

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**W.P.A. No.25626 of 2022
IA No: CAN 1 of 2023**

**Nihar Kanti Rakshit and others
Vs.
The State of West Bengal and Others**

For the petitioners	:	Mr. Biswaroop Bhattacharya, Mr. Anindya Sundar Das, Mr. Shaunak Ghosh, Mr. Mansaram Mandal, Ms. Srijani Biswas
For the State	:	Ms. Amrita Panja Moulick
For the WBSEDCL	:	Mr. Sumit Kumar Panja Mr. Saurav Chaudhuri
Hearing concluded on	:	23.08.2023
Judgment on	:	00.09.2023

Sabyasachi Bhattacharyya, J:-

1. Contractors working for the WBSEDCL (West Bengal State Electricity Distribution Company Limited) have preferred the instant writ petition, challenging certain Office Orders issued by the WBSEDCL, whereby work would be withheld from the concerned contractors, if there was an accident due to improper shutdown at the concerned sites where the labourers of the contractors were working for the WBSEDCL.

2. The petitioners seek to argue that the Office Orders are lopsided, favouring the WBSEDCL while, in effect, blacklisting the contractors for the same offence.
3. The first limb of the argument of the petitioners is that it is the WBSEDCL Officials who are in charge of supervision at the work-sites, being the technically-equipped persons as opposed to the labour force employed by the contractor. It is argued that as per the licence issued to the contractors, the liability of the contractors ends with the labourers engaged by the contractors entering the site with proper PPEs (Personal Protective Equipments) provided by the contractors.
4. Secondly, the effect of the impugned Office Orders is that the contractors would be blacklisted automatically if there is an accident, without ascertainment of the liability for such accident. Such blacklisting would be without prior show cause notice or right of hearing. It is argued that if no further work is assigned to the contractors, since the nature of the job is on a day-to-day basis, the effect would be indefinite blacklisting.
5. It is argued that in an agreement arrived at in a meeting of all stakeholders, including the contractors' associations and the WBSEDCL and others, a decision was arrived at that there would be an enquiry committee which would look into the grievances of the contractors on all relevant issues. The WBSEDCL, *vide* internal communication dated October 12, 2018, had agreed to maintain *status quo* towards initiation of penal action against the contractors in terms of the impugned Office Orders till the committee submitted a

report. The last date of filing of the report was November 30, 2018, but the same has not yet been filed.

6. Hence, the petitioners seek quashing of the Office Orders-in-question and lifting of the blacklisting of the petitioners.
7. The defence of the WBSEDCL is primarily that the matter pertains to policy decision of the State/WBSEDCL. The same is contended to be in consonance with safety norms, to protect the labours.
8. Learned counsel for the respondents places reliance on the terms and conditions of the work orders issued to the enlisted contracts as annexed to the opposition filed by the WBSEDCL and submits that as per the licenses issued to the contractors, it is the responsibility of the contractors to ensure that the labourers are equipped properly and that they do not flout any of the rules.
9. It is argued that the impugned Office Orders merely contemplate that no further work would be awarded to the contractors till the liability for the accident was fixed and would not amount to blacklisting. In any event, it is argued that final steps would be taken only after proper enquiry is undertaken.
10. It is also highlighted by learned counsel for the WBSEDCL that under the Office Orders, the officials and employees of the WBSEDCL are equally liable for the accidents and are also to be placed in suspension during the relevant period. Hence, it is disputed by the WBSEDCL that the impugned Office Orders are lopsided or unjust.
11. The Office Order dated May 17, 2013 is one of those assailed herein. Clauses 1.2.3 and 2.4 thereof provide that the maintenance and jobs

involving High Tension shutdown is to be done by skilled labours of the contractor. Clause 3.4 thereof contemplates that there will be one skilled and one unskilled labour deployed by the contractor in each 8-hour shift to ensure round-the-clock operation and maintenance and it is to be ensured that skilled personnel have adequate expertise and experience and possess valid licence to work in the said voltage categories.

12. Equally, Clause 8.10 contemplates the liability of the WBSEDCL. It fixes personal responsibility on the officer who awarded the order to see that PPEs would be available with the contractor and no labour is to undertake the job without informing the concerned officer and observing safety standards of the company. The Supervisor of the contractor company, however, is also to maintain a job register for day to day preventive maintenance done by the High Tension Gang. However, as per the same Office Order, if the labourers had no PPEs and safety standards were not observed, due to which the accident occurred, the order of the contractor would be cancelled and other actions under the Indian Penal Code could be taken.
13. Apart from the above Office Order, the one dated May 12, 2017 has also been challenged herein. The same refers to a previous Office Order dated July 12, 2010 and provides for guidelines regarding penal measures for fatal accidents due to improper shutdown. It is provided there that the concerned officer of the WBSEDCL is to be personally present till the completion of the job and if fatal accident occurs due to failure to shut down the exact line/feeder/phase properly, the

officer shall be suspended immediately, pending investigation/departmental proceedings by the Divisional Manager. The officer would also be temporarily debarred from duty.

