

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 1434 of 2023

**Reliable Facility Services Private Limited and Another
Vs.
Government of West Bengal and Others**

For the petitioners	:	Mr. Suddhasatva Banerjee, Adv. Mr. Pushan Kar, Adv., Mr. Sagnik Majumdar, Adv., Mr. Abhidipto Tarafdar, Adv.
For the State	:	Mr. Sirsanya Bandopadhyay, Adv, Mr. Arka Kr. Nag, Adv.
Hearing concluded on	:	21.08.2023
Judgment on	:	06.09.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company is engaged in the business of providing housekeeping and maintenance services. It participated in a tender dated March 3, 2023 floated by the respondent-Authorities and emerged as the L-1 bidder. The respondents sought a justification of the prices submitted by the petitioners in terms of the Clause 8.9.5 of the tender document on the ground that the petitioners' bid was much less than the quoted price of the bid items.
2. The petitioners provided justification by citing efficient operation and bulk purchase of material, resulting in significant discounts enjoyed by the petitioners. However, such justification was rejected by the respondents and the petitioners were required to perform a demonstration of the proposed work at the premises of Khadyashree

Bhawan. Although it is argued that such demonstration was not part of the conditions of the tender, the petitioner participated to secure and perform the contract.

3. It is argued by the petitioners that subsequently the respondents imposed additional obligations in the form of new conditions, which were foreign to the tender, including use of a particular brand of glass cleaning material, enhanced rate of security deposit and additional security deposit, if the Letter of Acceptance was to be awarded to the petitioners. Such conditions were communicated to the petitioners *vide* letter dated April 25, 2023, which also mentioned that the petitioners' failure to perform the said conditions would lead to forfeiture of the earnest money deposit and/or cancellation of the petitioners' bid.
4. It is argued that the said conditions were arbitrary and imposed subsequent to the bidding process.
5. The petitioners' wrote an advocate's letter dated April 28, 2023 expressing such grievances. The respondent invited the petitioners to a meeting by dint of a letter dated May 16, 2023, which was to be held on May 24, 2023 for settling disputes.
6. However, subsequently, by a letter dated May 30, 2023, the respondents cancelled the entire tender process and forfeited the earnest money deposited by the petitioners, in the process debarring the petitioners from participating in future bids for a period of five years.
7. It is argued that the bid prices of the four participants in the tender

were similar and there was hardly any difference in the quoted prices between the petitioners and the L-2 bidder.

8. The present writ petition, thus, has been preferred challenging the order of blacklisting dated June 30, 2023 and seeking refund of the earnest money deposited by the petitioners.
9. Learned counsel for the petitioner argues that the blacklisting of the petitioner no.1 was done for five years without a prior show-cause notice or opportunity of hearing being given to the petitioners. An order of blacklisting has severe civil consequences and such action on the part of the respondents amounts to violation of principles of natural justice.
10. In support of such contention, learned counsel for the petitioners cites *UMC Technologies Private Limited Vs. Food Corporation of India and others*, reported at (2021) 2 SCC 551, as well as an unreported judgment dated June 26, 2023 passed in WPO No.1317 of 2023 [*HI Speed Logistic Pvt. Ltd. and Another Vs. Food Corporation of India and others*] and the judgment dated June 13, 2023 in WPO No.742 of 2023 [*Pranab Bose Vs. Union of India and Others*].
11. Learned counsel next argues that no loss or damage was suffered by the respondents in the tender process and as a result, the earnest money could not be forfeited. No party can stand to gain from a situation when no work order has been placed and no loss has been suffered. It is argued that in the absence of proof of actual loss, the respondents acted illegally in insisting upon forfeiture of the earnest money.

