

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA NO. 19280 of 2023

**LEARNING SPIRAL PRIVATE LIMITED
VS.
JHARKHAND COMBINED ENTRANCE COMPETITIVE
EXAMINATION BOARD & ORS.**

For the petitioner	:	Mr. Prem Prakash, Mr. Sailendra Jain, Mr. Farhan Ghaffar
For the respondents	:	Ms. Amrita Pandey, Mr. Surendra Kumar
Hearing concluded on	:	13.03.2024
Judgment on	:	19.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner has challenged an order of blacklisting issued by the respondent-Authorities. Learned counsel for the petitioner argues that throughout the entire period during which the petitioner did the concerned work for the respondents, the contract of the petitioner was never terminated by the respondent-Authorities. During the pendency of the writ petition, a substantial portion of the dues of the petitioner has also been cleared. Hence, there was no occasion for the respondent-Authorities to issue the impugned order of blacklisting.
2. It is next argued that Clause 10 of the agreement between the parties contemplates larger penalty than damages to be imposed only in cases where the delay occasioned for performing the work is more than five

weeks. The delay occasioned by the petitioner being much less, the larger penalty of blacklisting could not have been imposed.

3. Clause 18 of the agreement (Memorandum of Understanding) clearly stipulates that the present agreement sets forth the entire understanding and agreement of the parties as to the subject matter of the agreement and supersedes all oral and written agreement or understanding between the parties regarding the subject matter. The present contract does not contain any clause of blacklisting, as opposed to the other previous agreements. Thus, by specific exclusion, the provision of blacklisting has been removed. Accordingly, the order of blacklisting is also challenged on such ground.
4. Learned counsel next contends that the elaborate reply given by the petitioner to the Show-Cause Notice, citing reasons for the delay, which were not attributable to the petitioner, was overlooked by the respondents and not adverted to in the order of blacklisting. Thus, the said order is vitiated on such ground as well.
5. It is argued that the blacklisting decision was taken only when the petitioner asked for its dues, much after the petitioner completed the work under the contract. Hence, an element of arbitrariness and malice cannot be ruled out as well.
6. Lastly, it is contended that the penalty of blacklisting is grossly disproportionate with the allegation of minor delay on the part of the petitioner.

7. Learned counsel for the petitioner cites the judgment of the Supreme Court in *Uttar Pradesh Power Transmission Corporation Ltd. and Anr. Vs. CG Power and Industrial Solutions Limited and Anr.*, reported at (2021) 6 SCC 15, where it was held that alternative remedy is not an absolute bar to the writ jurisdiction, which can be invoked for enforcement of a fundamental right or failure of principle of natural justice, etc.
8. Learned counsel appearing for the petitioner next cites another judgment of the Supreme Court in the matter of *Unitech Limited & Ors. Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors.*, reported at LL 2021 SC 92, where the Supreme Court observed that even if the dispute is contractual and there is an arbitration clause, it can be subject to the writ jurisdiction when there is arbitrary exercise of power or misuse of authority on the part of State instrumentalities.
9. Learned counsel also cites *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, reported at AIR 1978 SC 851 and a judgment of a Learned Single Judge of the Andhra Pradesh High Court in *Sambasiva Milk Transport Vs. State of Andhra Pradesh*, reported at AIR 2022 AP 110 in support of the proposition that reasons for an order cannot be subsequently furnished by way of affidavit or otherwise to justify an order which did not contain such reasons.
10. Learned counsel next relies on *Blue Dreamz Advertising Pvt. Ltd. & Anr. Vs. The Kolkata Municipal Corporation & Ors.*, in W.P. No. 6616 (W) of 2016, an unreported judgment of a Co-ordinate Bench of this

Court, where it was held that blacklisting is a civil consequence and rules of natural justice have to be scrupulously followed, giving proper reasons which suggest that public interest would be affected if the writ petitioner was continued to be awarded contracts or that the writ petitioner was a dishonest business organization lacking in business integrity. If a dispute is raised, blacklisting ought not to be made until and unless the dispute is resolved. In the present case, the petitioner had claimed its dues, thereby raising a dispute.

11. Learned counsel next cites the judgment of a Learned Single Judge of the Delhi High Court in *Birla Gtm-Enterpose Ltd. and ors. Vs. Union of India & Anr.*, in *W.P. (C) 11247/2009*, where it was held that a blacklisting order severely affects the reputation of a party and by its very nature is prejudicial to such party. Hence, sufficient explanation has to be given. The delay in initiating such proceedings, it was held, will certainly be a factor in determining its reasonableness.
12. Learned counsel next cites another Single Judge decision of the Delhi High Court in *Hariom Project Private Limited Vs. Military Engineer Services, Director*, reported at *AIRONLINE 2020 DEL 1159*, where the court observed that every breach of contract cannot justify an order of banning the contractor from future contracts. It is to be considered whether such breach was contemptuous or in utter disregard to the contractual responsibility of the contractor. The past conduct of the contractor is also to be considered while taking such decision as it amounts to the “civil death” of the contractor.

