

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 14533 of 2023

M/s Amit Mines Private Limited

Vs.

Steel Authority of India Limited and others

For the petitioner	:	Mr. Srijib Chakraborty, Mr. Rajdeep Majumdar, Mr. Moyukh Mukherjee, Mr. Aditya Mondal
For the respondents	:	Mr. Sarathi Dasgupta, Mr. Arijit Basu
Hearing concluded on	:	19.02.2024
Judgment on	:	23.02.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company is engaged in the business of excavation and transportation of steel as well as recovery of proceedings of mine scraps from slag dump sidings and segregation of fractional scrap from slag/debris. The petitioner came out successful in a tender issued by the respondent no. 3 on behalf of the respondent no. 1, that is, the Steel Authority of India Limited (SAIL) for the work of recovery of ferrous scrap and steel scrap for internal use and sale of processed ferrous scrap, etc. from slag dump sidings of the Bokaro Steel Plant in Jharkhand.
2. Subsequently, the petitioner did work as per the contract. The time for completing the work was extended from time to time by formal extension of the work order. After completion of the work, the

petitioner asked for Completion Certificate from the respondent-Authorities.

3. All on a sudden, on June 12, 2023, an Office Order was communicated to the petitioner intimating that the petitioner was found to have committed malpractices and was being considered for being banned of future business dealings by the Bokaro Steel Plant. Further, all future business dealings with the petitioner were suspended till December 11, 2023/further orders in this respect.
4. The present writ petition has been preferred challenging the said Suspension Order.
5. Learned counsel for the petitioner argues that the impugned order, although couched as a Suspension Order, was in effect an order of banning.
6. Banning, it is argued, is governed by Clause 7 of the Guidelines on Banning of Business Dealings, which is a part of the Integrity Pact between SAIL and the bidders which, in turn, is a part of the tender document. Clause 7.4 thereof provides for a prior Show-cause Notice before an action of banning is taken. In the present case, no such Notice was given to the petitioner, thereby vitiating the impugned order.
7. It is next argued that even if the Order is treated to be one of suspension, the same is governed by Clause 5 of the Agreement which contemplates that the allegations made against the concerned Agency, for the purpose of suspension, are to be under investigation for offence of a serious nature. Pendency of investigation is a *sine qua non* for

such suspension. In the present case, no such pendency was indicated in the impugned Suspension Order.

8. Even in the affidavit-in-opposition subsequently filed in connection with the writ petition, the respondents have indicated that an investigation/enquiry at the instance of the Central Vigilance Commission (CVC) was concluded prior to the advice for suspension being given. Thus, at the juncture when the Suspension Order was passed, there was no pending investigation, which violates Clause 5.1.
9. The gravity of the misconduct under investigation is to be very serious under Clause 5.4. Clause 6 and its sub-clauses provide the grounds for banning of business dealings which are also to be treated to be the yardsticks for suspension. However, none of the said grounds are met in the present case.
10. It is argued that no specific offence or allegation was disclosed in the suspension order, thereby depriving the opportunity to the petitioner to defend itself.
11. Learned counsel places reliance on *Eurasian Equipment & Chemicals Ltd. Vs. State of West Bengal and another*, reported at (1975) 1 SCC 70 in support of the proposition that blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of Blacklisting indicates that the relevant authority is to have an objective satisfaction. In the present case, such objective satisfaction is missing. It is further argued that the Supreme Court held in the said cited judgment that

the fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist, which was violated in the present case.