12. In such context, learned counsel cites *Kailash Nath Associates Vs. Delhi Development Authority and Another*, reported at (2015) 4 SCC 136.
13. The petitioners next argue that a State or a statutory body is expected to act reasonably and rationally and cannot be permitted to enrich itself in an unjust manner. In support of such contention, learned counsel cites *MBL Infrastructure Limited Vs. Rites Limited and Others*, reported at 2020 SCC OnLine Cal 478.
14. Learned counsel next contends that even in a case where the party is aware of the consequences of blacklisting, which is to take place if certain conditions prescribed are not met, the blacklisting authority must issue a show-cause notice, provide a hearing, and observe the principles of natural justice. The show-cause notice must mention blacklisting as one of the consequences, which was entirely absent in the present case.
15. In support of such proposition, learned counsel cites *Gorkha Security Services Vs. Government (NCT of Delhi) and Others*, reported at (2014) 9 SCC 105.
16. It is further argued by learned counsel for the petitioners that the existence of an arbitration clause is not an absolute bar to maintain an application under Article 226 of the Constitution of India. For such proposition, learned counsel cites *Prabir Kumar Bidya Vs. The Union of India and Others* [WPA No.10713 of 2018].
17. Lastly, it is contended that the clause of the contract referred to in the impugned decision does not authorise forfeiture of earnest money

deposit. The clauses authorising forfeiture coupled with power of blacklisting had not admittedly been invoked and are also completely inapplicable to the facts of the case as the bid of the petitioners has not been cancelled but the petitioners have withdrawn their bid. Only if the bid is cancelled, the same “may” draw the consequences of forfeiture and blacklisting. Learned counsel, in the context of interpretation of the word “may”, cites *Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another*, reported at (2008) 4 SCC 144.

18. Learned counsel also places reliance on certain relevant clauses of the tender document.
19. Learned counsel appearing for the respondent nos.1 to 4 submits that in view of the existence of an arbitration clause (Clause 10.1.1) in the Notice Inviting Tender (NIT), which covers any dispute between the parties, the petitioners had an alternative efficacious remedy in the form of arbitration. Hence, the present writ petition ought not to be entertained.
20. It is argued that *vide* a letter April 10, 2023, the Deputy Secretary, Government of West Bengal sought justification from the petitioners for the violation of Clause 8.9.5 specified in the tender document, as the petitioners, in every item of the bid, quoted much less price. It is argued that the power to call for an explanation is contained in Clause 8.9.5.
21. The petitioners insinuate that the representative of the L-2 bidder was present on the date that is April 19, 2023, before the tender committee when the petitioners attended that meeting. It is clarified by the

respondents that so far as the L-1 bidder is concerned, they have quoted a rate which is more than 20% less than the expected price, whereas the L-2 bidder also quoted a price less than 20% in some of the items apart from four. That is the reason why the L-2 bidder was also called along with the L-1 bidder for providing justification to their quotations.

- 22.** The petitioners have argued on the forfeiture of EMD without any proper reason, but the respondents contend that Clause 6.5.1 of the NIT specifies that EMD can be forfeited in the following circumstances:
- i) Withdrawal of bid;
 - ii) False or faulty documentation,
 - iii) Any unilateral revision made by the bidder during the valid period of offer.
- 23.** Clause 8.9.5 also says that the tenderer has a right to forfeit the EMD amount if the contractor quotes a price below 80% of the estimated price of the items other than the manpower price, which was applicable in the present case.
- 24.** Even assuming that a wrong provision or clause was quoted in the impugned order dated June 30, 2023, such error is inconsequential. If the authority has the power, quoting a wrong clause would not nullify the findings.
- 25.** With regard to the requirement of notice, learned counsel for the respondent nos. 1 to 4 argues that the petitioners were already aware of the consequence and had replied through their advocate's letter annexed at page 94, paragraph (e) of the writ petition. Hence, the

action taken by the respondents was not a surprise for the petitioners. The purpose of notice of prior hearing is that no action for which civil consequences follow is be intended to be a surprise. In the present case, there was no surprise element at all.

