

GAHC010121832022



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

Case No. : WP(C)/4234/2022

M/S B B ELECTRICALS
397, 3RD C ROAD SADARPUR, JODHPUR 342003 RAJASTHAN.
REPRESENTED BY ESTAQUE ALI AHMED AGED 40 YEARS, S/O LATE
ABDUL HAMID MONDAL, R/O SHAIL KANDA, JALESWAR, LKAHIPUR,
GOALPARA ASSAM, PIN-783132

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY ENGINEER-IN-CHARGE, E-IN-C BRANCH INTEGRATED
HQ OF MOD KASHMIR HOUSE, RAJAJI MARG NEW DELHI-110011

2:HQ CHIEF ENGINEER
SILIGURI ZONE
MES
SEVOKE ROAD
P.O.-SALUGARA
WEST BENGAL-734008

3:CWE
TENGA
ARUNACHAL PRADESH
790116

4:GE 859
EWS TENGA
ARUNACHAL PRADESH PI

Advocate for the Petitioner : MS. M BORAH

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.06.2024

Heard Ms. M. Borah, learned counsel for the petitioner and Mr. K. K. Parasar, learned CGC for the respondents.

2. The grievance of the petitioner is that he has been debarred from participating in any future tenders issued by the respondents, without the respondents issuing any order blacklisting the petitioner.

3. The facts of the case are that the petitioner had been awarded a contract, namely, CWE/TEZ (859)/02 of 2018-19 “special repair for replacement/upgradation of old vintage transformer and water supply pumps etc. at various locations under GE (859) EWS”.

4. Consequently, a contract agreement dated 26.04.2018 was executed between the parties and the contract work had to be completed by the petitioner on 04.02.2019. In spite of repeated show-cause-notices issued to the petitioner for completing the contract work in question, the petitioner could not complete the same and as such, the contract work was cancelled by the respondents on 20.10.2022, after issuing final notices dated 10.12.2019 and 30.09.2020 to the petitioner, as per Clause 54 of IAFW2249 of the General Conditions of the Contract.

5. The petitioner’s counsel submits that subsequent to the termination of the

petitioner's contract work, as mentioned above, the petitioner has not been allowed to participate in any tender issued by the respondents. She submits that until and unless a debarment/blacklisting order is issued by the respondents, the petitioner cannot be debarred from participating in the tender process. She accordingly submits that a direction should be issued to the respondents to allow the petitioner to participate in all the tenders issued by the respondents.

6. Mr. K.K. Parasar, the learned CGC, on the other hand, submits that due to the petitioner not having been able to complete the work within the stipulated time frame, the petitioner had been called upon to accelerate the progress of the work, so as to complete it by the stipulated date of completion. He submits that the petitioner was time and again told that time was essence of the contract and that the petitioner was to complete the work within the stipulated time frame. Further, he was show caused as to why the petitioner firm should not be considered for non issuance of tender in future for such a lackadaisical approach.

7. The learned CGC further submits that as per Section 1.16(g)(ii) of the Military Engineering Services Manual on Contracts, 2007, once a contract with a contractor has been cancelled due to his continued default in completing a contract work, no tender shall be issued by any Military Engineering Service, either to the contractor or his partners, till clearance is obtained from the Engineer-in Chief's Branch. He submits that as the petitioner's contract work pertaining to CWE/TEZ (859)/02 of 2018-19 had been terminated due to the continued default on the part of the petitioner, the respondents could refuse issuance of a tender to the petitioner in terms of Section 1.16(g)(ii) of the Military Engineering Services Manual of Contracts, 2017.

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

9. Section 1.16(g)(ii) of the Military Engineering Services Manual on Contracts, 2007 states as follows-

“1.16(g) Action on Cancellation of Contract :

(ii) Once a contract with a Contractor has been cancelled due to his continued default in completing the works, no tenders shall be issued by any MES formation either to the said Contractor or to any of his partners individually or to any of his allied firms, till clearance is obtained from E-in-C's Branch. In exceptional cases where the Command Chief Engineer considers that action against the Contractor in terms of the Standardised Code (or with-holding issue of further tenders) is not advisable, he should forward the case to E-in-C's Branch with his detailed recommendations for a decision. However, pending decision on such cases from E-in-C's Branch, issue of tenders to the firm shall stand suspended.”

