

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

M.A.T. 33 of 2024
(CAN 1 of 2024)

M/s. Roxy Enterprises
-Vs-
The State of West Bengal & Ors.

For the Appellant : Mr. Kunaljit Bhattacharjee, Adv.
Mr. Sourav Ganguly, Adv.
Mr. Alok Sah, Adv.
Ms. Rishita Chakraborty, Adv.

For the Respondent
Nos. 3 to 6 : Mr. Bikramaditya Ghosh, Adv.
Ms. Supriya Singh, Adv.

For the State : Mr. Hirak Barman, Adv.
Mr. Momenur Rahman, Adv.

Heard on : 16.05.2024 & 21.05.2024

Judgment on : 21.05.2024

Joymalya Bagchi, J. :-

1. Leave is granted to the learned Advocate-on-record for the appellant to correct the cause title in course of the day.

2. A brief factual sketch leading to the appeal is as follows :-

In response to a notice inviting pre-qualification-cum-tender (two cover system) published by the Alipurduar Zilla Parishad, the appellant submitted its bid for repair of road from Salkumarhat near Dijarajghat to Bhandani temple via Bangdaki Forest under Salkumar-II GP of Alipurduar-I PS within Alipurduar Zilla Parishad. The work was to be completed within 120 days. The terms and conditions mentioned in the notice, inter alia, provided if the work was not completed by the contractor within the stipulated time frame, necessary penal measure in the tune of deduction of an amount as decided by the Artha Sanstha Unnayan-o-Parikalpana Sthayee Samity of Alipurduar Zilla Parishad will be imposed. Running payments shall be made as per norms and availability of funds.

3. By Memo dated 03.03.2020, Executive Engineer (P & RD), Alipurduar Zilla Parishad issued work order in favour of the appellant. He was requested to take up the work within seven days from the date of issuance of the letter and complete the same in all respect within the stipulated period. Due to pandemic conditions appellant was unable to commence work immediately. In spite of repeated requests by the Assistant Engineer, he did not resume work and the work was not completed within the stipulated time frame.

4. Under such circumstances, by the impugned Memo dated 05.05.2022 appellant was directed to respond why the contract shall not be terminated as per provisions of Artha Sanstha Unnayan-o-Parikalpana Sthayee Samity of Alipurduar Zilla Parishad.
5. By communication dated 03.01.2023 the Executive Engineer intimated the appellant as he had failed to complete the work as per agreement and in view of the public interest involved, his contract was terminated along with penalty of forfeiture of security deposit etc. and he was debarred from participating in any type of work in the government sector.
6. Challenging the aforesaid communication, appellant moved this court.
7. Learned Single Judge, inter alia, opined the legality of termination and forfeiture of security involved disputed questions of fact and relegated the appellant to seek remedy before a competent forum, if permissible in law. Being aggrieved by this order appellant is before us.
8. Learned Advocate for the appellant contends the learned Judge failed to consider the fact that the contract had not only been terminated but the appellant had also been debarred from participating in any other government work. This amounts to

blacklisting. No notice was served upon the appellant with regard to blacklisting as required under law.

9. Learned Advocate for the respondent nos.3 to 6 contends appellant had violated the terms of contract. Accordingly, his contract was terminated. All issues including debarment may be agitated before the appropriate forum in accordance with law.
10. It is alleged appellant had failed to act diligently and complete work within the stipulated time frame. Appellant contends the delay was due to pandemic conditions prevailing in 2020-21 and non-release of running dues in time. On the other hand, respondent nos.3 to 6 contends in spite of repeated notices, appellant did not resume work after the pandemic and in view of public interest involved, his contract was terminated and security forfeited.
11. The rival stances give rise to disputed questions of fact and the parties were rightly relegated to the competent forum. However, the issue of debarment of the appellant appears to be in violation of principles of natural justice. None of the show cause notices including the impugned notice dated 05.05.2022 calls upon the appellant to show cause why he shall not be debarred from government work. Without issuing a notice to show cause why the appellant should not be blacklisted, he could not have been debarred from further government work.

12. Termination of a contract *per se* does not attract blacklisting. Blacklisting is independent of termination and the appellant ought to have been notified with regard to the intention of the respondents to impose such penalty which is akin to ‘civil death’. Admittedly, the respondent nos. 3 to 6 did not issue notice upon the appellant to show cause why he shall not be debarred from government work/blacklisting. This violates the principles of natural justice and renders the decision void.
13. In this regard it may be apposite to refer to the observations of the Apex Court in *Gorkha Security Services vs. Government (NCT of Delhi) & Ors.*¹.

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as ‘civil death’ of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

14. Accordingly, I hold the impugned letter dated 03.01.2023 to the extent it recommends the appellant shall be debarred from government work is in violation of the principles of natural justice and is liable to be set aside.

¹ (2014) 9 SCC 105

15. Accordingly, I set aside the decision taken by the respondent nos. 3 to 6 to debar the appellant from any government work.
16. This order shall not stand in the way of the respondent nos.3 to 6 from initiating appropriate proceeding for debarment against the appellant, if so advised.
17. With these directions, MAT 33 of 2024 is disposed of.
18. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.
19. There shall be no order as to costs.
20. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on usual undertaking.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)