12. Learned counsel appearing for the respondents takes a two-fold objection as to maintainability of the writ petition. The first objection pertains to territorial jurisdiction of this Court to entertain the writ petition. It is pointed out that the respondents are primarily located in the State of Jharkhand. The impugned decision of suspension was also taken in Jharkhand for work done in the State of Jharkhand. Hence, only on the frivolous pretext that the communication of the suspension order was received by the petitioner in Kolkata, the jurisdiction of this Court cannot be invoked. It is argued that if such flimsy pretext was taken to be sufficient to invoke jurisdiction, the concept of territorial jurisdiction would lose meaning.
13. The other ground of non-maintainability is that the disputes raised arise out of a non-statutory contract. Such contractual relations, even if with the State, fall within the realm of private law. As such, the writ jurisdiction of this Court cannot be invoked.
14. In support of the objection as to territorial jurisdiction, learned counsel for the respondents cites *Nawal Kishore Sharma Vs. Union of India and others*, reported at (2014) 9 SCC 329, where it was held that the question of territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. The petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the

territorial limit of the Court's jurisdiction. Facts which have no bearing with the *lis* or the disputes involved in the case do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

15. On the issue of non-statutory contract, learned counsel for the respondents cites *M.P. Power Management Company Limited, Jabalpur Vs. Sky Power Southeast Solar India Private Limited and others*, reported at (2023) 2 SCC 703. In contractual matters not arising out of a statute, where no public law element is involved, the writ court will generally not interfere.
16. Next placing reliance on *Unitech Limited and Others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others*, reported at 2021 SCC OnLine SC 99, it is pointed out that the writ jurisdiction of a court is not normally exercised to the exclusion of other available remedies unless State action violates Article 14 or for other valid and legitimate reasons.
17. Learned counsel places reliance on the averments made in the affidavit-in-opposition of the respondents and argues that serious allegations came up against the petitioner for which the matter was investigated by the CVC with regard to the work of recovery of processing ferrous scrap and steel scrap and other works contained in the work order. Following the said enquiry, a report was submitted for 'First Stage Advice' of the CVC, which was also sent to the Chairman of SAIL for obtaining his views. The CVC *vide* Office Memo No. 022/STL/016/53358 dated December 16, 2022 issued their First

Stage Advice wherein they had *inter alia* advised to initiate proceedings against two General Managers of BSP-SAIL and also against the petitioner in accordance with law. The proposals, according to the respondents, were placed before the Director of SAIL for approval. Such approval was granted considering the alleged severity of the irregularities, leading to the decision to suspend the petitioner for a fair and transparent investigation.

- 18.** Learned counsel for the respondents alleges numerous other serious violations of the terms and conditions outlined in the NIT and indicates that the petitioner did not attain the quantity assigned to it as per the work order in comparison to the work executed during the contract period. The overall shortfall, it is alleged, is approximately Rs. 208.26 Cr.
- 19.** Thus, it is submitted that the respondents were fully justified in passing the Suspension Order and Courts of Law generally do not interfere with such decisions of the authorities.
- 20.** Dealing with the issue of maintainability first, it is to be noted that the averments made in a writ petition are to be considered for ascertaining territorial jurisdiction.
- 21.** It has been pleaded by the petitioner that the cause of action partially arose within the territorial jurisdiction of this Court since the address of the petitioner is in Kolkata. Moreover, the petitioner received the impugned order of banning/suspension at its office in Durgapur, which is in West Bengal. That apart, it has been pleaded that the

petitioner has suffered and continues to suffer the consequences of suspension from such offices of the petitioner.

- 22.** Thus, we find from the averments in the writ petition and the arguments of learned counsel for the petitioner that the writ petitioner received the order of suspension within West Bengal.
- 23.** Although the order of suspension was passed in Jharkhand, the same took effect the moment it was communicated to the petitioner. Hence, the suspension was not an isolated act taken at Jharkhand but culminated in the petitioner being informed of the same in West Bengal.
- 24.** More importantly, the effect of the Suspension Order is that the petitioner shall be restrained from participating in contracts for other Government Agencies and Instrumentalities within the State of West Bengal as well. It is common knowledge that every tender floated by the Government or its instrumentalities and other major concerns mandatorily contains a clause seeking disclosure of whether the bidders were banned/suspended/debarred in any previous work. Hence, although the Suspension Order was passed in Jharkhand, the effect of the same spreads all over India, including in West Bengal. In particular, since the petitioner's registered office is located in Kolkata, the participation of the petitioner in other Government tenders in and around Kolkata and within West Bengal is also directly affected by the Suspension Order.
- 25.** The cause of action comprises of a bundle of facts. The primary cause for the present writ petition lies in the effect of Suspension Order,

which tantamounts to debarring the petitioner from participating in other tenders floated by other authorities, also in the State of West Bengal. Seen from such perspective, at least a part of the cause of action falls within the territorial jurisdiction of this Court.