13. Lastly, learned counsel cites a judgment of the Supreme Court in *Lt. Governor, Delhi and others Vs. HC Narinder Singh*, reported (2004) 13 SCC 342, where it was held that a second proposed penalty based on the same cause of action would amount to double jeopardy which should be annulled.
14. In reply, learned counsel appearing for the respondents contends that the writ petition ought not to be entertained in respect of a contractual dispute between the parties. Furthermore, there was a clause restricting the jurisdiction to courts in Ranchi. Also, there was due compliance of natural justice since the respondents gave a Show-Cause Notice and considered the reply of the petitioner before blacklisting it.
15. It is argued that the blacklisting was effected due to serious allegations against the petitioner affecting the lives of young people who were the examinees in the concerned examinations which were being conducted through the petitioner.
16. It is also argued that the reply of the petitioner was dealt with duly and it was disclosed in the blacklisting order that the petitioner was supposed to know the number of vacancies. The excuse of the petitioner, that it committed delay due to the respective colleges not uploading the relevant information in time and deficiencies in applications, is not justifiable and were rightly repudiated.
17. Thus, the respondents seek dismissal of the writ petition.
18. Heard learned counsel.

- 19.** It is to be noted that in the present case, the respondents have paid the petitioner's dues and, more importantly, did not raise any allegation against the petitioner and/or terminate the contract throughout the tenure of the work done by the petitioner. Only subsequently, upon the petitioner asking for payments and long after completion of the work, the respondent-Authorities have blacklisted the petitioner.
- 20.** Thus, the element of malice and arbitrariness cannot be ruled out.
- 21.** Secondly, Clause 10 of the contract stipulates that a larger penalty than damages can be imposed only upon the delay in completing the work being more than five weeks. However, in the petitioner's case, the delay was much less and, accordingly, there arose no occasion to impose a higher penalty than damages. It is obvious that blacklisting is a much higher penalty than damages, since it has civil consequences and tarnishes the goodwill of the petitioner as well as prevents the petitioner from participating in future contracts, directly affecting the business of the petitioner.
- 22.** In the impugned order of blacklisting, the reasons furnished by the petitioner for the delay occasioned are not dealt with clearly. It is to be considered that although the respondents sought to attribute knowledge of the vacancies to the petitioner, the petitioner's specific explanation that the delay was occasioned due to delayed uploading of relevant documents by the respective colleges and the application forms in certain cases lacking in details and connected documents, was not dealt with at all. Moreover, the delay ought to be assessed in

the backdrop of the Covid-19 Pandemic which was going on at the relevant point of time and lends substantial credibility to the cause shown by the petitioner.

- 23.** The payments sought by the petitioner were made only subsequently, during pendency of the writ. Such payment, therefore, does not absolve the respondents' malicious act in blacklisting the petitioner only upon such payment being asked for by the petitioner, despite there being no previous allegation of laches on the part of the petitioner or termination of the petitioner's contract.
- 24.** It is relevant to note that Clause 18 of the current contract between the parties clearly stipulates that the said agreement is the sole and complete contract between the parties. The blacklisting clause which was present in the previous agreement is conspicuously absent in the current one. Thus, by specific exclusion, the said penalty was removed.
- 25.** However, the absence of any blacklisting clause in the agreement may not itself be sufficient defence, since in case of sufficiently high grounds being made out that the petitioner acted in contravention of public interest or lacked business integrity, the respondents might have blacklisted the petitioner. In such context, the ratio of *Blue Dreamz Advertising Pvt. Ltd. (supra)* is relevant. Moreover, the delay in initiating proceeding also affects the reasonableness, as held in *Birla Gtm-Enterpose Ltd. (supra)*.
- 26.** In *Hariom Project Private Limited (supra)*, the Delhi High Court was also justified in reiterating that every breach cannot lead to

blacklisting and it is to be considered whether the breach was contemptuous or in utter disregard of the contractual responsibility of the concerned entity. Past conduct was also highlighted in the said judgment, which is a relevant factor in the present case as well. Subsequent grounds sought to be portrayed by the respondents cannot be taken into consideration to justify the order of blacklisting which was passed prior to the filing of the writ petition and furnishes the cause of action of the writ petition. In such context, *Mohinder Singh Gill (supra)* and *Sambasiva Milk Transport (supra)* are also apt and the proposition therein attracted.

- 27.** In *Unitech Limited (supra)*, the Supreme Court observed that even contractual disputes, when arbitration clause was there in the agreement, can be subject to challenge in the writ jurisdiction. The tests of arbitrariness and misuse of authority as laid down therein are fully applicable in the present case in the facts and circumstances of the instant matter.
- 28.** In *Uttar Pradesh Power Transmission Corporation Ltd. (supra)*, cited by the petitioner, alternative remedy was held not to be an absolute bar. The petitioner, in the present case, cites unreasonableness as a violation of Article 14 of the Constitution of India, thus, bringing the matter within the fold of exercise of power under Article 226 of the Constitution of the Constitution of India.
- 29.** Since the reply of the petitioner was not considered objectively, there was a failure of natural justice principles which also brings to the fore

the arbitrariness of the respondents' action in blacklisting the petitioner.

- 30.** Above all, the penalty of blacklisting imposed on the petitioner was grossly disproportionate to the minor delay occasioned by the petitioner in its work, that too during the Pandemic times when life had come to stand-still. In the absence of any major fault on the part of the petitioner, the extreme penalty of blacklisting the petitioner was not only disproportionate but patently unreasonable.
- 31.** The respondents have sought to set up a case that the delay on the part of the petitioner affected lives of examinees. However, the affectation of the lives of examinees could not be attributed to the petitioner sufficiently to hand out an order of blacklisting to the petitioner.
- 32.** In the above circumstances, the impugned decision of the respondents to blacklist the petitioner cannot withstand the scrutiny of judicial review.
- 33.** Accordingly, WPA No. 19280 of 2023 is allowed on contest, thereby setting aside the order of blacklisting the petitioner dated June 24, 2024.
- 34.** There will be no order as to costs.
- 35.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)