26. Learned counsel for the respondent nos. 1 to 4 next argues that the mere participation and offering of bid price less than 80% do not accrue any vested right in favour of the petitioners, even if they were an L-1 bidder. Learned counsel submits that the facts of *MBL Infrastructure Limited (supra)* were different and hence not applicable to the present case.
27. Insofar as *Gorkha Security Service (supra)* is concerned, paragraph 25 thereof states the clause considered by the Supreme Court, which is significantly different from the present case. In the present case, the phrase “if so warranted” is absent, which phrase, in the said case, compelled the Supreme Court to come to the finding in paragraphs 26 and 27 of the judgment.
28. *Shanti Sports Club (supra)* is distinguishable on facts as well. *Kailash Nath Associates (supra)*, interpreted with *MBL Infrastructure Limited (supra)*, cannot be applicable at all when the bid is cancelled and after participation in the tender process. The petitioners cannot now say that the clause specified for forfeiture of the EMD in the NIT is outrageous and against the law, it is argued.
29. Heard learned counsel for the parties.
30. A perusal of the tender document reveals that Clause 10.1 contains an arbitration clause. However, the nature of the allegations in the

present writ petition is gross violation of principles of natural justice and patent arbitrariness. Thus, if the said allegations are established, the present case would fall within the window stipulated by the Supreme Court time and again for interference under Article 226 of the Constitution of India, which principle has also been reiterated in *Prabir Kumar Bidya (supra)*, cited by the petitioners. Hence, the objection as to availability of arbitration as an alternative recourse is turned down and the writ petition is entertained.

- 31.** In order to examine on merits whether the petitioners are entitled to the reliefs sought, the relevant clauses of the tender document are of utmost importance.
- 32.** With regard to forfeiture of earnest money, two clauses are of importance. The first Clause, referred to by both sides, is Clause 8.9.5 of the tender document. As per the said provision, if the contractor quotes price below 80% of the estimated price of the items other than manpower, the contractor/agency will have to submit justification mathematically along with authenticated documents to support the low bid price along with supportive documents, otherwise the authorities reserve the right that the bid may be cancelled and it may draw the forfeiture of the EMD amount along with other conditions to bar the said low bidder to take part in the future tender process of the Food and Supplies Department.
- 33.** The other provision is Clause 6.5.1 which provides that the Food and Supplies Department reserves the right to forfeit the earnest money deposit (EMD) of any bidder in certain circumstances. The first

ground enumerated there is withdrawal of bid, while bids are under consideration during the tender period. The bid was withdrawn by the present petitioner by citing certain reasons. However, it is required to be ascertained whether such withdrawal was “while bids are under consideration during the tender period”.

- 34.** The next sub-clause relates to false or faulty documentation, fabricated information and documentation and failure to execute the work or part thereof, as stated in the terms and conditions. There is no specific allegation that any of the documentations were faulty. The information supplied by the petitioners was not alleged to be fabricated as such, nor could there be any failure to execute the work or part thereof on the part of the petitioners, since the work was not awarded to them at all. Unilateral revision made by the bidder, in terms of the third sub-clause, is also not applicable, as is sub-clause (iv), which is failure to accept the work order for executing the document or submit security deposit, which was not be present case, since no work order was issued at all.
- 35.** Certain facts are to be ascertained from the correspondence annexed to the writ petition. Upon the petitioner no.1 turning out to be the successful bidder, the respondent-Authorities communicated in writing to the petitioners on April 10, 2023 clarifying that the petitioners had submitted a much ‘less’ quoted price of the bid items, for which a hearing was given to the petitioners.
- 36.** Two days thereafter on April 12, 2023, the petitioner no.1 wrote a reply thereto to the authorities, where they gave certain explanations

including that the petitioner no.1 was a leading organization providing such facilities across West Bengal and that the petitioners get bulk discounts on their purchases and also control the material misutilization and wastage.

37. In any event, as admitted by the petitioners, the hearing and demonstration asked from the petitioners was within the authority of the tender-issuing authorities as per the tender document and cannot be faulted on such score.
38. Interestingly, from the documents annexed at pages 83 and 84 of the writ petition, which was an annexure to the reply of the petitioners dated April 12, 2023, it is seen that in the projected monthly materials required for facility management services for the Khadyashree Bhawan tentatively disclosed by the petitioners to clarify the doubt regarding quotation of less price, they mentioned certain particular brand names of products, including the brand name of a particular product which was apparently to be used as a glass cleaner. Serial No.4 of the said material list furnished by the petitioners themselves named a particular brand of glass cleaner. It was claimed in the same row of the list that five litres of the said brand name of glass cleaner would require an expenditure of Rs.1265/-.
39. In continuance of the tentative monthly calculation for facade cleaning for facility management of the Khadyashree Bhawan, the petitioners quoted a price of Rs.620/- for five litre of the same brand name of glass cleaner.
40. Again, in another sub-list annexed with the communication of the

petitioners dated April 12, 2023, it was mentioned that three litres of the same glass cleaner would require Rs.450/-.