10. Section 1.16(g)(ii) of the Military Engineering Services Manual on Contracts, 2007 shows that no tender can be issued to a defaulting contractor whose contract had been earlier cancelled, till clearance is obtained from the Engineer-in-Chief's Branch. The letters dated 30.08.2019 and 18.11.2019 issued by the respondents to the petitioner to accelerate the progress of his contract works and to complete the same within the stipulated date of completion, has also show caused the petitioner as to why the petitioner should not be considered for non issuance of tender in future, for the delay in completing the contract work.

11. As can be seen from the submissions made by the counsels for the parties, the petitioner's contract was terminated due to the delay in completing the contract works. The subsequent non issuance of tender to the petitioner

amounts to blacklisting/debarring the petitioner from participating in any future tenders. Though show cause notices have been submitted to the petitioner with regard to the proposed action for non issuance of tender in future, no final order to that effect has been made by the respondents. As such, it is quite apparent that the petitioner has been blacklisted without any final decision being taken by the respondents, disallowing him to participate in any future tender process.

12. In the case of ***M/s Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & Another***, reported in ***(1975) 1 SCC 70***, the Supreme Court has held that blacklisting involves civil consequences and that it has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purpose of gain. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

13. In the case of ***Gorkha Security Services vs. Government (NCT of Delhi) & Others***, reported in ***(2014) 9 SCC 105***, the Supreme Court has held that law with regard to issuance of Show-Cause Notice prior to blacklisting is firmly grounded and the giving of an opportunity of hearing to the person against whom the action of blacklisting is sought to be taken has a valid and solid rationale behind it. It held that the serving of the Show-Cause Notice is not only to make the noticee understand the precise case set up against him which he has to meet , but the other requirement is that he should be made to know the nature of action which is proposed to be taken against him. That should be

stated in the notice, so that the noticee is able to point out that the proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactory explained. The Supreme Court held in the above case that the giving of a prior notice was imperative. It held as follows :

“When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is the harshest possible action.”

The Supreme Court thus held in paragraph-22 that in order to fulfill the requirements of principles of natural justice, a Show-Cause Notice should meet the following two requirements viz :

“i) The material/ grounds to be stated on which according to the Department necessitates an action;

ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

14. In the above case of **UMC Technologies Private Limited vs. Food Corporation of India & Another**, reported in **(2021) 2 SCC 551**, the Supreme Court has held that in the context of blacklisting of a person or an entity by the State Corporation, the requirement of a valid, particularized and unambiguous Show-Cause Notice is particularly crucial, due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. It further held that for a show cause notice to

constitute a valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

15. On considering the various judgments of the Supreme Court with regard to the procedure to be adopted before blacklisting a person, the respondents have to issue a prior show cause notice stating the precise case set up against the person, specifically making the petitioner know that the penalty of blacklisting/debarment was being proposed to be taken against the petitioner. Besides, the letters issued by the respondents not being specific enough in terms of the judgments of the Supreme Court, it is also seen that no final decision had been taken by the respondents with regard to blacklisting/debarring the petitioner from participating in any future tender. In the absence of any final decision of blacklisting/debarment being made by the respondents and the same being communicated to the petitioner, the action of the respondents in debarring the petitioner from participating in any future tender is arbitrary and in violation of Article 14 of the Constitution of India.

16. In view of the reasons stated above, this Court holds that the respondents cannot bar the petitioner from participating in any future tenders. The respondents are accordingly directed to ensure that the petitioner is allowed to participate in future tenders, unless and until a blacklisting/debarment order is made after the procedure required to be followed in terms of the judgments of the Supreme Court are followed.

17. The writ petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant