

D/L. 6.
November 22, 2023.
MNS.

WPA No. 12872 of 2023

M/s. Neogi Construction and Company
and another
Vs.
The State of West Bengal and others

Mr. Srijib Chakraborty,
Mr. Sobhan Majumder,
Ms. Kalpita Paul,
Mr. Deeptangshu Kar,
Mr. Atulya Sinha

... for the petitioners.

Ms. Sucharita Roy,
Mr. Subhendu Sengupta

...for the State.

Mr. Samim Ahammed,
Mr. Arka maiti,
Ms. Saloni Bhattacharjee,
Ms. Gulsanwara Pervin

...for the private respondent no. 8.

1. The petitioners have challenged an order, whereby the previous order of debarment / blacklisting of the petitioners has been affirmed and the petitioners' contract has been terminated by the respondent authorities. The petitioners participated in the tender floated by the respondent authorities in the year 2018 and after conclusion of the work, a complaint was lodged by the private respondent on the ground that the petitioners did not have the

requisite credentials to participate in previous tenders and, as such, the work order issued to the petitioners was vitiated.

2. There was a previous round of litigation when the private respondent had taken out a review application against an order of a co-ordinate bench, whereby a challenge to the petitioners' participation was turned down. Ultimately, however, the matter culminated in the authorities taking a decision against which another writ petition was preferred.
3. On the second such occasion, a co-ordinate Bench remanded the matter to the authorities to reconsider the representation/complaint given by the private respondent with regard to the work having been awarded to the petitioners, thereby reopening the blacklisting as well as the termination of contract of the petitioners proposed by the private respondent.
4. In the third round, by the impugned order, the respondent authorities have terminated the contract of the petitioners and have retained the blacklisting / debarment of the said petitioners for a year.

5. Learned counsel for the respondent authorities submits that despite having been given repeated opportunities, the petitioners did not produce requisite documents, for which the contract was terminated and the debarment retained.
6. Learned counsel for the private respondent argues elaborately by placing reliance on the provisions of the tender document of 2018. In the general conditions of contract, which comprise of a part of the 2018 tender document, Clause 3.1 stipulates that the bidder must be a recognized security agency with experience in providing security services in a Government Hospital or corporate hospital / Medical College and Hospital or any other institution and that the intending tenderer should produce credential of work of a similar nature of a completed single work as stipulated therein or produce credentials of two similar nature of completed works as stipulated therein, being respectively of the minimum value of 40% and 30% of the estimated amount put to tender.
7. It is submitted that the petitioners had participated in two tenders floated respectively

in the years 2003 and 2007, during both of which, the petitioners did not have the requisite credentials.

8. It is submitted that even the trade licence was obtained by the petitioners only in the year 2011, that is, after participating in the said two tenders for the years 2003 and 2007.
9. That apart, the petitioners also did not have requisite security licence, which was a basic necessity, keeping in view that the petitioner no. 1 was required to be a recognized security agency and provide security personnel.
10. It is argued by the private respondent that due to the previous “work experiences” of the petitioners being vitiated by such illegality / irregularity, the said work experiences cannot be counted for the purpose of the petitioners being eligible for the year 2018 tender, as envisaged in Clause 3.1 of the latter.
11. Hence, learned counsel for the private respondent submits that once the petitioners’ credentials were vitiated, subsequent participation of the petitioners in all tender processes, including the 2018 tender, are automatically vitiated.

12. Even the petitioner no. 1, it is argued, in the writ petition, has made general averments as to the petitioners having general trade licence.

13. In reply, learned counsel for the petitioners contends that the previous work experience was restricted to three years prior to the date of issue of the 2018 e-tender notice and, as such, could not cover the periods of 2003 and 2007.

14. Heard learned counsel for the parties.

15. There are several components of the present challenge, the primary being that the petitioners were allegedly ineligible for participation in the tenders of the years 2003 and 2007.

16. First, the said chapter cannot be reopened at this juncture at the behest of the private respondent, since the private respondent had no stake in the said tender processes. Not being a participant in the said tender processes, or at least having shown to be so, the private respondent cannot seek a reopening of the said tender processes at this juncture, particularly since the petitioners already participated in the said tenders and had done the work under the said tenders.

17. The word “fraud” is not a magic word, which vitiates anything and everything at the behest of a third party, who had no stake in the relevant cause of action at all at the relevant juncture. Anybody and everybody can allege fraud, but such allegation has to be very specific, with supplemented with detailed particulars.

18. In the present case, the petitioners successfully participated in the tenders floated in the years 2003 and 2007 and the private respondent raised no objection whatsoever, nor did anyone else, at any point of time. The said point ordinarily ought not to be reopened.

19. However, the private respondent has sought to make a valid point to the effect that previous lack of credentials might render the petitioners ineligible inasmuch as the necessary requisite work experience is concerned for the year 2018. In that regard, the petitioner is justified in submitting that the previous work experience required under the 2018 tender was confined to the past three years, relating back to the year 2015, which does not cover 2003 and 2007 tenders.

20. That apart, there is nothing on record to indicate that the 2003 and 2007 tenders had as a necessary precondition the production of valid security licences. Since, admittedly the petitioners have had a trade licence at least since the year 2011, that is, much before 2018 and even before 2015, which is the year up to which the past three years' experience goes, it cannot be said that the petitioners were otherwise ineligible to participate in the 2018 tender.

21. As such, I do not find any justification or reason to terminate the contract of the petitioners under the 2018 tender at this juncture, when work has already been completed under the same by the petitioners, which is palpably arbitrary and without any reasonable basis, not satisfying the Wednesbury principle.

22. Insofar as the blacklisting / debarment is concerned, the same is consequential upon the termination of the contract and should automatically go.

23. Over and above, it does not transpire that such stringent action was backed up by solid reasons being given by the respondent

authorities in their decision of blacklisting dated March 27, 2023, which was affirmed by the currently impugned decision dated May 18, 2023.

24. In such view of the matter, neither the debarment nor the termination of the petitioners' contract can survive the scrutiny of law.

25. Accordingly, WPA No. 12872 of 2023 is allowed on contest, thereby setting aside the debarment of the petitioners dated March 27, 2023 and the termination of the petitioners' contract dated May 18, 2023 by the respondent authorities.

26. Any action, if taken as a consequence of such debarment or termination by the respondent authorities, stands automatically reversed.

27. Since, vide order dated October 6, 2023, the respondent authorities were restrained from proceeding with issuance of the work order in terms of the tender which happened during pendency of the writ petition, the said restraint order is hereby lifted and the respondent authorities shall be at liberty to proceed with the issuance of the work order in terms of such tender process which has occurred

during pendency of the writ petition. All interim orders, if any, stand automatically vacated.

28. There will be no order as to costs.

29. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)