09.10.2025
Item No. 11.
Court No.6.
AB

WPA 23810 of 2025

M/s. Abdul Matin
Vs
State of West Bengal, Represented by the Secretary, I&W Directorate & Others

Mr. Ashok Kumar Banerjee, sr. adv,
Mr. A. K. Ghosh,
Ms. N. Adhya,
Ms. N. Chatterjee .....for the Petitioner.

Mr. Kishore Dutta, ld. AG
Mr. Dipanjan Dutta,
Mr. Raja Ram Banerjee .....for the State.

1. The petitioner is aggrieved by an order dated September 16, 2025, passed by the Chief Engineer (D&R), Irrigation and Waterways Directorate, whereby penalty of forfeiture of earnest money and debarment for a period of six months with effect from September 16, 2025, has been imposed upon the petitioner.
2. The case in the writ petition, shorn of unnecessary details, is that the petitioner participated in a tender process that was initiated by the respondents for execution of "Anti Erosion work to the right bank of river Padma at AOR of BOP Atrosia and Renu for a total length of 1830.00 m in Block and P.S. Lalgola, District Murshidabad".
3. Upon the petitioner qualifying in the preliminary technical evaluation process for the NIT, the

Superintending Engineer, Central Tender Unit issued a letter dated August 22, 2025 calling upon the petitioner to provide a report prepared by the Chartered Accountant of the petitioner, containing gross turnover, excluding GST for the years under zone of consideration of the e-NIT i.e. for the financial years 2020-21 to 2024-25.

4. The petitioner furnished the same under the cover of his letter dated August 26, 2025.

5. Subsequently, by a letter dated September 1, 2025 the petitioner was declared to be disqualified on the ground that "the average annual turnover based on 3 (three) years within the zone of 5 (five) preceding years is less than that mentioned in PQ criteria of e-NIT under reference."

6. Feeling aggrieved by such disqualification, the petitioner approached this Court by filing a writ petition being WPA 21458 of 2025, which is pending.

7. During pendency of the aforesaid writ petition, the said tender process was cancelled by a letter dated September 12, 2025 on the ground that the number of qualified bidders was less than 3.

8. Subsequently, the petitioner was served with an order dated September 16, 2025 whereby penalty of forfeiture and debarment was imposed

and it is this letter which has been impugned in the present writ petition.

9. Mr. Banerjee, learned senior advocate appearing for the writ petitioner has taken this Court through the order dated September 16, 2025 (page 492 of the writ petition) and submitted that the said order has been passed without issuing a show cause notice and without hearing the petitioner. It is submitted that the same ought not to have been passed inasmuch as the same has the effect of putting the petitioner out of business for a period of six months.

10. Learned Advocate General appearing for the State respondents has taken the Court through Clauses 7(v)(a), 11(d), 11(g) of the NIT and submitted that the writ petitioner has not only evidently acted in violation of the tender conditions but has also submitted documents containing false information. In order to buttress his contention, he took this Court through Form 2 i.e. "Certificate regarding Summary Statement of Yearly Turnover from Contractual Business," at page 109 of the writ petition (hereafter "the certificate") and through the document appearing at page 481 of the writ petition containing the same caption and submitted that a comparison of the two documents would reveal that the petitioner has furnished the turnover in

the earlier document (i.e. the one appearing at page 109 of the writ petition) only for the purpose of crossing the turnover-threshold prescribed in the NIT for the purpose of showcasing eligibility in the bid process, which was actually non-existent.

11. It is further submitted that in the facts of the present case, even if hearing is granted to the petitioner, no different conclusion could be reached than the one that has been reached by the Authority while passing the order dated September 16, 2025.

12. Heard the learned advocates appearing for the respective parties and considered the material on record.

13. The certificate annexed at page 109 of the writ petition which was submitted by the petitioner initially along with his bid i.e. prior to the notice dated August 22, 2025 being issued to him, shows that the petitioner has calculated his turnover by treating GST component as part thereof i.e. by including GST component. It is apparent that the certificate annexed at page 481 was furnished by the petitioner under the cover of its letter dated August 26, 2025 whereby the petitioner sought to explain as to why the petitioner has included the GST component in the turnover. The petitioner's

explanation as proffered by its letter dated August 26, 2025 may or may not be correct but then the respondents ought to have considered the same prior to issuing the order imposing penalty of forfeiture and debarment for a period of six months.

14. It is now well settled that no order having civil consequences can be passed without first affording an opportunity of hearing to the person who is likely to be visited by such civil consequences. Reference in this connection may be made to the case of ***Isolators & Isolators v. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd., reported at (2023) 8 SCC 607*** where, after referring to a catena of earlier judgments of the Hon'ble Supreme Court, the Hon'ble Supreme Court re-emphasised the aspect that granting a reasonable opportunity of being heard is an essential element in decisions pertaining to blacklisting or debarment which entail grave civil consequences for the entity being blacklisted or debarred and that failure to furnish a valid show-cause notice would be fatal to any order of blacklisting.

15. The order impugned dated September 16, 2025 has been passed without issuance of show cause and without hearing the petitioner. The submission of Mr. Dutta, the learned Advocate

General that no different conclusion would or could be reached even if the petitioner is heard fails to impress the Court inasmuch as the order dated September 16, 2025 impugned in the writ petition does not show as to how the petitioner's clarification contained in the letter dated August 26, 2025 has been considered and dealt with. As already indicated hereinabove, the explanation offered by the petitioner by its letter dated August 26, 2025 in support of its contention that turnover should be inclusive of GST component may or may not be correct but then the reason as to why such explanation is not acceptable would definitely be required to be furnished if an order imposing penalty of forfeiture or debarment is to be imposed on the petitioner. It is equally settled that non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. A person who has denied justice cannot be heard saying that the person who has been denied justice is not prejudiced. (See ***S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379).***

16. In such view of the matter, the order impugned dated August 16, 2025 is set aside. This order shall however not prevent the respondent to pass appropriate order after affording an opportunity of hearing to the petitioner, strictly in accordance with law.

17. WPA 23810 of 2025 stands disposed of.

18. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Om Narayan Rai , J.)