

18th October,
2023
(AK)
07-08

W.P.A 19904 of 2023

Sujoy Krishna Jana
Vs.
The State of West Bengal and others

With

W.P.A 19933 of 2023

M/s. Sujoy Krishna Jana & Co. and others
Vs.
The State of West Bengal and others

Mr. Subhabrata Datta
Mr. Aranya Saha
...for the petitioners.

Mr. Suman Sengupta
Mr. Sambuddha Datta
Mr. Sanatan Panja
...for the State.

Mr. Amal Kr. Sen
Ms. Asima Das (Sil)
...for the State
In WPA 19933 of 2023.

1. Learned counsel for the petitioners contends that the petitioners were debarred from participation in future tenders by the impugned decision of the respondent authorities.
2. However, in the show cause notice for such debarment, it was not indicated as to what penal measures would exactly be taken against the petitioners.

3. Although Serial no.11 of the e-NIT bid was referred to, no specific details as to the punishment contemplated and/or the specific action proposed was indicated in the said document.

4. Hence, proper hearing on the show cause was not given to the petitioners at all within the contemplation of law.

5. In such context, learned counsel refers to *(2021) 2 SCC 551 (UMC Technologies Private Limited vs. Food Corporation of India and another* where the Supreme Court observed, inter-alia, that the notice of show cause in such cases should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously.

6. The Supreme Court also held that specifically in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularized and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity.

7. Learned counsel also places reliance on the portion of the judgment where the Supreme Court found that not only does blacklisting take away the privilege, but also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting

also has long-lasting civil consequences for the future business prospects of the blacklisted person.

8. In another portion of the judgment cited, the Supreme Court held that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the blacklisted entity.

9. A plain reading of the notice in the said case, it was observed, makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show-cause notice. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice.

10. Learned counsel for the petitioner adds that blacklisting tantamounts to civil death of an entity and, as such, ought to have been strictly construed.

11. Learned counsel places reliance on Serial no.11 of the tender document and submits that from the same, it could not be deciphered as to what exact action is to be taken by the respondent authorities, thus vitiating the blacklisting.

12. Moreover, in the order of blacklisting, it is argued that certain recommendations of higher authorities were referred to, copies of which were never handed over to the petitioner. Hence, the said order of blacklisting was also vitiated on such count.

13. Learned counsel appearing for the respondents contends by placing reliance on a proforma of Form-2 annexed to the writ petition that in the said form, it was clearly to be disclosed by the participant that it did not have any common interest either as a partner in any other partnership firm etc.

14. In the present case, the petitioners answered the said query in such form, falsely, in the negative thereby coming within the purview of serial no.11, being subject to debarment.

15. Further, it is argued that the several provisions of the tender document clearly indicate that sufficient power was vested in the respondents to blacklist the petitioners on the ground of suppression/ falsification of documents and information.

16. Upon hearing learned counsel for the parties, it transpires that there was no scope of ambiguity in Form-2, which was filed erroneously by the petitioners, to the extent that the said form clearly sought a disclosure, *inter-alia*, on whether the petitioners had any common

interest either as a partner in any other partnership firm etc.

17. It is not disputed that the petitioner is still a partner in the partnership firm, M/s. Sujoy Krishna Jana and Co. The contention of the petitioners is that there is strained relationship between the partnership firm and the petitioner and the petitioner is not in charge of the affairs of the firm or involved in any manner in the business of the said partnership firm, on which ground the petitioners do not have any common interest with the same.

18. However, such contention of the petitioners could not be a valid ground to bye-pass the requirement of Form-2.

19. The specific requirement in Form-2 was that there is no common interest, stipulating clearly that such interest also covered interest as a partner in any other partnership firm. The petitioner is, indeed, a partner in the other firm mentioned above.

20. Irrespective of the relationship being strained between the petitioners and the partnership firm, unless the said firm is dissolved, the petitioner is, as a partner, jointly and severally liable for every action of the partnership firm and as such comes squarely within the purview of the bar. Hence, the non-disclosure amounted to falsification of information.

