

AD-29
Ct No.09
16.01.2024
TN

WPA No. 28929 of 2023

Idris Ali Halder
Vs.
West Bengal State Rural Development Agency
and others

Mr. Debasish Ghosh,
Ms. Antara Biswas

.... for the petitioner

Ms. Sulagna Bhattacharya,
Mr. Ranjit Rajak

.... for the State

- 1.** The circumstances of the present challenge are a bit peculiar.
- 2.** The petitioner had challenged a decision of the respondent-authorities blacklisting the petitioner and other contractors vide order dated May 06, 2022.
- 3.** During pendency of the said writ petition challenging the blacklisting, it came about that the State, by a Notification dated April 05, 2023, had withdrawn the order of debarment with effect from November 06, 2022.
- 4.** In such context, the writ petition was disposed of by a coordinate Bench granting liberty to the petitioner to challenge the Notification dated April 05, 2023 insofar as it reiterated that the

petitioner had been blacklisted before withdrawing the said blacklisting and also the debarment order dated May 06, 2022 if the petitioner was so advised.

- 5.** It is argued that the stigma remains with the petitioner in view of the debarment although the challenge previously made was rendered infructuous. Without any prior show-cause notice, the blacklisting impugned herein is prayed to be set aside.
- 6.** Learned counsel for the respondent-authorities places reliance on the communication dated March 16, 2021 where the Executive Engineer, WBSRDA, Purba Medinipur Division had categorically given the specific reasons why the petitioner and other contractors were debarred. It is, thus, submitted that the debarment order was reasoned.
- 7.** Moreover, it is pointed out that in the previous writ petition, the same order of debarment/blacklisting had been challenged and, as such, the present writ petition is not maintainable on such count.
- 8.** A careful perusal of the order of the coordinate Bench dated April 18, 2023 passed in WPA No. 13113 of 2022 indicates that although the

blacklisting order dated May 06, 2022 was challenged therein, the learned Single Judge observed, in the context of the subsequent withdrawal of the same, that the said writ petition had become infructuous. More importantly, leave was granted to the petitioner to challenge the blacklisting order dated May 06, 2022 afresh along with the Notification dated April 05, 2023 which withdrew the debarment *inter alia* reiterating that the petitioner had been blacklisted in the first place.

9. The leave granted by the coordinate Bench can be interpreted in the following manner:

Since technically the challenge to the blacklisting had become infructuous in view of its withdrawal, the writ petition was disposed of, but leave was granted by the coordinate Bench to challenge the same in view of the stigma associated therewith. Insofar as the Notification dated April 05, 2023 was concerned, although the same had the effect of withdrawing the blacklisting against the petitioner and superficially the petitioner did not have any cause of action to challenge such withdrawal since it enured to the benefit of the petitioner, implicitly, the withdrawal of the blacklisting reiterated that there had been a

blacklisting in the first place, which was being withdrawn by the said Notification. Citation of the blacklisting as the cause of action for the withdrawal itself cast a stigma on the petitioner. Moreover, the initial blacklisting dated May 06, 2022 remains against the petitioner, casting a shadow on future work which might be awarded to the petitioner insofar as several tenders generally contain clauses where the bidder has to give a declaration that there was no previous blacklisting, on which count the petitioner would suffer a stigma, be ineligible to participate in such future tenders and consequentially suffer huge professional loss.

- 10.** In such wider context, the present challenge is entertained.
- 11.** The reliance of the respondent-authorities on the communication dated March 16, 2021 is misplaced insofar as the same merely gave general reasons for the blacklisting but could not substitute a proper show-cause notice.
- 12.** It is well-settled and has now become cliché that any order of debarment or blacklisting having a severe penal impact on the accused person has to be preceded mandatorily by a proper show-cause notice where not only is the specific offence

allegedly committed by the accused to be disclosed but also the specific sanction or measure to be taken against the accused in the event proper cause was not shown also has to be enumerated. There being no such show-cause notice at all in the petitioner's case, the impugned blacklisting of the petitioner dated May 06, 2022 annexed at page-34 of the writ petition was palpably bad and *de hors* the principles of natural justice.

- 13.** Hence, WPA No. 28929 of 2023 is allowed on contest, thereby setting aside the blacklisting of the petitioner vide the order dated May 06, 2022 only insofar as the present petitioner is concerned. It is also made clear that the Notification dated April 05, 2023 whereby the said blacklisting was withdrawn shall be deemed to stand rectified to the limited extent insofar as the same refers to the petitioner having been blacklisted in the first place.
- 14.** In view of the blacklisting of the petitioner itself having been set aside by this order, the withdrawal of such debarment/blacklisting thus becomes redundant.
- 15.** It is made clear that any stigma, if attached to the petitioner's professional activities till date by

virtue of the impugned blacklisting, hereby stands obliterated. The petitioner shall be able to participate in future tenders floated by any authority on the premise that the petitioner was never blacklisted by the impugned order dated May 06, 2022, of course, subject to being otherwise eligible to do so.

16. There will be no order as to costs.

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.)