

D/L. 16.
November 16, 2023.
MNS.

WPA No. 24772 of 2023

S. B. Construction and Co. and another
Vs.
State of West Bengal and others

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Rahul Kumar Singh,
Mr. Sankha Biswas

... for the petitioners.

Mr. Suman Sengupta,
Mr. Arindam Mondal,
Mr. Sambuddha Dutta,
Ms. Amrita Panja Maoullick

...for the State.

1. Affidavit-of-service filed in court today be kept on record.
2. Learned counsel for the petitioners contends that the petitioner no. 1 is a registered partnership firm with its unique PAN number. On the other hand, the petitioner no. 2 is the Managing Partner and Power of Attorney holder of the petitioner no. 1 with his unique PAN number.
3. While participating in a tender floated by the present respondents, the petitioner no. 1 so participated with its own PAN number.

4. In satisfaction of a clause in the tender documents that any previous blacklisting was to be disclosed, the petitioners disclosed a previous blacklisting of the partnership firm in a different tender in respect of a Panchayat work.
5. However, it was also disclosed that such debarment/blacklisting of the petitioner no. 1 was subsequently withdrawn. Since the petitioner no. 2, as the Managing Partner and Power of Attorney Holder of the petitioner no. 1 had given his PAN number as well, which was quoted in both the debarment order and the withdrawal of the debarment by the previous authorities, a doubt apparently arose in the mind of the present respondents, a clarification regarding which was sought vide communication dated September 1, 2023.
6. The relevant clarification was regarding the alleged mismatch in PAN number as mentioned in the letter for withdrawal of debarment and that uploaded in tender.
7. It is contended that since it has subsequently been clarified by the petitioners as well as the previous authorities that it was an internal error on the part of the said authorities in

quoting the PAN number of petitioner no.2 instead of petitioner no. 1 in the debarment and withdrawal orders, the same cannot be a deterrent in holding the petitioners to be eligible for participation in the present tender.

8. Learned counsel for the respondents opposes such contentions and submits that in the Declaration (Affidavit - Y) annexed at page 118 of the writ petition, which was given by the petitioners, certain numbers were given, which do not tally with the PAN number of the petitioner no. 1-firm.
9. It is argued that in view of such palpable discrepancy in the debarment order and withdrawal orders regarding PAN, which does not tally with the PAN number of the petitioner no. 1, the petitioners' bid was held to be ineligible.
10. A perusal of the documents annexed show that in both the orders of debarment of the petitioner no. 1 and the order of withdrawal of such debarment, the PAN number of the petitioner no. 2 was cited, although the name of the petitioner no. 1 subsequently duly finds place in both. The petitioners have given sufficient explanation in writing upon the query

of the respondent authorities to indicate that in both the orders of debarment and withdrawal, the name of the petitioner no. 1 has been given, which was represented by the petitioner no. 2 with his own PAN number in the internal concerns and/or online records of the previous tendering authority, for which the petitioners were not responsible.

11. It is quite obvious that the petitioner no. 2, who is the Managing Partner, at all relevant times acting as the Constituted Power of Attorney of the petitioner no. 1, might have very well been misquoted inasmuch as his PAN number was cited as that representing the petitioner no. 1 before the previous authorities.

12. Thus, the present respondents are making much ado about nothing inasmuch as the purported minor discrepancy is concerned. Even if it is assumed that the PAN number of the petitioner no. 2 instead of that of the petitioner no. 1-firm was cited in the debarment order and the withdrawal order, it would not have affected any debarment with regard to petitioner no. 1 if the version of the respondents is to be accepted.

13. There is no inconsistency at least *inter se* between the debarment order and the withdrawal of such debarment, which absolves any debarment, if suffered by the petitioner no. 1 and / or petitioner no. 2.

14. Thus, the quotation of the PAN number of petitioner no. 2, who is in any event a Managing Partner and Power of Attorney holder of the petitioner no. 1, in the previous orders of debarment and withdrawal do not have any germane effect on the eligibility of the petitioner no.1 as bidders for the present contract, since it has been sufficiently explained away by the petitioners as to what were the circumstances under which the petitioner no. 1 was debarred and subsequently such debarment was cancelled by the previous authority. Thus, the approach of the respondents in rejecting the technical bid of the petitioners was hyper-technical and ought to be set aside.

15. Accordingly, WPA No. 24772 of 2023 is allowed on contest, thereby setting aside the order of rejection of the tender of the petitioners by the respondent authorities dated October 6, 2023 (Annexure P14 at page 184

of the writ petition). The petitioners shall now be treated to be eligible for the consideration of the final bid. Necessary steps shall be taken immediately by the respondents for re-evaluation of the financial bids by deeming the petitioners to have succeeded as eligible bidders in the technical bid.

16. It is expected that such exercise shall be concluded at the earliest with prior notice to the petitioners as well as the other successful bidders at the technical stage.

17. There will be no order as to costs.

18. 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.)

