

GAHC010265842024



2024:GAU-AS:12930

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

Case No. : I.A.(Civil) 3891/2024
in WP(C) 6152/2024

M/S KURSEONG CARRIERS PVT. LTD. AND ANR.
A REGISTERED PRIVATE LTD. COMPANY
HAVING ITS REGISTERED HEAD OFFICE AT 2A,
GANESH CHANDRA AVENUE,
COMMERCE HOUSE, ROOM NO. 8A 7TH FLOOR,
KOLKATA 700013 AND BRANCH OFFICE AT JAIL ROAD FANCY
BAZAR, MARKET, GUWAHATI 781001
KAMRUP M ASSAM REPRESENTED BY ITS MANAGER, SRI BISHNU
MOUR, SON OF LATE B.L MOUR AGED ABOUT 50 YEARS,
RESIDENT OF PALTAN BAZAR,
PO AND PS PALTAN BAZAR,
GUWAHATI KAMRUP M ASSAM

VERSUS

ASSAM STATE TEXTBOOK PRODUCTION AND PUBLICATION
CORPORATION LTD. (ASTPPC LTD. AND ANR
A GOVT. OF ASSAM UNDERTAKING,
HAVING ITS REGISTERED AND HEAD OFFICE AT GNB ROAD
PANBAZAR DIST. KAMRUP M ASSAM REPRESENTED BY ITS
CHAIRMAN

2:THE MANAGING DIRECTOR
ASSAM STATE TEXTBOOK PRODUCTION AND PUBLICATION
CORPORATION LTD. (ASTPPC LTD.

Advocate for the Petitioner : MR. S HAZARIKA, MR. A R GOGOI,MR B KAUSHIK,K
BHARALI,MR. I CHOWDHURY SR ADV

Advocate for the Respondent : SC, ASTP,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 19.12.2024

Heard Mr. I. Chowdhury, learned senior counsel for the applicant/writ petitioner and Mr. K. P. Pathak, learned counsel for the respondents.

2. The applicant's case is that the applicant was asked to deliver free textbooks for Class-1 to Class-X students, pursuant to the NIT dated 23.11.2023. However, two consignments were lost by the applicant. The 1st consignment had been loaded on the truck on 18.05.2024, while the 2nd consignment, which had been lost, was loaded on the truck on 02.06.2024. In terms of the Contract Agreement made between the parties, the free educational textbooks were to be delivered in all the districts of Assam, except for Barak Valley and Dima Hasao within 24 hours of leaving from Bonda Central Godown. In the case of the districts of Barak Valley and Dima Hasao, the educational free textbooks were to be delivered within 36 hours of leaving from the Bonda Central Godown. The two consignments mentioned above having been lost, the applicant was to have submitted an FIR and pursued the matter immediately. However, the applicant submitted the FIR in respect of the lost textbooks only on 25.06.2024.

3. Clause 9 of the agreement executed between the parties provides that for any fault made by the applicant, the Assam State Textbook Production and Publication Corporation Limited, hereinafter referred to as the "Corporation", would have the right to forfeit the security deposit and

the right to blacklist the applicant, after notifying the applicant to rectify the mistake committed by him in writing, before the action was taken.

4. Clause 11 of the agreement further provided that the applicant would remain responsible for any loss sustained by the 1st party (Corporation), while the books were in transit and till delivery at the destination was completed.

5. The applicant was thereafter served notices dated 26.06.2024, 30.07.2024 and 03.10.2024 regarding the loss of consignments of free textbooks, wherein the applicant was informed that the Corporation intended to blacklist the applicant, from future participation in any activity of the Corporation. The applicant was also informed that the loss of the textbooks was a serious violation, which had put the academic life of thousands of students in peril, besides causing financial loss to the Corporation. The lost consignments also reflected the co-managerial capacity of the applicant, in failing to keep a constant track of each and every consignment on the move and lack of instant response to the situation.

6. The applicant had also submitted his replies to the notices issued by the Corporation, vide various letters, one of them being 25.09.2024, wherein it was stated that the investigation with regard to the loss for non-delivery of the consignments was still going on. The applicant further requested the Corporation to release the funds for the works done by the applicant and if required, some amount of the money could be blocked till recovery of the loss of the consignments.