- 41.** Hence, the insistence in the further reply of the respondents in their communication dated April 25, 2023 that the said particular brand name of glass cleaner be used by the petitioners for giving the demonstration, was not at all unjust but, rather, in consonance with the claim made by the petitioners. It is obvious that if the petitioners did the job during demonstration with some other brand, the costs would vary considerably, thereby leaving no scope for the authorities to ascertain the veracity of the demonstratively low price quoted by the petitioners.
- 42.** In the communication dated April 25, 2023, certain “additional” Clauses were allegedly mentioned. The petitioners have vociferously argued that such introduction of new clauses at a belated stage was beyond the scope of the tender and the petitioners could not be penalized on such ground.
- 43.** A scrutiny of the so called ‘additional’ clauses shows that the first of those specified that only glass cleaning product of the brand name suggested by the petitioners should be used for the purpose of glass cleaning and the other named products, as mentioned by the petitioners themselves, should be used accordingly for the cleaning operation and other services. Such clause was not an ‘additional’ clause as such, but only a reiteration of the original clauses of the tender document, read in conjunction with the claims made by the petitioners themselves.

44. There has to be a transparency in the bidding process, both from the end of the tender-issuing authority and the bidders. Clarity and transparency are not a one-way traffic.
45. In the present case, particular criteria were mentioned in the tender document, pursuant to which specific bids were made by the petitioners. At the clarification stage which was allowed by the tender document, the petitioners quoted specific prices in reply to the charge of the petitioners having quoted demonstratively less prices, referring to particular brands for particular components of the job envisaged under the contract.
46. Hence, the insistence of the authorities that in order to achieve compliance and adherence to the prices actually quoted by the petitioners, the same brands were to be used during the work, was neither unjust nor arbitrary.
47. Clause (ii) of the 'additional' clauses stipulated that cleaning and other operations shall have to be performed as per the scope of the work of the NIT and as per the declaration given by the petitioners in their letter dated April 12, 2023, failure or shortfall to provide satisfactory service in which regard would entail imposition of penalty as per the terms and conditions of the NIT. As Clause (i), Clause (ii) is also not a new clause sought to be introduced later.
48. Clause (iii) stipulated that in terms of the Memo dated February 25, 2022, as the reduced rate of security deposit at 3% ends on March 31, 2023, Rs.14,14,854/- (10% of the total amount of Rs.1,41,48,540/- that is 10% of the tender value) would be the security deposit

including the EMD amount. The said clause was not *de hors* the contemplation of the NIT; rather, was provided for in the tender document itself.

49. The same logic applies to Clause (iv) which stipulates that additional performance security of 10% of the tendered value as per the Memo dated July 18, 2018 would have to be submitted if the tender inviting authority decided to offer Letter of Acceptance of the tender. Manpower utilisation, Clause (iv) provide, would also require that payment should be as per NIT. Thus, the warning of cancellation of the petitioners' bid and forfeiture of EMD was clearly issued in the communication dated April 25, 2023.
50. In their advocate's letter dated April 28, 2023, the petitioners raised several objections. One of the grounds of challenge by the petitioners was that the expression "may" was mentioned in Clause 8.9.5 of the NIT. The said phrase is sought to be interpreted by the petitioners to mean that there cannot be any automatic forfeiture or that the forfeiture clause cannot be absolute.
51. Such argument cannot be accepted in the present case, since Clause 8.9.5 clearly stipulates that if the contractor quotes prices below 80% of the estimated price, the contractor/agency would have to submit justification mathematically along with authenticated documents to support the low bid price and supportive documents. Otherwise, it is stipulated, the respondents reserves the right that the bid may be cancelled and it may draw the forfeiture of the EMD amount along with other conditions to bar the said low bidder to take part in the

future process of the Food and Supplies Department.

