

AD. 48.
December 18, 2020.
MNS.

W. P. A. 9288 of 2020
(Via video conference)

VSAIPPL-PE-SI (JV) and others

Vs.

The Eastern Coalfield Limited and others

Mr. Soumya Mazumder,
Mr. Mayukh Maitra

... for the petitioners.

Mr. Shib Shankar Banerjee

...for the respondent-authorities.

Affidavit-of-service filed in Court today be
taken on record.

The grievance of the petitioners is that the
respondent-authorities blacklisted the petitioners
vide order dated October 23, 2020, without giving
any prior show cause notice in respect of such
proposed blacklisting.

Learned counsel appearing for the
petitioners submits, as reflected from an order
dated October 21, 2020 passed by a co-ordinate
Bench in WPA 8722 of 2020, that it was
represented before the said court by the
respondents that a show cause notice had been
given to the petitioners. On such premise, the
learned single Judge observed that hearing shall

be given to the petitioners and/or its officer at the official address of respondent no. 4 as suggested by learned counsel for the petitioners therein. The respondent no. 4 was directed to pass a reasoned order pursuant to such hearing by October 23, 2020 and communicate the same to the petitioners on the same day.

Thereafter, hearing was given to the petitioners and the order dated October 23, 2020 was passed, wherefrom the petitioners learnt that the respondents were relying on a notice of proposed termination of the contract between the parties and claiming that the same amounted to a show cause notice for blacklisting.

Learned counsel for the respondent-authorities, by placing several portions of the contract between the parties and the communication between the parties, that the petitioners themselves asked for foreclosure of the contract and thereafter unilaterally stopped the work on the ground that there was water logging in the mines, and the rates at which the petitioners were working would not suffice.

Upon a preliminary consideration of the materials on record, it appears that the only "show cause notice" which was issued to the

petitioners by the respondents was in respect of termination of the contract between the parties. Whatever might have been the nature of dispute regarding rates of payment and/or the reasons for the petitioners stopping their work, those are already sub judice before a civil court, since the petitioners have filed a money suit on foreclosure of the contract.

However, by no stretch of imagination, the notice of termination of contract given to the petitioners can be deemed to be a notice for blacklisting.

It is well-settled that a show cause notice is a pre-requisite of taking a serious step such as blacklisting of a company. In the present case, sine no such show cause notice was given (termination of contract need not *ipso facto* culminate in blacklisting), the petitioners had no opportunity of addressing the allegations against the petitioners in the context of blacklisting.

Moreover, the impression given by the respondents to the previous co-ordinate Bench, regarding a show cause notice having already been given, appears to have been a mere eye-wash, since no show cause notice regarding blacklisting is evinced from the submissions of

the parties and/or materials on record. Moreover, the retrospective termination of the contract indicates *mala fides* insofar as it might have been a post facto attempt to prejudice the petitioners' contentions in the pending suit between the parties.

However, at this juncture, learned counsel for the respondent-authorities submits that in the event this Court is about to pass an interim order in favour of the petitioners, the Court may dispose of the writ petition itself, which would entitle the petitioners to re-initiate a blacklisting proceeding by issuing a fresh show cause notice.

In view of the above discussions, it is clear that no prior notice for blacklisting had been given to the petitioners, which omission vitiates the order of blacklisting dated October 23, 2020 as well as all prior notices leading to it.

Accordingly, W.P.A. 9288 of 2020 is allowed, thereby quashing the impugned notice dated October 8, 2020 and the order dated October 23, 2020, blacklisting the petitioners.

However, the observations made herein will not prejudice the respondent-authorities from re-initiating blacklisting proceeding upon issuance of a comprehensive show cause notice to the

petitioners and giving the petitioners a hearing on the same.

There will be no order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioners are granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be uploaded and the respondents are directed to act upon the same.

(Sabyasachi Bhattacharyya, J.)