- 26.** In *Nawal Kishore Sharma (supra)*, the jurisdiction of the High Court under Article 226(2) of the Constitution of India was being considered. The Supreme Court held in paragraph no. 16 thereof that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.
- 27.** Since the petitioner alleges infringement of the right of the petitioner to participate in similar tenders all over India including West Bengal, which right flows from Article 19 of the Constitution of India, it can very well be said that a part of the legal and constitutional right of the petitioner and its Directors and other functionaries as well as its employees is infringed within the jurisdiction of this Court. Hence, the objection as to territorial jurisdiction is ruled out and it is held that this Court has territorial jurisdiction to entertain the writ petition.
- 28.** Insofar as challenge to non-statutory contract is concerned, even *M.P. Power Management Company Limited (supra)* does not disown the

principle that State action has to be on a higher standard of fairness and reasonableness than an ordinary operator.

- 29.** The reach of Article 14, it was observed in paragraph no. 82.10 of the said judgment, enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same would be guided by the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State. Thus, merely because a contractual relationship between the parties is involved, a challenge to the action of the State or its instrumentalities on the ground of arbitrariness, unreasonableness and palpable illegality or violation of natural justice cannot be shut out.
- 30.** Seen in such context, the nature of the present challenge demands that the writ court entertains the writ petition to assess whether there has been any palpable arbitrariness or caprice and/or unreasonableness on the part of the respondents. Hence, the objection as to maintainability of the writ petition on such count is discounted as well.
- 31.** In *Unitech Limited (supra)*, the Supreme Court observed that presence of an arbitrary clause within a contract between a State instrumentality and a private party does not operate as an absolute bar to availing remedies under Article 226. If the State

instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie.

- 32.** Such principle has been reiterated time and again by the Supreme Court and as such, there is no bar to this Court entertaining the present writ petition.
- 33.** The next question which crops up is whether the action of the respondents is tainted due to infraction of any clause of the Guidelines of the SAIL on Banning of Business Dealings and/or for violation of natural justice.
- 34.** The facts of the present case show that the Suspension Order, which is impugned herein, came as a bolt from the blue, without disclosing any specific allegation against the petitioner, apart from mentioning vaguely that the petitioner had committed “malpractices”. The argument of the petitioner that the order tantamounts to a ban under Clause 7 of the Guidelines cannot be accepted, since the suspension was for a period of six months and is covered by Clause 5 of the Guidelines.
- 35.** Even proceeding on such premise, certain aspects of the matter are to be looked into. Clause 5.1 stipulates certain tests as pre-conditions for a suspension order being passed. First, there has to be a pending investigation on allegations of a serious nature. Secondly, there has to be a recommendation of the investigating department which can be the Vigilance Officer. Thirdly, the order of suspension may indicate a brief of the charges under investigation. As regards the second

component, it transpires from the affidavit-in-opposition that the same has been satisfied in the instant case as there was a recommendation of the CVC according to the respondents.

- 36.** However, as rightly pointed out by the petitioner, there is no indication of any “pending” investigation at the juncture when the Suspension Order was passed. For such purpose, we are to look into Paragraph No. 4(h) of the affidavit-in-opposition filed by the respondents.
- 37.** The said paragraph speaks about an investigation being conducted by the CVC. Following such “investigation”, which expression has been interchangeably used with the term “enquiry”, a report was submitted for First Stage Advice of the CVC which was then sent to the Chairman of the SAIL, who approved further implementation of the same. As per the averments in the opposition, such approval by the Director of SAIL led to the decision to suspend the petitioner for a fair and transparent investigation. However, not a single line has been spent in the opposition to disclose whether there was any initiation of investigation thereafter.
- 38.** The enquiry/investigation by the CVC ended much prior to the Suspension Order. In fact, only upon the end of the enquiry, the CVC made a recommendation which was approved by the Director of SAIL, leading to the suspension. There is nothing in the opposition to show that there was any subsequent investigation which was pending at the point of time when the Suspension Order was passed. Thus, the very

first pre-requisite of a suspension order, that is, the pendency of an investigation, is absent in the present case.