52. Clause 8.9.5 is composite, contemplating cancellation of the contract, forfeiture of the EMD amount and debarment of the concerned bidder in the same breath.
53. The interpretation sought to be lent by the petitioners to “may” is not acceptable. The very construction of the sentence clearly indicates that it is the respondents who reserved the right of cancellation, forfeiture and debarring the bidder. Hence, the forfeiture comes into operation the moment the respondents so choose subject, of course, to the satisfaction of the earlier portion of Clause 8.9.5.
54. In the present case, the petitioners quoted price below 80% of the estimated price and a justification was sought. In the clarificatory meeting, the petitioners failed to satisfy the respondent-Authorities by their demonstration. Having failed so, particularly in the perception of the respondent-authorities, the petitioners cannot now resist the exercise of due discretion by the respondent-Authorities in cancelling the bid and forfeiture of the EMD amount as per the terms of the tender document.
55. The communication dated May 16, 2023 by the respondents to the petitioners was a notice for the petitioners to be present in the meeting as per the financial bid in the NIT for the process of the financial bid evaluation, settling disputes if any and selection of the bidder to serve as agency for facility management for Khadyashree Bhawan.
56. Subsequently, *vide* notice dated June 30, 2023, which is impugned herein, the petitioners were informed that upon clarification and

justification sought for the bid price quoted on different items of work as per the scope of work and the demonstration of the petitioners on April 17, 2023, in the perception of the respondents, the same clearly established that the material quantity and expenses shown in the mathematical justification are seemingly imaginary.

- 57.** In fact, a hearing was given to the petitioners on May 24, 2023.
- 58.** The petitioners had expressed their unwillingness to serve the respondent, for which the petitioners were debarred from participating in the future bids for five years.
- 59.** Before going further, it is to be noticed that one of the objections taken by the petitioners is that the L-2 bidder was also present at the hearing.
- 60.** In the present case, the tender process itself has been aborted in view of both the L-1 and L-2 bidders having failed to satisfy the authorities on mathematical justification on their significantly low bids, below 80%. Hence, nothing turns on the presence of the L-2 bidder who was also rejected in the process. That apart, the respondents have sufficiently justified the presence of the L-2 bidder in the meeting, since both the L-1 bidder (petitioners) and the L-2 bidder had quoted low bids, less than 80% of the estimated price.
- 61.** Hence, the meeting and the exercise calling for demonstration cannot be vitiated in any manner. In any event, the petitioners participated in the same.
- 62.** Interestingly, the petitioner, after being served with the notice dated April 25, 2023 where the respondents insisted upon use of the

particular brand name cited by the petitioners themselves, shied away from such proposal.

63. In fact, the respondents were gracious enough to give another opportunity to the petitioners to stick to their own cited brand names, to satisfy the prices quoted by the petitioners corresponding to such brand name.
64. The result of the communication by the respondents dated April 25, 2023 was, however, a reply by the petitioners dated April 28, 2023, which was an advocate's letter sent by the petitioners. Apart from quoting certain provisions, the petitioners clearly and in no uncertain terms requested the respondents to cancel the subject-tender and refund the EMD money at the earliest within a period of seven days. Legal action was also threatened by the petitioners.
65. Thus, in the letter dated April 28, 2023, the petitioners, instead of sticking to their own quotations, expressed an unequivocal intention to withdraw from the work, after turning out to be the successful bidder.
66. Reverting back to the clauses of the contract, Clause 6.5, in sub-clause (i), specifies, as a ground for forfeiture of EMD, the withdrawal of bid while bids are under consideration during the tender period.
67. Although the parties were at a juncture when, strictly-speaking, the tender process was over, no work order had yet been issued. The hearing and demonstration sought by the respondents were also broadly within the contemplation of the tender process, as evident in the tender document. Hence, the withdrawal of the bid by the

petitioners was during the tender period. Thus, under 6.5.1, the respondents had the right to forfeit the amount of EMD.

