



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7456 OF 2024

Jitendrakumar Bhupsing Baloda,
Aged about 47 years, Occ.- Business,
R/o. Rampur, Tah. Rajura,
Distt. Chandrapur being the
Proprietor of **M/s J. K. Transport Co.**
(Proprietorship Firm) At Post : Rampur,
238, Shiv Nagar, Sasti Road, Rampur,
Rajura Dist. Chandrapur – 442905
(Maharashtra)

.... **PETITIONER**

// **VERSUS** //

Western Coalfield Ltd.,
through its Chairman-cum-Managing
Director Coal Estate, Headquarter
Nagpur, Seminary Hills, Civil Lines,
Near Futala Talao, Nagpur.

.... **RESPONDENT**

Mr. A. A. Dhawas, Advocate for Petitioner.
Mr. C. S. Samudra, Advocate for Respondent.

**CORAM : MRS. M. S. JAWALKAR AND
PRAVIN S. PATIL, JJ.**

DATE : 27th JUNE, 2025.

ORAL JUDGMENT : (Per – M. S. JAWALKAR, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
2. Matter is taken up for final hearing at the stage of admission by consent of the parties and on request of the parties.

The case in brief of the Petitioner is as under :

3. The Petitioner is the sole proprietor of M/s J.K. Transport Co. The Petitioner runs the business of coal loading, unloading, transporting and alike business activities by participating in tender process. He has participated through his firm in several tenders flouted by Respondent in which he was successful in several occasions and accordingly works were allocated to him. On 15.07.2020, a tender was flouted for the work of coal transportation and allied works. On 06.05.2023, a tender was flouted inviting tenders for works as showing the tender notice. On 25.10.2023, a show cause notice in respect of the e-tender notice No.08/2022-23, Ref. No. WCL/GM(CMC)/COAL LOADING/UMRER, dated 06.05.2023 came to be issued by the Respondent alleging suppression of earlier JV (Joint Venture) and participation of its JV holder. The reply came to be filed on 06.12.2023, in which the Petitioner made his stand clear that at the time of participation in the tender dated 15.07.2020, there was no such condition of one bid by one bidder. Thereafter, the Respondent issued a letter dated 10.05.2024 to the Petitioner for personal hearing to be held on 22.05.2025. Accordingly hearing was conducted. The Respondent-

WCL vide a communication dated 06.07.2024, debarred the Petitioner from the participation in WCL's future tender process for 12 months. It is contended that the action of the Respondent is contrary to the terms of the tender documents and is in violation of fundamental of the rules of equity and good conscience. The order dated 06.07.2024 is the subject matter of this writ petition.

4. By the impugned order, the Respondent debarred the Petitioner company for the period of 12 months from the date of issue of the letter from participating in any future tender in WCL, either in individual capacity or as a partner in partnership/JV firm. The said action is taken on the ground that M/s J.K. Transport Company have business relationship with M/s Banty Mahla Transport Company while participation in the Tender No. 08/2023-24. This fact is not disclosed in the Annexure-P and thereby highlighted Clause 4.2(d) of "Instruction to Bidder" of NIT No. 08/2023-24. For the sake of convenience Clause 4.2 is reproduced as under :

"Clause 4.2 Conflict of Interest.

"A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

a) They have controlling partner(s) in common: or

- b) *They receive or have received any direct or indirect subsidy/financial stake from any of them: or*
- c) *They have the same legal representative/agent for purpose of this bid: or*
- d) *They have business relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or*
- e) *A Bidder or any of its affiliate participated as a consultant in the preparation of the design or technical specification of the contract that is the subject of the Bid; or*
- f) *In case of a holding company having more than one subsidiary/sister concern having common business ownership/management only one of them can bid. Bidders must proactively declare such sister/common business/management in same/ similar line of business. All such Bidders having a conflict of interest shall be disqualified.”*

5. The issue involved in the present matter is already decided in **Writ Petition No.2677/2024** (M/s Harsha Constructions Private Limited (HCPL) Vs. Western Coalfields Limited) along with connected matters, dated **23.09.2024**, wherein this Court in paras 16 and 18 held as under :

“(16) The opening words of Clause 4.2 says that a bidder ‘may’ be considered to have a conflict of interest. As such, there is no conclusive presumption that if they have business relationship with each other it would be conclusive proof of having a conflict of interest with one or more parties in the bidding process. So simple business relationship is not sufficient to conclude that the parties are having conflict of interest unless there is functional integrity or commonality.

(18) In view of the above facts, one cannot conclude that there was any knowledge to the petitioner-company of any company/entity/firm, with which it had a JV participating, in the tender. If there would have been such intention, the said constituent of the JV would have submitted its bid within time and not in extended period. All the constituents of the JV are the distinct entities and having separate legal status. The Joint Venture had been entered into only for the earlier tender notice of a project. However, it appears that there was no functional integrity between entities which had formed the JV and they were independent entities. That JVs were for a single venture and not for a continuing business, is a position not disputed by the learned counsel for the respondents. On perusal of Clause 4.2 (d), “all business” relationships are not covered by the clause. It disqualifies only those business relationship that would put a bidder in a position to have access to the information about or influence the bid of another bidder. There is no absolute presumption to the effect that if there is business relationship, it would be considered to have conflict of interest with one or more parties in the bidding process. As indicated above, having a mere business relationship by itself is not a ground for disqualification, in light of the language of Clause 4.2 (d), for it further requires that such business relationship has put them in a position to have access to information about or influence on the bid of another bidder. Therefore, for disqualifying a bidder it has to be established that the latter part of Clause 4.2 (d) has been fulfilled and a mere business relationship cannot be the basis for holding that there is a conflict of interest within the meaning of the expression as occurring in Clause 4.2 of the Conditions of the NIT. There has to be subjective satisfaction of the Bidding Authorities.”

6. The Respondent while passing the impugned order assumed that there are business relationship between the Petitioner and M/s Banty Mahla Transport Company, which is itself sufficient to infer and establish that the bidders are in a position to have an access an information about or influence on the bid of another bidder. This is not the purport of Clause 4.2(d).

7. Learned Counsel for the Respondent fairly conceded that the issue involved is covered by the Judgment of this Court passed in ***Writ Petition No.2677/2024***. This Court relied on the Judgment of ***Blue Dreamz Advertising Private Limited & Anr. Vs. Kolkata Municipal Corporation & Others***, reported in ***2024 SCC OnLine SC 1896***, wherein some guidelines are laid down while blacklisting.

“The blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction.”

8. Thus, in view of the Judgment passed in ***Writ Petition No.2677/2024***, the order of blacklisting/debarring dated 06.07.2024 is liable to be set aside.

9. Accordingly the Writ Petition is **allowed**.

10. The impugned Communication dated 06.07.2024 is hereby quashed and set aside.

11. If any amount is confiscated in pursuance of the order of blacklisting that may be refunded.

The Writ Petition stands disposed of. No order as to costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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