- 39.** The third component indicated above is that the suspension order may indicate a brief of the charges under investigation. Since there was no question of any pending investigation, there could not have been any “charges under investigation”. That apart, since the serious right of a person to conduct business, guaranteed under Article 19 of the Constitution of India, is being infringed by the suspension, the term “may” in Clause 5.1 has to be read as “shall”. Hence, the suspension order must mandatorily indicate a brief of the charges against the petitioner, which is absent in the present case.
- 40.** Looking from another perspective, the scheme of the Guidelines indicates that suspension under Clause 5 is a precursor of banning under Clause 7. In fact, Clause 4 speaks about initiation of banning/suspension by a single course of action. Thus, the gravity of the offences justifying suspension has to be commensurate with those of banning, as the process of suspension leads to ultimate banning. Hence, the grounds of banning have to be looked into to ascertain whether sufficient case has been made out for suspension.
- 41.** Thus, it was all the more necessary to indicate specifically in the suspension order a brief of the charges under investigation, which would enable the petitioner to meet the allegations against him.
- 42.** As discussed above, since suspension under the Guidelines is the initiation of a banning process, ultimately leading to the latter, the grounds of banning as stipulated in Clause 6 are required to be

fulfilled even for initiating a suspension procedure. Clause 6 of the Guidelines is set forth hereunder:

“6. Ground on which Banning of Business Dealings can be initiated

- 6.1 *If the security consideration, including questions of loyalty of the agency to the State, so warrants;*
- 6.2 *If the Director/Owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises or SAIL, during the last five years;*
- 6.3 *If there is strong justification for believing that the Directors, Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc;*
- 6.4 *If the Agency continuously refuses to return/refund the dues of SAIL without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law;*
- 6.5 *If the Agency employs a public servant dismissed/removed or employs a person convicted for an offence involving corruption or abetment of such offence;*
- 6.6 *If business dealings with the Agency have been banned by the Govt. or any other public sector enterprise;*
- 6.7 *If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts **and/or fudging/forging/tampering of documents;***
- 6.8 *If the Agency uses intimidation/threatening or brings undue outside pressure on the Company (SAIL) or its official in acceptance/performances of the job under the contract;*
- 6.9 *If the Agency indulges in repeated and/or deliberate use of delay tactics in complying with contractual stipulations;*
- 6.10 *Willful indulgency by the Agency in supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by Company (SAIL) or not;*
- 6.11 *Based on the findings of the investigation report of CBI/Police against the Agency for malafide/unlawful acts or improper conduct on his part in matters relating to the Company (SAIL) or even otherwise;*
- 6.12 *Established litigant nature of the Agency to derive undue benefit;*

6.13 *Continued poor performance of the Agency in several contracts;*

6.14 *If the Agency misuses the premises or facilities of the Company (SAIL), forcefully occupies, tampers or damages the Company's properties including land, water resources, forests/trees, etc. (Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason)."*

- 43.** Only three grounds stipulated above come even close to the present case. Since, in the affidavit-in-opposition, it has been alleged that the petitioner was guilty of not fulfilling the entire work, clause 6.9 can be looked into. The said clause provides that the agency must indulge in repeated and/or deliberate use of delay tactics in complying with contractual stipulations. However, delay is not a factor which can be urged by the respondents in the present case. The petitioner was granted extension on certain occasions by the respondents themselves. Upon such grant of extension in an unqualified manner, the respondents are estopped from alleging delay against the petitioner *post facto*. In fact, after grant of such extensions, the petitioner completed the work and only when the petitioner insisted on issuance of completion certificate, the suspension order was served all on a sudden. Hence, Clause 6.9 is not attracted in the present case.
- 44.** Continued poor performance is another factor which has been enumerated in Clause 6.13. However, as per the said Clause, the continued poor performance of the agency has to be in "several" contracts. Isolated allegations of poor performance in a single contract cannot be sufficient ground for banning.

