



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4385/2024

M/s. Saluja Transport Company Vs. Western Coalfields Limited and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J. B. Gandhi, Advocate for Petitioner.
Mr. N. G. Moharir, Advocate for Respondent No.2.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 18/11/2024.

P.C.

. The challenge in this petition is to the order dated 22.06.2024, whereby the petitioner was blacklisted. Vide the said communication, the respondents have directed debarment of the petitioner from participating in future tender in WCL for the period of twelve months.

2. It is the case of the petitioner that the mandate of furnishing information as provided under Clause 4.2 of the instructions to bidders which have been annexed with the tender was inappropriately interpreted in the case of the petitioner. So as to substantiate the said contention, the learned Counsel for the petitioner would invite our attention to the following observations in the impugned order :

“From the above, it is evident that you i.e. M/s Saluja Transport Company did not avail the

opportunity of personal hearing offered by WCL in observance of principles of natural justice on 08/09/2023, 06/10/2023, 01/02/2024 and 25/04/2024 and hence, it transpired that you have nothing more to represent in addition to your written submission. Thus, WCL decided for further proceedings in the matter as per the available records and as per the terms and conditions of NIT No.30/2022-23.

The letters dated 25/01/2023, 06/09/2023, 03/10/2023, 31/01/2024 and 23/04/2024 submitted by you i.e. M/s Saluja Transport Company have been perused and observations of WCL with respect to your letters are as under -

Your letter dated 23/04/2024 is almost replica of you letter dated 25/01/2023. Moreover, your letter dated 06/09/2023, 03/10/2023 and 31/01/2024 were regarding extending the date of scheduled personal hearing for the reasons whatsoever.

In your aforesaid letters, you insisted that you don't have relationship with M/s GK Transport Co. (Transport Division). You had submitted that "Joint Venture is nothing but a SPV (Special Purpose Vehicle) wherein the answer in respondent and GK Transport have entered into agreement of Joint Venture which was limited to only submission of their bids in respect of those tender. That, in respect of the said tender the work was already completed prior to issuance of notice of the aforesaid present tender. Moreover, after successful completion of the work the answer in respondent and GK Transport have parted their ways and have also entered into a Memorandum of Understanding by which the said Joint Venture was put up to end. "Further, you had also enclosed "Deed of Dissolution of Joint Venture named as "M/s STC & GKT Joint Venture Firm" executed on 15th September

2022 along with your reply.

However, you had neither disclosed the aforesaid facts in the Annexure-P that you i.e. M/s. Saluja Transport Company and M/s GK Transport Co. (Transport Division) had business relationship with each other nor submitted the aforesaid “Deed of Dissolution of Joint Venture named as “M/s STC & GKT Joint Venture Firm” at the time of participating in the NIT No.30/2022-23 and thus, you had violated point no.4.2(d) of “Instruction of Bidder” of NIT No.30/2022-23. As such, you i.e. M/s Saluja Transport Company had submitted false information in the declaration/undertaking in Annexure-P and Annexure-C at the time of participation in Tender No.30/2022-23. Accordingly, you were disqualified in the tender No.30/2022-23.

Accordingly, Clause 14 of the Annexure – C of the NIT No.30/2022-23 has been invoked, which is quoted as under -

Quote :

14. If any information and document submitted is found to be false/incorrect at any time, department may cancel my/our Bid and action as deemed fit may be taken against me/us, including termination of the contract, forfeiture of all dues including Earnest Money and banning of our firm and all partners of the firm etc.

Unquote:

The above facts were deliberated and found that the explanation given by you in this regard is not satisfactory as elaborated above.

In view of the above and as per the terms and conditions of NIT, the following action has been taken against you -

You i.e. M/s Saluja Transport Company and all your Partners are debarred for a period of 12 (twelve) months from the date of issue of the letter from participating in any future tenders in WCL either in individual capacity or as partener in partnership/JV firm.

This issues with the approval of competent authority.”

3. According to the learned Counsel Mr. Gandhi, the relationship of the petitioner with the other contractor, who had participated in the tender, stood dissolved as could be inferred from the Deed of Dissolution of joint venture M/s. STC and GKT dated 15.09.2022. According to him, the said fact was brought to the notice of the respondents, however the respondents have interpreted the said conditions contrary to the interest of the petitioner and have passed the impugned order. He would claim that on the date of participation in the tender process, there was no joint venture between the petitioner and other tenderer. That being so, the order impugned is not sustainable as Clause 4.2 particularly Clause (b) of the instructions to bidders, which deals with conflict of interest, is not attracted.

4. As against above, the learned Counsel appearing for the respondents, tried to justify their claim,

thereby submitting that Clause 14 of the Format of Undertaking to be furnished by the tenderer as prescribed in Annexure – C to the tender documents, specifically gives option to the respondents to take such an action of debarment in case of conflict of interest as prescribed in Clause 4.2 of the instructions to bidders.

5. Mr. Ghare, learned Counsel would submit that on perusal of the entire documents submitted by the petitioner including the undertaking as required under Clause 4.2(d) and (e) of the instructions to bidders, the petitioner failed to disclose about the earlier work carried out with M/s. G.K Transport Co. in joint venture and that being so, the petitioner was debarred for a period of twelve months as the tender was submitted from the same ID.

6. We have considered the said submission.

7. The perusal of the order impugned reflects that the petitioner was served with the show cause notice dated 10.01.2023 whereby the petitioner was called upon to explain the violation of Clause 4.2 of the instructions to bidders. It was never the contention of the respondents that the petitioner along with another tenderer has submitted the tender from the same ID and thereby tried to form a syndicate so as to grab the tender in question.

8. Apart from above, the fact remains that the Deed of Dissolution was duly brought to the notice of the respondents, which is dated 15.09.2022 and while dealing with the same, the respondents have failed to consider the impact of the same while observing that the petitioner needs to be debarred for a period of twelve months.

9. From the record particularly in view of Deed of Dissolution, it can be inferred that the petitioner cannot be said to have conducted himself in violation of Clause 4.2 of the instructions to bidders as the petitioner has severed his relationship with the other tenderer with whom he was having an earlier arrangement of joint venture. That being so, the reasons forming the basis of the impugned order thereby directing debarment of the petitioner in the tender process cannot be said to be sustainable.

10. As such, the petition stands allowed, the order impugned dated 22.06.2024 is hereby quashed and set aside.

11. Order accordingly.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)