- 14.** In the same Office Order, corresponding liability has been cast on the contractor agency. If the agency undertook execution/maintenance in absence of proper supervisory personnel, without confirming proper shutdown, or without use of PPE or non-availability of PPE, or if the job was executed without informing the controlling/supervisory officer, the agency would be immediately holiday listed. However, the Divisional Manager is to initiate the proposal of holiday listing within three working days from the accident, indicating the facts, supported by documentary evidence.
- 15.** In the last impugned Office Order dated July 28, 2022, the subject of which was administrative action against contractors in case of fatal work accidents, it was recorded that there was a spate of recent accidents involving general public which had prompted various safety meetings, seminars and guidelines towards usage of PPEs, taking proper shutdown, and observing various safety measures, which were still unable to be accomplished to provide accident-free environment as those were allegedly not being complied with by many contract labourers who perform the jobs on daily basis and the concerned contractors/agencies were not being watchful enough to ensure the compliance of his/her labourers. Hence, for framing definitive guidelines towards safety, it was decided that the Controlling Officer shall not allow any job order to the agency/contractor as per approved

rate contract if any of his/her labour meets with fatal accident until the findings of the Permanent Enquiry Committee/departmental enquiry come out, as per prevailing rules. Such temporary debarment shall continue until enquiry proceedings and subsequent actions are completed.

- 16.** In this context, we are required to scrutinize the Circular dated March 26, 2008, which is relied on by the petitioners. The petitioners argue that the same was issued by the Board of the Distribution Company and cannot be overridden by individual officers by issuing Office Orders.
- 17.** In the said Circular, it is found that under the head “Accidents and Payment of Compensation to Contract Labours as per the Workmen’s Compensation Act”, if contract labours sustained injury in course of and out of engagement/work of the Company resulting in death or loss of limb/earning capacity, they shall be entitled as per the Workmen’s’ Compensation Act, 1923 (hereinafter referred to as, “the 1923 Act”), to be paid, by the respective DDOs of the concerned Division through Commissioner, workmen compensation. Such compensation would pertain to work in respect of which no insurance premium against the contract labours is approved by the company and simultaneously would be for negligence/derelection of duty and for any unlawful activity, if leading to an accident, in which case the Controlling Officer is to forthwith initiate actions against the persons found responsible, including drawing up disciplinary proceeding if the

person responsible is an employee of the company and blacklisting the contractor concerned.

- 18.** Thus, even as per the Office Order dated March 26, 2008, adherence to which is sought by the petitioners in their prayers in the writ petition, there is a provision for blacklisting of the contractor, corresponding with drawing up of disciplinary proceedings against the concerned employee of the company.
- 19.** The revised monthly rate contracts which have been produced by the petitioners indicates that if the contract labours meet with an accident while working on the system of the company resulting in death or loss of earning capacity, compensation has to be paid as per the 1923 Act.
- 20.** It transpires from the Office Orders cited by the parties that the contractors' duty does not end strictly at the entry-point of the location where the work is being done. As per the Office Orders of the WBSEDCL, the contractors have to furnish their labourers with proper PPEs and also maintain a register.
- 21.** Since the contractors are providing the workforce, they cannot disown the liability entirely in the event the labour supplied by them does not adhere to proper safety norms as stipulated in law and by the safety guidelines of the WBSEDCL.
- 22.** The provisions discussed above clearly contemplate that the contractors' liability is not restricted to providing labour force with PPEs but to ensure that there is one skilled labour and one unskilled labour for each 8-hour shift to look after the HT (High Tension) shutdown procedure.

- 23.** Undoubtedly, the liability of the WBSEDCL employees and officers cannot be overlooked. However, it is a common refrain in all the impugned Officer Orders that there are corresponding measures contemplated against the officers of the WBSEDCL itself, equally with the concerned contractors.
- 24.** There is, thus, no clear-cut straight jacket division between the exact liabilities of the contractor providing the labour force and the WBSEDCL in respect of accidents.
- 25.** It has to be kept in mind that although the WBSEDCL is the principal employer, it is outsourcing the work to the contractors who, knowing fully the gravity of the work to be performed, engage labour force, including skilled labour, with PPE kits. The contractors also maintain registers of the labour force engaged and have to ensure that their labour force complies strictly with the safety norms and guidelines and work under the aegis of the officers of the WBSEDCL.
- 26.** Since the labourers are provided by the concerned contractors themselves, it cannot be said that the contractors have no liability whatsoever regarding the contravention of safety norms by the labour force engaged by the contractors and that the liability vests entirely with the WBSEDCL.
- 27.** The liability of the contractors extends till the end of the job, of course, only insofar as contravention of safety norms and unwarranted disobedience by their labour force is concerned, since it is the labourers who do the job hands-on. At the same time, the

WBSEDCL is in overall supervision and cannot go scot-free if there is any negligence on their part in supervision.

