained with the records.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha , J.)