

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 19005 of 2023

M/s. BPCL and Aretpl JV & Ors.
Vs.
Eastern Coalfields Limited & Ors.

Mr. Shashwat Nayak,
Ms. Akanksha Mukherjee

.... for the petitioners

Mr. Debnath Ghosh,
Mr. Syed N. Arefin,
Ms. Rashni Binayak,
Mr. Syed M. Arefin

.... for the ECL Authorities

1 The present challenge has been preferred against the termination of the contract/work granted to the petitioners by the respondent-authorities and banning of business of the petitioners with the respondent-authorities for a period of three years.

2 Learned counsel appearing for the petitioners argues that despite the respondents having given several previous show cause notices and the petitioners having answered the same, the respondents in their final show cause notice dated May 28, 2023, waived the previous notices by referring only to two months of alleged default,

pertaining to April and May 2023, whereas the previous notices had referred to previous months.

3 It is argued that in view of the waiver, the respondents cannot now rely on the contents of or the allegation made in the previous show cause notices. In the notice dated May 28, 2023, which was the genesis of the present impugned action, the respondent authorities did not give the particulars of the alleged defaults of the petitioners but only referred to two months, whereas the contract contemplates default for a continuous period of six months within an eighteen months' period.

4 It is further argued that proper show cause notice for blacklisting the petitioners by banning business was not issued to the petitioners at all. By placing reliance on the show cause notice dated May 28, 2023, it is argued that the same relates only to the subsequent cause of action pertaining to the months of April and May, 2023, whereas the impugned order of termination and banning of business dated June 10, 2023 refers to previous alleged defaults committed by the petitioners. Thus, the termination/banning of business order went much beyond the show cause notice itself.

5 Learned counsel places reliance on a coordinate Bench judgment reported at *2023 SCC Online Cal 139*

(*Cognition Projects Pvt. Ltd. & Anr. vs. Damodar Vallery Corporation & Ors.*), where the learned coordinate Bench, placing reliance on certain judgments of the Supreme Court, observed that a show cause notice must essentially disclose the charges upon the person/entity to who the notice is being addressed and must also afford a reasonable opportunity to the person to reply to the charges made in the show cause notice. The necessity of a show cause notice and the consequent opportunity to the person of a hearing, it was observed, assumes importance in the context of the punishment to be suffered by the person for who the show cause notice is intended. The learned Single Judge, citing the Supreme Court judgment in *Gorkha Security Services*, also borrowed the principles of natural justice in such context, since blacklisting entails “civil death” and is stigmatic in nature.

6 Learned counsel also places reliance on the parent judgment of *Gorkha Security Services vs. Government (NCT of Delhi) & Ors.*, reported at (2014) 9 SCC 105 for the same proposition.

7. Learned counsel appearing for the respondent authorities contends that a vital portion of the admission of the petitioners has not been annexed to the writ petition. Whereas the minutes of a personal hearing given to the petitioners on April 06, 2023 have

been annexed, the second page thereof, which contains question no. 11 and the answer thereto, has not been annexed. A copy of the same is handed over to Court by learned counsel for the respondents. It is argued that in the said reply, the petitioners had stated that they would like to start production from April 25, 2023 and would give their level best to achieve the targeted production, failing which the management would be free to proceed in continuation with the previous letter dated April 01, 2023 for termination of contract with banning of business and the same would be accepted by the petitioners.

8. In the said paragraph, it is pointed out, the petitioners also admitted that at that juncture, the maximum machineries of the petitioners were under breakdown due to admitted lack of proper maintenance.

9. It is argued that in the show cause notice dated May 28, 2023, the respondents clearly mentioned the previous notices in terms of the concession given by the petitioners in reply to question no.11, referred to above.

10. Thus, it is argued that no question of waiver of the previous notices or the grounds taken therein arose at any point of time. Since the petitioners had already been given opportunity of hearing previously

and had given a reply to the show-cause notice dated May 28, 2023, it cannot be said that the petitioners were not given ample opportunity within the contemplation of the cited judgments.