21. Insofar as the allegation that specific details of the penal action contemplated were not disclosed in the show-cause notice, the same cannot also be accepted.

22. The show-cause notice dated March 29, 2023 clearly mentioned the reason for the proposed penal action which was false declaration in Form-2.

23. The second paragraph of the show cause notice clearly indicated that the penal measures were being contemplated for such action of the petitioners in terms of Serial no.11 of the e-NIT.

24. Serial no.11 of the said tender document carries the caption “Procedure for suspension and debarment of suppliers/contractors”.

25. In terms of the provisions of the said clause, suspension and debarment have virtually been used interchangeably and as such, there could not be any scope of doubt as to the action contemplated against the petitioners as disclosed in the show-cause notice.

26. Clause G of serial no.11 provides that for committing first degree offence in any of the cases referred to under Clause 11 D(i) to (v), forfeiture of earnest money and debarment for a period of six months is contemplated.

27. In the present case, as because the petitioners committed a first degree offence, a debarment

of six months have been handed out to the petitioner, which is the minimum penalty under the said serial no.

28. Clause D (i) of Serial no.11 stipulates as a ground for suspension and debarment, the submission of eligibility requirements containing false information or falsified documents.

29. In the reply of the petitioners to the show-cause dated March 31, 2023, the petitioner clearly admitted that there was a mistake on the part of the petitioner which was pleaded to be unintentional, committed by a staff of the petitioner during the uploading process.

30. The petitioner also sought a condonation of his perceived irresponsibility and sought a last chance to rectify himself.

31. However, such post facto request of the petitioner cannot vitiate the act of debarment itself.

32. In terms of the cited judgment of the Supreme Court, the Supreme Court clearly observed that the show-cause notice has to be particularized and unambiguous.

33. In the said particular case, apparently a reference was made to a clause in the bid document which merely mentioned blacklisting as a bar against eligibility. In the present case, however, Serial no.11 and its sub-Clauses clearly stipulate the procedure and

grounds for blacklisting in the form of suspension/debarment clearly and unambiguously. The show-cause notice referred to penal action as per Serial no.11 and as such, the petitioner, a participant in the tender, could not feign ignorance on such count.

36. The Supreme Court in the cited judgment observed that the action was of blacklisting in the said case was neither expressly proposed “nor could it have been inferred” from the language employed in the show-cause notice.

37. In the present case, however, the proposed action could definitely be inferred by reference to Serial no.11 and was expressly proposed to be contemplated by the respondent authorities.

38. The question which now remains is whether the debarment after the petitioner having submitted his bid was justified as a ground for disqualifying the petitioner.

39. It is rightly contended by learned counsel for the respondents that the appropriate stage for consideration of eligibility is not merely the date of submitting the bid but the date when the technical evaluation took place.

40. The debarment order was conveyed on August 3, 2023 and the disqualification took effect on August 4, 2023.

41. It is noteworthy that the debarment process itself had started long prior to the petitioner participating in the subsequent tender where he has been disqualified.

42. The debarment itself was a mere culmination of the process started previously and was not a subsequent new event.

43. Insofar as non-furnishing to the petitioner copies of the recommendations of higher committees on which the respondents relied for disqualifying the petitioners, the said recommendations were, as the name suggests, only internal recommendations, which were a part of the adjudicatory process in terms of the clauses of the tender document and not independent documents which were relied on by the respondent authorities for the purpose of debarring the petitioners.

44. The grounds of debarment were implicit in the admissions contained in the reply to the show-cause given by the petitioner and the mere recommendations, which were given by higher authorities for the purpose of debarment could not be labelled as materials which were relied on by the higher authorities or the respondents for the purpose of debarment and were to be passed on to the petitioner.

45. In such view of the matter, I do not find any scope of interference in the present challenge.

46. Accordingly, WPA 19904 of 2023 and WPA 19933 of 2023 are dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)