

GAHC010085862023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2168/2023

SUMCON INFRAVENTURES LLP
A LIMITED LIABILITY PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT ROOM NO. 10P,
GROUND FLOOR, SARVAMANGALA HOUSE,
5, DR. RAJENDRA PRASAD SARANI,
KOLKATA- 700001 AND IS REPRESENTED BY ITS DULY AUTHORIZED
PARTNER SHRI ANUJ SINGHANIA,
SON OF RAJ KUMAR SINGHANIA,
AGED ABOUT 30 YEARS,
RESIDENT OF PRANTIK RESIDENCY (FLAT NO. 7D),
157, VINOBA BHAVE ROAD, KOLKATA- 700038.

VERSUS

THE UNION OF INDIA AND 10 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF RAILWAYS,
NEW DELHI- 110001.

2:NORTHEAST FRONTIER RAILWAY
REPRESENTED BY ITS GENERAL MANAGER

N.F. RAILWAY
MALIGAON

GUWAHATI- 781011.

3:THE CHIEF ENGINEER/ CON-V
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011.

4:THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011.

5:THE RAILWAY BOARD
MINISTRY OF RAILWAYS

REPRESENTED BY ITS CHAIRMAN

RAIL BHAWAN 1
RAISINA ROAD

NEW DELHI- 110001.

6:THE CHAIRMAN
THE RAILWAY BOARD
MINISTRY OF RAILWAYS
RAIL BHAWAN 1
RAISINA ROAD

NEW DELHI- 110001.

7:THE EXECUTIVE DIRECTOR-CIVIL ENGINEER(G)
THE RAILWAY BOARD
MINISTRY OF RAILWAYS

RAIL BHAVAN 1
RAISINA ROAD

NEW DELHI- 110001.

8:RITES LIMITED
HAVING ITS REGISTERED OFFICE AT SCOPE MINAR

LAXMI NAGAR
DELHI- 110092

HAVING ITS REGIONAL PROJECT OFFICE AT- 40/424

RAJAT SHREE HOUSE
1ST FLOOR

NEAR SBI KOTRA ROAD

RAJGARH- 496001
REPRESENTED BY ITS ADDITIONAL GENERAL MANAGER(CIVIL).

9:THE ADDITIONAL GENERAL MANAGER (CIVIL)
RITES LIMITED
HAVING ITS REGISTERED OFFICE AT SCOPE MINAR

LAXMI NAGAR
DELHI- 110092

HAVING ITS REGIONAL PROJECT OFFICE AT 40/424

RAJAT SHREE HOUSE
1ST FLOOR

NEAR SBI KOTRA ROAD

RAJGARH- 496001.

10:THE MANAGER (CIVIL)
RITES LIMITED
HAVING ITS REGISTERED OFFICE AT SCOPE MINAR

LAXMI NAGAR
DELHI- 110092

HAVING ITS REGIONAL PROJECT OFFICE AT 40/424

RAJAT SHREE HOUSE
1ST FLOOR

NEAR SBI KOTRA ROAD

RAJGARH- 496001.

11:M/S. AVIJANTRIK INFRATECH PRIVATE LIMITED
HOUSE NO. 239
WARD NO.- 04

P.O. AND P.S.- CHAPAR
DISTRICT- DHUBRI
ASSAM
REPRESENTED BY ITS AUTHORIZED SIGNATORY
SRI SUBHAMAY KARMAKAR

S/O- LATE SANKAR KARMAKAR

RESIDENT OF- CHAPAGURI ROAD

NORTH BONGAIGAON

P.O. AND DISTRICT- BONGAIGAON

ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

11.05.2023

1. Heard Mr. G.N Sahewalla, learned senior counsel assisted by Mr. M Sahewalla, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC for the respondent no.1 – 10.

2. The petitioner has challenged the impugned letters dated 29.10.2021 and 29.11.2021 issued by the respondent no.6, by which the petitioner was blacklisted for a period of 5 years w.e.f. 29.10.2021. The blacklisting of the petitioner company i.e. Sumcon Infraventures LLP has been done on the ground that the petitioner along with M/s Avijantrik Infratech Private Limited (respondent no.1) had participated in the tender process as a Joint Venture and had submitted forged documents.

3. The petitioner's counsel submits that the petitioner was never a constituent of the Joint Venture with the respondent no.11, i.e. M/s Avijantrik Infratech Private Limited. The petitioner's counsel also relies upon paragraph-14 of the judgment and order dated 11.04.2023 passed in WP(C) No.7057/2021, in support of his submission that the petitioner did not enter into any Joint Venture

with the respondent no.11. He submits that the said paragraph-14 in WP(C) No.7057/2021 would clearly show that the respondent no.11 had admitted to participating in the tender process by forging documents. He has also relied upon the letter dated 17.03.2023 issued by the respondent no.3 to the respondent no.7 to re-consider/revoke the order of blacklisting/banning of business dealings with the petitioner, in view of the respondent no.11 having admitted vide letters issued by them, that the documents used in the tender pursuant to tender notice dated 30.07.2018 were not connected with the petitioner and that the respondent no.11 had not conducted any business with the petitioner.

