

02.08.2021
Item no.93

Aloke
Ct. no.8

Through Video Conference

W.P.A. 10890 of 2020

**M/s HICO Multifin Products Pvt. Ltd.
Versus
Indian Oil Corporation Ltd. & Ors.**

Ms. Priyanka Agarwal, Advocate
... for the petitioner

Ms. Vineeta Meharia, Advocate

Mr. Amit Meharia, Advocate

Ms. Madhurima Halder, Advocate

Ms. Subika Paul, Advocate

... for the respondents

The petitioner is aggrieved by a decision of the Indian Oil Corporation Limited. dated August 24, 2020.

By the impugned decision, the Oil Company blacklisted the petitioner for a period of one year from August 24, 2020.

Learned Advocate appearing for the Oil Company raises the point of jurisdiction. She submits that, all the respondents are outside jurisdiction and, therefore, the writ petition is not maintainable. She submits that, there is a forum selection clause under the contract. She refers to Clause-35 of the contract dealing with the jurisdiction.

The clause of jurisdiction referred to in the contract relates to any arbitration proceedings that the parties may initiate. The existence of an alternative remedy is not complete bar to the exercise of jurisdiction under Article 226 of the Constitution of India. Notwithstanding the existence of an alternative remedy, a petition under Article 226 of the Constitution is maintainable in the event the impugned order

is without jurisdiction or is in breach of principles of natural justice or is in breach of a fundamental right of the petitioner or perverse.

So far as the jurisdiction is concerned, I find that the petitioner is carrying on business from within jurisdiction. The petitioner participated in the tenders floated by the Oil Company from within jurisdiction. The petitioner suffered the order of blacklisting within the jurisdiction. The damages suffered by the petitioner by reason of the order of blacklisting is within the jurisdiction of this Court. Therefore, a part of the cause of action of the instant proceedings arose within the jurisdiction of this Hon'ble Court. Therefore, the contention of jurisdiction on behalf of the Oil Corporation cannot be accepted.

On the merits of the matter, I find that, the petitioner participated in a tender process of the Oil Company. A show-cause notice was issued to the petitioner with regard thereto. The petitioner replied to such Show Cause Notice. By the impugned order, the petitioner was informed that after considering the reply to the show-cause notice the Oil Company decided to place the petitioner on "Holiday List" and debarred the petitioner from entering into any contract with the Oil Company for a period of one year effective from August 24, 2020.

The impugned order is not informed with any reason . It is a non-speaking order and a nullity in the eye of law. The decision taken by an instrumentality of the State is required

to be informed with reasons particularly when it affects the rights of a citizen.

In the facts of the present case, the right of the petitioner to participate a tender process by the Oil Company stands affected by the impugned decision. The impugned decision being without any reason is a nullity.

It is the contention of the Oil Company that the reasons for blacklisting are set out in the show-cause notice. The reasons may be specified in the show-cause notice. However, the deciding authority is required to specify as to why it is arriving at the impugned decision given the rival contentions of the parties. It is required to discuss the allegations levelled and the reply given by the delinquent. In the facts of the present case, the impugned order does not speak of the allegations levelled against the petitioner as also the reply advanced by the petitioner and why the oil company arrived at the decision impugned.

In such circumstances, the impugned order dated August 24, 2020 is set aside. The Oil Company is at liberty to proceed against the petitioner from the stage of the reply to the show-cause, in accordance with law, if it chooses to do so.

It is clarified that the Court did not enter into the rival contentions with regard to the merits of the show-cause and the reply thereto. Such points are kept open.

W.P.A. 10890 of 2020 is disposed of accordingly.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all legal formalities.

(Debangsu Basak, J.)