

01.04.2024
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Sl. No. 14
Ct. No. 09

WPA 7579 of 2024

Revat Laboratories Private Limited & anr.
-Versus-
The State of West Bengal & Ors.

Mr. Shuvasish Sengupta
Mr. Abhrajit Roy Chowdhury
Mr. Souvik Ghosh

..... for the petitioners

Mr. Anirban Ray
Mr. Sk. Md. Galib
Mr. Tonoy Chakraborty
Mr. Rezaul Hossain

..... for the State

1. The petitioners challenge a decision of the respondent authorities to invoke bank guarantees furnished by the petitioners in pursuance of an agreement entered into between the petitioners and the respondents in terms of a tender floated by the latter.
2. Learned counsel for the petitioners submits that although by a Circular dated June 16, 2023, the petitioners had been blacklisted and penalty was imposed, threatening forfeiture of performance bank guarantees, subsequently the respondent authorities accepted the supply of the self-same medicines which were covered by the tender and the agreement from the petitioners and by virtue of such action, categorically waived the decision to

debar/blacklist the petitioners and to invoke the bank guarantees.

3. Learned counsel for the petitioners places particular reliance on the several challans annexed from the page-125 onwards of the writ petition to indicate that the dates of supply of all of those succeeded the issuance of the blacklisting Circular. Hence, by their specific action of accepting the medicines in question from the petitioners subsequently, the respondents waived the impugned action of blacklisting, imposition of penalty and invocation of bank guarantees.
4. Learned counsel appearing for the respondent authorities points out to the Court that in all the said challans produced before the Court, although the medicines were supplied subsequent to the blacklisting decision, the corresponding order dates preceded the order of blacklisting. Hence, no new purchase order was placed with the petitioners after the debarment and penal action to draw an inference that the debarment order was waived by the respondent authorities.
5. Insofar as the blacklisting order is concerned, the respondents argue that there were as many as four show-cause notices issued to the petitioners indicating the consequences of failure on the part

of the petitioners to rectify the petitioners' flaws in non-supply of the medicine. However, in each of the replies to the respective show-cause notices, the petitioners primarily took a common refrain of the increase in prices of raw materials and related issues as defence to the show-cause notices.

6. Learned counsel, by placing reliance on Clause 24(XIII), shows that enhancement of cost of raw materials will not be acceptable as a plea for not supplying the materials within the stipulated period as provided in the work order within the contemplation of the tender. Hence, it is argued the respondents were fully justified in invoking the penalty clause including blacklisting and invocation of the bank guarantees of the petitioners.
7. The question which primarily arises is whether the respondents could be said to have waived the decision to blacklist the petitioners and to invoke the penalty clause as stipulated in the tender.
8. The first thing which strikes the eye is the date of the challans relied on by the petitioners. The respondents have rightly argued that although the medicines in question were supplied subsequent to the blacklisting order, the connected order dates

corresponding to such supplies were of a period before the decision to blacklist.

9. Only one of the orders was of the same date as the issuance of the blacklisting order.
10. Thus, the vast majority of the medicines supplied by the petitioners were in pursuance of orders placed prior to the blacklisting decision. Only one isolated instance is found in which case the order was of the same date as the blacklisting order and not a subsequent purchase order placed by the respondent authorities.
11. It is well-settled that to constitute waiver, there has to be a conscious relinquishment of a known right by the person said to waive. In the present case, even issuance of a work order on the same date as the blacklisting order does not constitute the conscious decision on the part of the respondent authorities to waive the blacklisting order. In any event, the vast majority of the orders pertain to a period prior to the blacklisting.
12. More importantly, there is no scope within the four corners of the tender document or the agreement for the respondent authorities to waive an act of blacklisting, once taken.

13. In so far as the justification of the blacklisting and imposition of penalty is concerned, Clause 24 and its sub-Clauses of the agreement between the parties sufficiently justify the said action on the part of the respondents in view of the habitual defaults in supply of the life-saving medicines on the part of the petitioners.
14. Hence, in the absence of any waiver on the part of the respondents as held above, there is no reason as to why the decision to blacklist and to impose penalty and invoke the bank guarantees by the respondents need be faulted. I do not find any flaw in the decision-making process of the respondent authorities either, which was well within the confines of the tender document and the agreement between the parties. Hence, there is no scope of interference in the present writ petition.
15. Accordingly, WPA 7579 of 2024 is dismissed on contest without, however, any order as to costs.
16. The bunch of documents handed over in Court today be kept on record.
17. 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.)