4. Besides the above facts, the learned Senior Counsel for the petitioner has relied upon the judgment of the Apex Court in the case of ***UMC technologies Private Limited vs. Food Corporation of India & Another***, reported in ***(2021) 2 SCC 551***, wherein it has been held that prior show-cause-notice granting a reasonable opportunity of hearing is an essential element of all administrative decision making and particularly so in decisions pertaining to blacklisting, which entail grave consequences for the entity being blacklisted. Though the State respondents had apparently issued notices to the alleged Joint Venture comprising of the M/s Sumcon-Avijantrik (JV) and the respondent nos.11 in the address of respondent no.11, the said notices were never sent to the petitioner's address. The learned Senior Counsel submits that as no prior show-cause-notice was issued to the petitioner prior to the impugned letters being issued by the respondents, the impugned letters should be set aside.

5. Mr. H. Gupta, learned CGC submits that the question as to whether the

blacklisting of the petitioner should be revoked, is under consideration with the Railway Board and in this regard, the Railway Board has issued a letter dated 13.04.2023 to the Chief Administrative Officer (Cons.) Northeast Frontier Railway, asking him to clarify under what circumstances the NF Railway had taken a decision to reconsider revoking the blacklisting/banning of business against the petitioner. He submits that the above letter dated 13.04.2023 issued by the Railway Board, had been made in pursuance to the letter dated 17.03.2023 issued by the respondent no.3. The learned CGC submits that as no reply has been forthcoming from the NF Railway to the Railway Board in pursuance to the letter dated 13.04.2023, the Railway Board is unable to take a decision with regard to whether the blacklisting of the petitioner company should be revoked. The learned CGC also submits that the Guidelines dated 09.11.2022 are to be applied by the Railway Board, for considering cases arising out of blacklisting. He submits that in terms of Guideline nos.15 & 16, the revocation of the blacklisting would have to be done with the approval of the Railway Board. He accordingly submits that some more time should be given to the Railway Board to take a decision with regard to the grievance of the petitioner.

6. I have heard the learned counsels for the parties.

7. A perusal of the documents on record would show that no prior show-cause-notice had been sent to the petitioner or to its address, prior to the blacklisting of the petitioner. As such, on this ground alone, the impugned letters dated 29.10.2021 and 29.11.2021 issued by the respondent no.6 are liable to be set aside. The above being said, in the writ petition filed by the

respondent no.11 in this Court i.e. WP(C) No.7057/2021, wherein the impugned letters have also been put to challenge, it is seen that the respondent no.11 has in paragraph-14 admitted to forging documents of another company, which in this case is the petitioner, to enable the respondent no.11 to participate in the tender process. The above admission made by the respondent no.11 in the judgment and order dated 11.04.2023 passed in WP(C) No.7057/2021 thus indicates that the respondent no.11 had unitarily forged documents and participated in the tender process as a Joint Venture, without the consent and knowledge of the petitioner.

8. A perusal of the letter dated 17.03.2023 issued by the respondent no.3 also states that in response to a clarification sought by the NF Railway, the respondent no.11 had admitted that the documents used in the tender were not connected with the petitioner and they had not conducted any business with the petitioner. The said letter also states that as per admission made by the respondent no.11 and the Law Officer's opinion, it was evident that the petitioner was not a Joint Venture partner and had not participated in the tender process as a Joint Venture.

The above also indicates that the petitioner not being a Joint Venture partner with the respondent no.11, the ground for issuing the impugned letters, by which the petitioner has been blacklisted does not appear to have any basis.

9. The Guideline no.15 & 16 issued by the Railway Board on 09.11.2022, with regard to the debarment/blacklisting, states as follows :

“15. Any representation from the debarred firm shall be dealt with by the concerned directorate in Board. The revocation of debarment order before

expiry of debarment period, if there is adequate justification for the same, shall be done with the approval of concerned Board member.

16. Court cases arising out of debarment orders issued shall be processed/dealt with by the concerned procuring unit."

10. A perusal of the above guidelines shows that that any representation from the blacklisted/debarred firm shall be dealt with by the concerned Directorate of the Board before expiry of the debarment period. The revocation of the blacklisting, if there is adequate justification for the same, shall be done with the approval of the concerned Board and that Court cases arising out of the debarment orders issued shall be processed/dealt with by the concerned procuring unit.

11. The learned CGC's prayer that the question of revocation of blacklisting/debarment of the petitioner from participating in any future tender should be left in the hands of the Railway Board is justified. However, they have to take a decision at the earliest and keeping the issue pending is unfair and unreasonable. In view of the judgment of the Apex Court in ***UMC technologies Private Limited (supra)*** and the admission by the respondent no.11 in the judgment and order dated 11.04.2023 passed in WP(C) No.7057/2021 to the effect that the respondent no.11 had used forged documents for taking part in the tender process, this Court is of the view that the impugned letters are arbitrary and not sustainable.

12. In view of the reasons stated above, the impugned letters dated 29.10.2021 and 29.11.2021 issued by the respondent no.6, so far as the petitioner herein is blacklisted/debarred from participating in any future tender,

is hereby set aside. The above is however, subject to any final decision to be taken by the Railway Board in pursuance to the letter dated 17.03.2023 issued by the respondent no.3 and the letter dated 13.04.2023 issued by the Railway Board. While coming to a finding on the issue, the Railway Board may make it's own finding, based on any new facts which has not been considered in this order.

13. The writ petition is accordingly disposed off.

JUDGE

Comparing Assistant