

Court No. - 40

Case :- WRIT - C No. - 11037 of 2024

Petitioner :- M/S Hi Tech Pipe Limited

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Ronak Chaturvedi, Swati Agrawal
Srivastava

Counsel for Respondent :- C.S.C., Sanjay Kumar Om

Hon'ble Shekhar B. Saraf, J.

Hon'ble Manjive Shukla, J.

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Ronak Chaturvedi, learned counsel appearing for the petitioner, learned Standing Counsel appearing for Respondent No.1 and Sri Sanjay Kumar Om, learned counsel appearing for Respondents No.2 and 3.

2. Petitioner through this writ petition has challenged the order dated 23.1.2024 passed by the Executive Director, State Water and Sanitation Mission, U.P., Lucknow whereby petitioner has been debarred from making any supply to any project of Jal Jeevan Mission.

3. Learned Senior Advocate appearing for the petitioner has argued that while passing the impugned order dated 23.1.2024 the Executive Director has not considered the reply submitted by the petitioner at all and only this much has been said that petitioner's reply has not been found satisfactory. He further argues that vide order dated 23.1.2024 petitioner firm has been debarred from making supply for an indefinite period whereas the Hon'ble Supreme Court in catena of judgments had categorically held that debarment or blacklisting cannot be done for an indefinite period.

4. On the other hand, Sri Sanjay Kumar Om, learned counsel appearing for the contesting respondents submits that

reply submitted by the petitioner to the show cause notice has not been found satisfactory and therefore, the impugned order has been passed. He further submits that the impugned order cannot be termed as an order for blacklisting for an indefinite period as the term of State Water and Sanitation Mission itself shall come to an end on 31.12.2024.

5. We have considered the rival arguments advanced by the learned counsels appearing for the parties and we find that before passing the impugned order dated 23.1.2024 petitioner was issued a show cause notice, to which petitioner submitted a detailed reply and also made a request for re-testing of pipes supplied by the petitioner. The reply submitted by the petitioner has not been considered at all while passing the impugned order dated 23.1.2024 and only this much has been said that the reply submitted by the petitioner has not been found satisfactory. We are of the view that once proper reply was submitted, it was obligatory on the respondents to consider the entire reply and thereafter by recording reasons the order of blacklisting/debarment could have been passed. We also find that the impugned order dated 23.1.2024 proceeds to debar the petitioner firm for an indefinite period as it is the routine phenomenon that the term of the Schemes/Missions is extended from time to time.

6. This Court in **A.K. Construction Company v. Union of India and Others** (Writ-C No.20223 of 2024 decided on July 19, 2024), after examining the Supreme Court judgment in *M/s Kulja Industries Limited -v- Chief Gen. Manager W.T. Proj. BSNL & Ors.* (Civil Appeal No. 8944 of 2013), has held as follows:

14. Upon a perusal of the relevant paragraphs above, it is evident that the judgement brings forward several critical principles concerning the judicial scrutiny of decisions to blacklist contractors by governmental or public authorities. First, the inherent power to blacklist a contractor is vested in

the entity awarding the contract, typically the State or its instrumentalities. This authority does not necessarily require explicit statutory authorisation but must conform to fairness and reasonableness. It is also to be noted that any governmental or public authority's decision to blacklist a contractor is open to judicial review, ensuring adherence to natural justice principles, particularly audi alteram partem and the doctrine of proportionality. This means courts can examine such decisions to ensure they are just and balanced. Further, before blacklisting a contractor, the entity must provide a fair hearing, allowing the contractor to present their case and defend against the allegations or reasons for blacklisting. The decision to blacklist must also be reasonable, fair, and proportionate to the gravity of the alleged offence or breach, avoiding arbitrariness or discrimination. Additionally, actions by State authorities, including blacklisting decisions, must pass the reasonableness test under Article 14 of the Indian Constitution, which ensures equality before the law and prevents arbitrary State actions. Furthermore, precedents and legal standards established in prior judicial decisions, such as Erusian Equipment & Chemicals Ltd. -v- State of W.B., reported in (1975) 1 SCC 70 and subsequent cases like Radha Krishna Agarwal and Ors. -v- State of Bihar & Ors., reported in (1977) 3 SCC 457, shed light on the legal framework guiding the judicial review of blacklisting decisions. These principles collectively aim to ensure that the power to blacklist is exercised judiciously, upholding fairness, reasonableness, and proportionality while safeguarding contractors' rights to a fair hearing and defense.

7. The entire concept of blacklisting is required to be seen in a holistic manner and what has to be appreciated that an order of blacklisting/debarment of a particular firm is in the nature of punishment which carries with civil consequences for a firm. An order of blacklisting is accordingly required to be passed taking into consideration all aspects and should not be passed in a casual and cavalier manner as the same has an impact on the person for which such blacklisting is done.

8. In light of the same, we are of the view that it was imperative upon the respondent authorities to consider the reply given by the petitioner in totality and the mere rejection by using

the term "reply is not satisfactory" is uncalled for and cannot be accepted.

9. In view of the aforesaid reasons, this writ petition is allowed. The order dated 23.1.2024 is quashed with liberty to respondents to pass fresh order after considering the reply submitted by the petitioner.

Order Date :- 5.8.2024

Salim

(Manjive Shukla, J.) (Shekhar B. Saraf, J.)