68. In any event, nothing remained to be cancelled, the since the petitioners chose to withdraw from the tender process after having turned out to be successful but having been exposed in the demonstration and hearing before the respondent-Authorities.
69. Clause 8.9.5 further empowers the respondents, in the event the contractor fails to justify mathematically along with authenticated documents to support the low bid price if the prices quoted are below 80% of the estimated price, to cancel the bid and to exact forfeiture of the EMD amount. Clause 8.9.5 also stipulates that the concerned bidder may be restrained from taking part in future tender process of the Food and Supplies Department.
70. Hence, there is no illegality or arbitrariness in the decision-making process of the respondent-authorities in cancelling the bid of the petitioners and forfeiting the EMD amount, strictly in terms of the NIT.
71. The next question which arises is whether the respondents blacklisted the petitioners without a show-cause notice.
72. The requirement of a prior show-cause notice, to grant sufficient opportunity of hearing to the concerned party, is an essential component of natural justice, as laid down in *UMC Technologies Private Limited (supra)*, *HI Speed Logistic Pvt. Ltd. (supra)* as well as *Pranab Bose (supra)*, all cited by the petitioners.
73. The question which arises is whether the show-cause notice must mention blacklisting as a consequence as well.

- 74.** In *Gorkha Security Services (supra)*, the question which came up for consideration was the necessity of serving show-cause notice as a requisite of the principles of natural justice. The effects of blacklisting were discussed by the Supreme Court, as reiterated in several judgments, and it was observed that a show-cause notice has to precede a blacklisting.
- 75.** A show-cause notice, as held by the Supreme Court, has to meet two requirements, namely that the materials/grounds which according to the department necessitate an action are to be stated, and the particular penalty/action which is proposed to be taken is also required to be mentioned.
- 76.** The Supreme Court in the said case also reiterated that the purpose of a show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him.
- 77.** In such context, let us consider the instant case. The first notice on the part of the authorities was dated April 10, 2023 where the authorities clearly mentioned that the price quoted by the petitioners was less than 80% of the estimated prices, for which a hearing was given to the petitioners.
- 78.** The petitioners gave a reply to such notice on April 12, 2023 disclosing certain explanations for the meagre price. The petitioners also cited tentative monthly materials required for the job contemplated under the tender.
- 79.** In fact, specific parameters were also mentioned by the petitioners in their reply. Subsequently, on April 17, 2023, the petitioners gave a

demonstration. It is to be remembered that Clause 8.9.5 was well within the knowledge of both the parties. In fact, the insistence of the respondents for a mathematical justification and demonstration was all along disclosed by the respondents to be due to the quotation of the petitioners being less than 80% of the estimated price, within the contemplation of Clause 8.9.5. Hence, the petitioners all along had a clear idea as to the reason for which they were being given a hearing and were required to give a demonstration as well.

- 80.** The mere pretext that the petitioners were never given a show cause notice indicating the exact ground of blacklisting or indicating the consequences of blacklisting pales into insignificant, since the notice dated April 10, 2023 issued by the respondents clearly mentioned that failure on the part of the petitioners to submit proper justification as well as dissatisfaction on the score of such justification would entail that the respondents would take action “as appropriate as per the NIT”. Clause 8.9.5 was a part of the NIT and was specifically quoted in the communication dated April 10, 2023. In the very second sentence of the communication, it was mentioned that the tender committee found that contrary to the Clause in the NIT at section 8.9.5, the petitioners had submitted much less as the quoted price of the bid items.
- 81.** Read in a composite manner, the entire text of the communication dated April 10, 2023 was a clear show cause notice to the petitioners regarding the alleged violation of clause 8.9.5 and the probable consequence of implementation of Clause 8.9.5 “as appropriate, as per

the NIT”.