- 45.** Clause 6.3 contemplates malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation, etc. It is to be noted that the expression used in the impugned suspension order dated June 12, 2023 is “malpractices”.
- 46.** However, Clause 6.3 is placed on a very high pedestal. Bribery, corruption, fraud, substitution of tenders, interpolations are palpable crimes which are also punishable under the criminal laws of the country. Mere under-performance, by any stretch of imagination, cannot be equated with such acts.
- 47.** In the affidavit-in-opposition, the most serious allegation levelled against the petitioner is perceived irregularities with regard to the work of recovery and processing and numerous other serious violations, which have not been specifically enumerated. The petitioner, it has been alleged, did not attain the quantity assigned to it as per work order in comparison to the work executed during the contract period. A shortfall has also been alleged and attributed to the petitioner. None of those allegations, even if those were to be true, can tantamount to a malpractice as envisaged in Clause 6.3. Hence, the very premise of the suspension order is suspect.
- 48.** Clause 5.7, it is argued, makes it optional to give a Show-Cause Notice or personal hearing to the agency. Even if the said argument is to be accepted, although *prima facie* violative of the principles of natural justice, Clause 5.6 indicates that the agency concerned are to be informed that its conduct is under investigation. The said Clause, coupled with Clause 5.1 which mandates that a pending investigation

must be there for a suspension order to be passed and that the brief of charges under investigation are to be indicated in the suspension order, are found entirely absent in the present case, which patently vitiates the suspension order.

49. The Guidelines, in Clause 1.2, provide that since banning of business dealings involves civil consequences for an agency, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case. Clause 1.1 stipulates that it is not in the interest of SAIL to deal with agencies to commit deception, fraud or other misconduct in the execution of contracts awarded/orders issued to them.
50. Seen in the light of the entire scheme of the Guidelines, it is seen that no allegation has been levelled against the petitioner, even as an afterthought in the affidavit-in-opposition, serious enough to justify an order of suspension of the petitioner under Clause 5 of the Guidelines. The principle enumerated in *Eurasian Equipment (supra)* regarding objective satisfaction is apt in the present case. Although the impugned action is not that of blacklisting the petitioner, the suspension order, without disclosing any particulars of alleged offences of the petitioner, reeks of *mala fides*, without being backed by any objective satisfaction.
51. *Mala fides* can also be attributed to the respondents since the timing of the suspension order is crucial. All along, the respondents have been granting extensions to the petitioner without raising the issue of

delay. Only after the petitioner completed its work and insisted upon issuance of a completion certificate for the work done did the respondents issue the suspension order all on a sudden. Hence, the possibility of the suspension being a backlash due to the petitioner's insistence on the completion certificate cannot be ruled out entirely.

52. The attending circumstances show that the impugned order of suspension was arbitrary, unreasonable and patently capricious, which vitiates the same. The principles of fairness and equity have been thrown to the wind by the respondents in passing the impugned order of suspension.
53. In such view of the matter, the said order of suspension cannot be sustained.
54. Accordingly, WPA No. 14533 of 2023 is allowed on contest, thereby setting aside the impugned order of suspension dated June 12, 2023 passed by the respondents against the petitioner (Annexure P-8 at page 188 of the writ petition). All consequential actions, if any, taken pursuant to the said order stand hereby reversed as well. However, nothing in this order shall prevent the respondents from proceeding with any investigation against the petitioner and take consequential steps independently in accordance with the Guidelines.
55. There will be no order as to costs.
56. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)