11. A perusal of the judgments cited by the petitioners shows that the proposition laid down therein is well-settled and there cannot be any quarrel regarding of the same. However, in paragraph no. 20 of *Gorkha Security Services* itself, which is one of the judgments cited by the petitioners, the Supreme Court hastened to add that once the show cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. In the present case, the petitioners got an opportunity, which it used, to give a reply to the last show cause notice dated May 28, 2023. Hence, it cannot be said that the principles of natural justice were violated on the ground of non-compliance of the doctrine of *audi alteram partem*.

12. Insofar as the petitioners' stand is concerned, the petitioners clearly admitted in reply to question no. 11 in its previous personal hearing that if it failed to complete the target as indicated therein, the management would be free to proceed "in continuation with the abovementioned letter dated 01.04.2023

for termination of contract with banning of business and the same will be accepted by me”.

13. Thus, the said concession of the petitioners itself revives the validity of the grounds taken in the previous show cause notices.

14. The question which remains is whether the previous notices were specifically waived by the respondents at any point of time. In such context, the penultimate paragraph of the show cause notice dated May 28, 2023 is placed by the petitioners which states that “in the light of the above scenario” (which included the grounds cited in the previous notices), the petitioners were asked to submit a written explanation as to why the respondents should not start the process of termination of contract with banning of business again.

15. The petitioners’ reliance on the table given in the show cause notice dated May 28, 2023 is misplaced, since the said table, alleging non-fulfillment of the target during the months of April, 2023 and May, 2023 were superfluous, over and above the grounds cited in the four previous show cause notices and other communications in that regard which were referred to in the said show cause notice, such grounds being revived on the failure of

the petitioners to fulfill their undertaking, by virtue of the undertaking given by the petitioners themselves.

16. In the second paragraph of the show cause notice dated May 28, 2023, the respondents clearly referred to the previous notices dated March 15, 2023, March 24, 2023, April 01, 2023 and the hearing dated April 06, 2023.

17. The respondents mentioned in the show cause notice that in continuance of the said notices, the respondents apprised the petitioners that the latter had miserably failed to keep its commitment in terms of OB removal and coal production at Nimcha (Ankola Extension) OC Patch.

18. In the same notice, the respondents also mentioned that the level of performance of the petitioners, in terms of the paragraphs thereinabove, is unacceptable and falls well below the standards set forth to achieve the targeted production given to the petitioners vide the letter dated April 06, 2023.

19. In such view of the matter and “in the light of the above scenario”, the petitioners were asked to submit a written explanation as to why the respondents should not start the process of termination and banning of business “again”. The term “again” does not waive the previous notices but rather resumes the exercise from where it was left in

terms of the previous notices, which was enabled by none other than the petitioners' own admission in their reply to the question no. 11 in the personal hearing given to the petitioners.

20. Insofar as opportunity of hearing and reply is concerned, sufficient opportunity was given to the petitioners. Hence, the proposition laid down in the said judgments is not attracted in the present case.

21. The respondents gave several opportunities to the petitioners but the petitioners failed to meet the required standards. Although the petitioners have argued that subsequent to the issuance of the previous show-cause notices it had fulfilled the targets for a particular period, in view of the previous laches, which were not satisfactorily explained by the petitioners, it cannot be said that the impugned order of termination and debarment are so vitiated that those have to be set aside.

22. The writ court can only scrutinize the decision-making process and whether there was any palpable arbitrariness, *mala fides* or unreasonableness in the action impugned.

23. I do not find any of the above yardsticks to have been met in the present case to call for an interference with the decision of the respondents, particularly, insofar as the legality of such decision is concerned,

since there is no flaw in the decision-making process of the respondents.

24. In such circumstances, there is no scope of interference with the impugned order.

25. Accordingly, WPA No. 19005 of 2023 is dismissed on contest without any order as to costs.

26. 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.)