

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16224 of 2023

M/s Edutest Solutions Private Limited, A company incorporated under the provisions of the Companies Act, 1956, Having its Registered Office at JBR, Corporate House Sindhu Bhavan Marg, Nr. Maruti Nandan Restaurant, Bodakdev, Ahmedabad, Gujarat- 380054 through its authorized representative namely Abraham TM, aged about 50 years (male), son of Late Mathai, resident of B-202, Sukirti Elegance Near Vraj Vihar-2, Satellite, Police Station- Satelite, District- Ahmedabad.

... .. Petitioner/s

Versus

1. Bihar School Examination Board through its Chairman, Sinha Library Road, P.S.- Kotwali, District- Patna.
2. The Chairman, Bihar School Examination Board, Sinha Library Road, P.S.- Kotwali, District- Patna.
3. The Secretary, Bihar School Examination Board, Sinha Library Road, P.S.- Kotwali, District- Patna.
4. The Controller of Examination (Vividh), Bihar School Examination Board, Patna.
5. The Bihar State Electronic Development Corporation Limited, through its Chairman Beltron Bhawan, P.S.- Shastri Nagar, District- Patna.
6. The Chairman, Bihar State Electronic Development Corporation Limited, Beltron Bhawan, P.S.- Shastri Nagar, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Saket Tiwary, Advocate
For the Respondent/s	:	Mr. Satyabir Bharti, Advocate Mr. Abhishek Anand, Advocate Ms. Manupriya, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 16-05-2024

We have heard Mr. Mrigank Mauli, learned Senior Advocate for the petitioner and Mr. Satyabir Bharti, learned Advocate for the Bihar School Examination Board, Patna. The



Government Advocate is also heard.

2. The grievance of the petitioner, in the present writ petition, is confined to the order contained in letter no. 691/2023 dated 20.10.2023 issued by respondent no.4 by which the petitioner has been debarred from working for examinations conducted by Bihar School Examination Board (hereinafter referred to as 'the Board') for three years. The petitioner has been further blacklisted for three years from any work with the Board.

3. The petitioner, a company incorporated under the provisions of the Companies Act, 1956 through its authorized representative, in response to the NIT issued by the Bihar State Electronic Development Corporation Ltd. (hereinafter referred to as 'the BELTRON') submitted its bid. The tender notice was issued for selection of agency for providing services related to "Computer Based Test" of Education Department of Government of Bihar. The petitioner having been the lowest bidder and successful in all respects, was awarded the contract. The Letter of Intent was issued to the petitioner by the BELTRON. Pursuant to the issuance of Letter of Intent, a service agreement was entered between the BELTRON and the petitioner on 30.08.2022. The copy of the agreement is



produced as Annexure-5 to the writ petition.

4. Learned Senior Advocate has taken this Court to the agreement and referring to the various prescriptions contended that the period of contract was two years and as per the agreement the BELTRON was to dispense fees and charges to the petitioner. The terms of the agreement, inter alia, also contained the detailed scope of work. It was also said that the terms, which were not specifically mentioned and otherwise shall be covered by the tender document, which forms part of the terms and conditions of the contract. After the commencement of the contract, various examinations were conducted by the petitioner. However, with respect to some of the examinations certain disturbances and delay had occurred in conducting the examination, not attributable to the petitioner. The instances have been elaborately mentioned in the writ petition. However, the same is not required to be dealt with here for the purposes of adjudicating the issue raised by the learned Senior Advocate, before us.

5. Due to the alleged negligence attributable to the petitioner in conducting certain examinations of the Board, different show-cause notices were issued by the Board to the petitioner seeking its explanation.



6. In response to the show-cause notices, the copies of which have been annexed in the writ petition, the writ petitioner submitted its response in defence. The response of the petitioner had been considered. However, the respondent Board has found the reply unsatisfactory. The negligent, erratic and irresponsible approach by the petitioner in conducting the computer based examination is said to be the basis for passing the impugned order dated 20.10.2023, the copy of which is produced as Annexure-1 to the writ petition.

7. By the aforementioned order, the petitioner had been debarred from working for examinations conducted by the Board as STET, D.El.Ed., Joint Entrance Exam, Simultala Residential School Entrance Examination and other such examinations for three years. The petitioner has further been put under Blacklist for three years relating to the work of the Board.

