

11.08.2025.
Court No.13
Item Nos. 22 & 23
ap/AP

M.A.T. No. 448 of 2022
With
I.A. No. CAN 1 of 2022
M/s. Ghosh Construction
Versus
West Bengal State Electricity Distribution Company
Limited & Ors.
With
F.M.A. No. 642 of 2022
With
I.A. No. CAN 1 of 2022
West Bengal State Electricity Distribution Company
Limited & Ors.
Versus
Joyanti Electronics & Anr.

Mr. Kishore Mukherjee,
Ms. Dipanwita Gupta.

...For the appellant in MAT 448 of 2022
& respondents in FMA 642 of 2022.

Mr. Sujit Sankar Koley.

...For the respondents in MAT 448 of 2022
& appellants in FMA 642 of 2022.

Re: FMA 642 of 2022

1. Affidavit-of-service filed in Court today be taken on record.
2. The instant intra court appeal is directed against judgment and order dated 14th March, 2022 passed by a learned Single Judge of this Court in W.P.A. 22399 of 2019.
3. The writ petition was filed by the respondent no.1 with a twofold grievance. Firstly, that the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') has engaged the respondent no.6 in the writ petition as a Maintenance Contractor for Ramsagar 33/11 KV Sub-Station without calling for

any tender. The second grievance of the writ petitioner/respondent No.1 was that he has been blacklisted from the list of enlisted contractors for various acts of omission and commission in the past.

4. In so far as the first part of the grievance of the writ petitioner is concerned, the Single Bench has directed that the WBSEDCL must and should have called for tenders before nominating any enlisted contractor to undertake the repair and maintenance work at the substation concerned.

5. In so far as the second grievance of the writ petitioner is concerned, the learned Single Bench was of the view that the WBSEDCL should not have blacklisted the writ petitioner without providing him an opportunity and that too indefinitely.

6. The Single Bench awarded costs of Rs.20,000/- each by WBSEDCL and respondent No.6 for loss of goodwill and damages suffered by the respondent No.1.

7. This Court firstly notes that the WBSEDCL is a body corporate albeit a licensee under the Electricity Act. The actions complained of in the writ petition are not by a consumer. There is some serious doubt as to whether a writ petition filed by an enlisted contractor under a private contractual decision of the WBSEDCL is at all amenable to the writ jurisdiction under Article 226 of the Constitution of India.

8. The engagement of contractors is not a public function. The blacklisting of writ petitioner/respondent No.1 being a private decision having no public element, therefore, could not have been subject matter of any proceeding under Article 226 of the Constitution of India.

9. This Court is reminded of a notification of the Government of West Bengal, Finance Department which is mandated that tendering process should be required in respect of any contract exceeding Rs.1,00,000/- and e-auction process in respect of tenders involving outgo or inflow of Rs.5,00,000/- and above.

10. It is submitted by Mr. Koley, learned counsel for the appellants in FMA 642 of 2022 and respondents in MAT 448 of 2022 submits that monthly remuneration payable to the contractor in question is in the region of Rs.50,000/-.

11. In those circumstances, the WBSEDCL is not obliged to float tenders for such work. The floating of tenders for any work below Rs.1,00,000/- by any authority within the State may involve substantial expenditure on the revenue of the WBSEDCL. Such burden is generally passed on to consumers through tariffs.

12. The Single Judge may have committed error in ignoring the aforesaid fact.

13. For the reasons stated hereinabove, the impugned judgment is set aside. The issue of blacklisting may be raised by the writ petitioner in a civil suit if he so advised.

14. Accordingly, F.M.A. No. 642 of 2022 is hereby allowed and disposed of. Consequently, all connected pending application, if any, is also disposed of.

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15. Learned counsel for the appellant in M.A.T. No. 448 of 2022 on instruction submits that his client does not wish to press the appeal any further.

16. Hence, M.A.T. No. 448 of 2022 is dismissed as not pressed. Consequently, all connected pending application, if any, is dismissed.

17. There shall be no order as to costs.

18. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)