- 28.** In fact, the impugned Office Orders clearly envisage co-equal liability of the officers of the WBSEDCL itself and the contractors, for accidents which may happen.
- 29.** However, one sticking point in the Office Orders is that although enquiry is contemplated therein to fix liability, there is no outer time limit of the completion of such enquiry, thus leaving it to the whims of the WBSEDCL and its enquiring body as regards the period for which the contractors would not be allotted work. Such unilateral vesting of discretion regarding the length of blacklisting cannot be countenanced in law, that too, without any proper opportunity of hearing.
- 30.** Moreover, in the meeting held between all the stakeholders, including WBSEDCL officials and the contractors' associations, on October 5, 2018, certain conclusions were arrived at.
- 31.** Clause 2 of the Minutes thereof indicates that the broad scope of activity of the committee is to include the framing of guidelines/codes of safety for the contractors to be observed while doing any erection/O&M works pertaining to the WBSEDCL's system, for the sake of determination of Contractors' liability in case of accident. The report of the committee was to be submitted, unfortunately, by November 30, 2018 but has not yet been so submitted.
- 32.** More importantly, it was held in the said meeting that till the time of such submission, no new proceeding as per provisions for violation of

safety as referred in Order No.1/2017 dated May 12, 2017 would be initiated against any contractor.

- 33.** The next important component in the present dispute is an internal communication by the Director (HR) of the WBSEDCL to the Divisional Managers of all divisions of the WBSEDCL where it was reiterated that, in terms of the meeting dated October 5, 2018, till the committee contemplated therein submits its report, *status quo* shall be maintained towards initiation of penal action against any contractor as per the mentioned clauses of the Office Order dated May 12, 2017 and towards realisation of compensation from contractors against the amount remitted by the WBSEDCL in terms of the 1923 Act.
- 34.** Hence, the petitioners are justified in arguing that the impugned Office Order No. P/71 dated July 28, 2022 is in absolute contravention of the said undertakings given by the WBSEDCL.
- 35.** The said impugned Office Order stipulates that as a blanket measure, in case of accidents, the agency/contractor would not be given any new job as per approved rate contract, if any of his/her labour meets with fatal work accident, until the findings of the Permanent Enquiry Committee/Departmental Enquiry come as per the prevailing rules. Such temporary debarment shall continue, as per the said Office Order, until the enquiry proceedings and the subsequent actions are complied with. Conspicuously, there is no outer limit of conclusion of such Permanent Enquiry Committee or Departmental Enquiry.
- 36.** Read in proper perspective, thus, the said Office Order dated July 28, 2022 patently contravenes the undertaking of the WBSEDCL in the

Minutes of its meeting dated October 5, 2018. The WBSEDCL, as an entity, is precluded by the doctrine of Estoppel, since the contractors participated in subsequent works of the WBSEDCL on the premise thereof, from enforcing the penal action as contemplated in its impugned Office Orders against the contractors, prior to submission of the report by the concerned committee. Thus, we can come to two conclusions on the basis of the above discussions.

- 37.** First, till a report is submitted by the Committee as per the meeting held on October 5, 2018 between the Contractors' Associations and the WBSEDCL officials, the WBSEDCL cannot take any penal action on the basis of the Office Orders impugned herein against the contractors.
- 38.** Secondly, even after the filing of such report, the contractors cannot be blacklisted for an indefinite period without a hearing.
- 39.** Hence, for the ends of justice, a balance has to be struck between the interests of public safety, justice and the interests of the parties.
- 40.** Accordingly, WPA No.25626 of 2022 and CAN 1 of 2023 are disposed of with the following observations:
 - (i) The impugned Office Order dated July 28, 2022 is set aside;
 - (ii) The WBSEDCL shall remain restrained from taking any penal action of blacklisting against the petitioners and the other WBSEDCL enlisted contractors in terms of the impugned Office Orders of the WBSEDCL dated May 17, 2013 and May 12, 2017 till a report is filed by the committee to be formed in terms of the

meeting dated October 5, 2018 held between the WBSEDCL official and its contractors' associations;

- (iii) Such committee shall be constituted, if not already done, within a fortnight from date, and it shall file its report, as contemplated in the meeting dated October 5, 2018, within four weeks thereafter;
- (iv) Both before and after the filing of such report, the WBSEDCL shall ensure that an enquiry is undertaken in case of each accident which happens due to improper shutdown of High Tension lines and gadgets at the worksites of the WBSEDCL. Such enquiry shall be concluded, including submission of the consequent report, within an outer limit of four weeks for each accident.
- (v) The WBSEDCL shall, upon such report being submitted, be at liberty to take appropriate action against the concerned contractor as well as its own officers in accordance with law and as per the terms and conditions of their own guidelines. However, till such report is filed, the contractors shall not be blacklisted and/or debarred from undertaking further work for the WBSEDCL.
- (vi) In the event the WBSEDCL proposes blacklisting the concerned contractors, including the petitioners, on the basis of such report, a show cause notice and a hearing shall be given to the concerned contractor, upon service of advance copies of the

report and any other document, if sought to be relied on by the WBSEDCL, to the accused contractor.

41. There will be no order as to costs.
42. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)