8. Learned Senior Advocate representing the petitioner has questioned the impugned order on the ground that the same is passed in a most mechanical manner without considering the explanation/reply of the writ petitioner by merely recording that the reply filed by the petitioner was not satisfactory. Learned Senior Advocate further contended that the contract was entered into by the petitioner and the respondent



BELTRON, but the impugned order has been passed by the Board, which has no authority to do so. The Board was not privy to the agreement and, as such, any order of debarment and blacklisting is wholly without jurisdiction. Moreover, a separate show-cause notice has caused to be served upon the petitioner by the respondent BELTRON. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of **Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Another; (2021) 1 SCC 804.**

9. It is further urged before this Court that the impugned order of blacklisting tantamounts to complete closure of the business of the petitioner, besides casting a stigma on the petitioner. In such circumstances, the process of law was scrupulously required to be followed. The debarment/blacklisting brings serious civil consequences, it should not be done casually, without authority; without following the proper procedure prescribed; without following the process of law and without proper application of mind. These are the submissions of the learned Senior Advocate for the petitioner.

10. Refuting the aforementioned contention, Mr. Satyabir Bharti, learned Advocate for the Board contended that admittedly the petitioner had entered into contract with



BELTRON for executing examination related work of the Board. However, the expenses for the work was being reimbursed by the Board and the petitioner was getting payment for the work from the Board through BELTRON. The Board was the affected party due to inefficiency and negligence of the petitioner in executing the work of the Board. The unsatisfactory service of the petitioner not only resulted in extreme level of inconvenience and embarrassment, but it also brought a bad name to the Board, which had compelled the Board to issue the impugned order.

11. Mr. Bharti further contended that the power to blacklist a contractor is inherent in any person legally capable of entering into contracts, subject to all constitutional limitations, which bind the State in its dealings with its subjects. The authority of the Board to enter into contracts consequently, has the concomitant power not to enter into a contract with a particular person. Moreover, for taking the impugned action of blacklisting: it is sufficient that the person/authority taking the impugned action should be adversely affected by the conduct of the other party, while executing the contract or at the time of finalization of the contract.

12. We have given anxious consideration to the



rival submissions advanced on behalf of the respective parties and also perused the materials available on record, especially the agreement. This Court, prima facie, finds that the NIT was issued by the BELTRON. Pursuant to the NIT issued by the BELTRON, the petitioner after having been declared successful bidder entered into an agreement with the BELTRON. Though the work of executing/conducting Computer Based Examination is in relation to the Board, admittedly the Board was not privy to the agreement. The Board has entrusted the contract of examination to BELTRON, who in turn entrusted it to the petitioner as the latter's agent. The service agreement, produced as Annexure-5 to the writ petition, specially Clause 7 thereof talks about termination. It clearly stipulates that either party may terminate this agreement in case the other party has committed breach of any of the terms and conditions of this agreement and/or terms and references of tender document.

13. From a bare reading thereof, it would be evident that the power to terminate the agreement rests with either of the party, who are privy to the agreement.

14. The power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever or render service, is in



our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality.

15. The aforementioned proposition has been settled by the Hon'ble Supreme Court in the case of **Kulja Industries Limited vs Chief General Manager Western Telecom Project Bharat Sanchar Nigam Limited & Ors.**, reported in (2014) 14 SCC 731.

16. We respectfully bow down to the observation of the Hon'ble Supreme Court that "the power to blacklist a contractor is inherent in the party allotting the contract. There is



no requirement for any such power being specifically conferred by statute or reserved by contractor.

17. Reliance placed by the learned Senior Advocate for the petitioner on a decision in **Vetindia Pharmaceuticals Limited** (supra) that it was incumbent on the part of the authority to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. In absence of the aforementioned ingredients contemplating what action is to be taken by the authority, it will certainly vitiate the impugned order on the face of it reflecting non-application of mind to the issue involved.

18. It is well settled that an order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death.

19. In view of the discussions made hereinabove and the admitted position that the Board was not privy to the agreement, the impugned order of debarment/blacklisting passed by the Board, in the opinion of this Court, is wholly



without jurisdiction and is fit to be set aside.

20. Accordingly, we set aside the impugned order, as contained in Annexure-1 to the writ petition.

21. It is made clear that quashing of the impugned order would not come in the way of the BELTRON to proceed in the matter in terms of the agreement. Already a show-cause notice has been served on the petitioner by BELTRON, for the defalcations complained of by the Board. Suffice it to observe that the BELTRON would hear both the petitioner and the Board before a final order is passed. We have not gone into the merits of the allegations on which the blacklisting/debarment has been recommended.

22. The writ petition stands allowed with the observations made hereinabove.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024
Transmission Date	NA