7. Consequent to the above, the applicant was issued two impugned letters dated 08.11.2024, wherein it was stated that 26,416 books had been lost, which amounted to Rs. 28,85,098/-. Vide the said letters, the performance security of the applicant was forfeited and the applicant was blacklisted from participating in any forthcoming tender, for carriage of free textbooks on behalf of the respondent No. 1/Corporation.

8. The applicant's counsel submits that the blacklisting order of the applicant may be stayed, so as to enable the applicant to participate in the Notice for Inviting e-Tender dated 21.11.2024, for carriage of free textbooks for Class-Ka *Shreni* to Class-XII, for the academic session 2025-2026 published on 28.11.2024.

9. The senior counsel for the applicant submits that in terms of the judgment of the Supreme Court in the case of ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited & Others***, reported in **(2014) 14 SCC 731**, the blacklisting of the applicant should be decided not only on the touchstone of natural justice, but also on the doctrine of proportionality. He submits that in the present case, the loss of the consignment of the free textbooks had been on account of the illegal action of the driver of the trucks, over which the applicant had no role or control. Keeping in view the above fact, the involvement of the applicant and the proportionality of the penalty of blacklisting would have to be decided, on the basis of its actual involvement in the loss of the free textbooks. He also submits that if the applicant is not allowed to participate in the tender process and if the writ petition is later allowed, the same would cause

injustice to the applicant.

10. Mr. K. P. Pathak, learned counsel for the respondents, on the other hand, submits that if the interim prayer is allowed by this Court, the same would amount to granting the petitioner the final relief, by way of an interim order. He also submits that the issue raised by the applicant is to be adjudicated, after giving opportunity to the respondents to file their affidavit. He further submits that the respondents are not willing to work with the applicant, because of the loss of two consignments of free textbooks, which was the responsibility of the applicant to secure. Further, the commercial interest of the applicant cannot out-weigh the public interest, which lies in the textbooks reaching the hands of the students. He also submits that the blacklisting of the applicant was done in terms of conditions laid down in the Bid document and the contract agreement.

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

12. Clause 16(j) of the Bid Document of the NIT states as follows:-

*“**16(j)** Late or delayed delivery, short delivery or miss-match delivery will attract penalty provisions and will be deducted from the bill.”*

13. Clause 9 and 11 of the Contract Agreement provides as follows:-

*“**9.** That for any fault made by the Second Party, the First Party shall have the right to forfeit the security deposit and will have the right to blacklist the second party after notifying to rectify the mistake committed by the second party in writing before the action taken.*

11. *The Second Party shall remain responsible for any loss sustained by the First Party while books are in transit and till delivery at the destination is completed."*

14. As can be seen from the terms and conditions of the Bid Document of the NIT and the Contract Agreement executed between the parties, the respondents had the power to blacklist the applicant, due to the loss of the free textbooks in transit, which was the responsibility of the applicant. It is also an admitted fact that the notices that were sent to the applicant by the respondents, had stated the intent of the respondents to blacklist the applicant for the loss in transit of the free textbooks, in terms of the Clauses provided in the Contract Agreement and the Bid Document.

15. In view of the above reasons, this Court prima facie does not find any reason to stay the blacklisting order of the applicant and to allow it to participate in the tender for carriage of free textbooks, for the academic session 2025-2026 at this stage. The issue of the doctrine of proportionality, regarding the blacklisting order, vis-à-vis the role of the applicant can be gone into at the time of final hearing of the case. The documents on record show that notice had been issued to the applicant regarding the respondents' intent to blacklist the applicant in terms of the Bid document and the contract agreement. The fact that the applicant was accountable and responsible for the lost consignment is clear, not only due to the applicant being vicariously liable, but also due to the conditions in the Bid document and contract agreement.

16. This Court is also of the view that allowing the applicant to take part

in a similar tender, having similar condition as the earlier tender, despite being accountable for the loss of consignments does not appear to be reasonable and would amount to passing a final order at the interim stage.

17. For the reasons stated above, this Court is not inclined to allow the application, for allowing the petitioner to participate in the Notice for Inviting e-Tender dated 21.11.2024, for carriage of free textbooks for Class-*Ka Shreni* to Class-XII, for the academic session 2025-2026 published on 28.11.2024.

18. The I.A. is accordingly dismissed.

JUDGE

Comparing Assistant