

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1214/2023

(M/S CIVIL SURGEON **VERSUS** WESTERN COALFIELDS LIMITED, NAGPUR & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.M. Tahaliyani with Shri A.G. Shitut, counsel for the petitioner.
Shri A.M. Ghare, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : APRIL 28, 2023.

Heard.

2. The challenge raised in this writ petition is to the communication dated 07.02.2022 issued by the respondents thereby banning the petitioner from participating in any tenders floated by the respondents for a period of two years. The impugned order indicates that on account of failure to submit Additional Performance Security Deposit (APSD) in accordance with the terms of the work order, the petitioner has been blacklisted.

3. The principal challenge raised by the learned counsel for the petitioner to the communication dated 07.02.2022 is that no opportunity whatsoever was granted to the petitioner to respond to the proposed action of blacklisting. Various E-mails relied upon by the respondents are stated to have been sent at the different E-mail addresses of the petitioner since his original E-mail address had been changed.

4. In this regard we find that the E-mails dated 08.10.2021, 13.11.2021, 20.11.2021 and 29.11.2021 have been sent at the same E-mail address on which the impugned order dated 07.02.2022 was sent. We may note that the petitioner has filed an appeal before the Chairman and Managing Director raising a grievance with regard to order of blacklisting. In the said appeal, the aforesaid ground that there was absence of any notice on account of change of E-mail address is conspicuously absent. There is no basis whatsoever to hold that these communications were not received by the petitioner especially when the impugned communication sent on that E-mail address is under challenge.

5. Further challenge raised is to the period of blacklisting by urging that the same is disproportionate. We find that while submitting the tender document the petitioner was required to submit a bid security declaration stating therein that if there was failure to submit the Performance Security Deposit before the deadline or the extended time, the Contractor would be banned for a period of two years. The impugned communication refers to said clause as one of the reasons for banning the petitioner. It is not the case of the petitioner that it had infact furnished the Performance Security Deposit and despite that the petitioner has been blacklisted. The blacklisting is thus in terms of the contract itself.

6. For aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed with no order as to costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

APTE