82. In fact, the petitioners not only got an opportunity of hearing and gave a reply on April 12, 2023, the petitioners actually participated in the hearing and had an opportunity of dispelling the doubts in the minds of the respondents. A demonstration was also sought from the petitioners and was given by the petitioners, which resulted in dissatisfaction of the authorities on the score of mathematical justification as communicated in the letter dated April 25, 2023.
83. The respondent-Authorities, however, went one step further in fairly granting a further opportunity to the petitioners to stick to the brands, corroborating to the respective estimated prices, quoted by the petitioners themselves, to do the work. It was also mentioned in the said communication dated April 25, 2023 that failure and/or dissatisfaction of the tender committee might lead to cancellation of the petitioners' bid and forfeiture of the EMD, to be decided by the authority of the department.
84. Clause 8.9.5 was all along implicit in the various opportunities of hearing and demonstration given to the respondents and was the premise of the replies given by the respondents, which also included the repercussion of blacklisting.
85. Thus, the petitioners cannot now be permitted to argue that they were not at notice of the consequence of blacklisting, which was implicit in Clause 8.9.5, which was quoted by the authorities in their communications, having got several opportunities of hearing, representation and demonstration on such count.

- 86.** What the petitioners did after that is also required to be factored in. On April 28, 2023, instead of taking the opportunity given by the respondents, the petitioners wrote an advocate's letter where they did not limit themselves to disputing the stand taken by the respondents but also went to the extent of requesting the respondents to cancel the subject-tender and refund the EMD money at the earliest, failing which the petitioners threatened legal action.
- 87.** Such stand of the petitioners clearly comes within the purview of the first sub-clause that is sub-clause (i) of Clause 6.5.1 of the tender document, which stipulates that withdrawal of bid, while bids are under consideration during the tender period, would entail forfeiture of the EMD.
- 88.** Clause 6.5.1, read in conjunction with Clause 8.9.5, clearly justifies the respondents' impugned action.
- 89.** Insofar as the allegation of imposition of additional conditions by the respondents is concerned, the same is also incorrect on the score of security deposit, since Clause 8.3.1 of the tender document provides that the successful bidder shall furnish within a week of the acceptance of the tender a security deposit of Rs.4,25,000/- (3% of the annual contract value), on failure of which and not taking over the work, the EMD amount would be forfeited and the bidder would be debarred for a period years of future tender of the respondent-Authorities, on which the decision of the authorities would be final and binding to the bidder. Thus, there is no scope of attributing erroneous imposition of additional costs on the respondents on such

count as well.

90. Apart from the arbitration clause, Clause 8.4 of the NIT stipulates that in the event of any dispute between the respondents and the petitioners, the Principal Secretary/Secretary and/or designated officer on behalf of the respondent-Authorities reserves the sole discretion to settle the disputes and his/her decision is final, with which the contractor is to abide by.
91. The petitioners in the present case have not explored any of the said options as well.
92. The last question which arises is whether the failure of the respondents to quote the correct clauses in their impugned notice of forfeiture and debarment is fatal. The respondents, in the said notice, dated June 30, 2023, clearly speak about the clarification and justification sought from the petitioners, the demonstration given by the petitioners on April 17, 2023 and that it established that the material quantity and expenses shown in the mathematical justification are seemingly imaginary. It was further cited in the said communication that the petitioners had expressed their unwillingness to serve the respondents. Hence, there was a substantial reference to the pith and substance of the relevant clauses as discussed above. Clause 6.5.1(iv) was also quoted, which contemplates failure to accept the work-order or execute the agreement or submit security deposit in prescribed time as required as per the provision. In the present case, the petitioners, indeed, failed to accept the work order or execute the agreement or submit the security deposit in time, more so by their

specific refusal to participate in the work. Thus, Clauses 6.5.1, sub-clauses (i) and (iv) as well as 8.9.5 of the tender were either quoted or substantially mentioned, with clear reference to the content of the said clauses in the impugned notice.

- 93.** Thus, there was no illegality, arbitrariness or unreasonableness in the decision-making process of the respondent-Authorities in forfeiting the EMD amount of the petitioners as well as debarring the petitioners for five years.
- 94.** In such view of the matter, WPO No.1434 of 2023 is dismissed on contest without any order as to costs.
- 95.** Urgent certified server copies, if applied for, be issued upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)