
(2016) 09 MP CK 0028
In the Madhya Pradesh High Court
Case No : W.P No. 5170 of 2016

Deep Enterprises

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Citation : (2017) 2 MPLJ 145

Hon'ble Judges : Vivek Rusia, J.

Bench : Single Bench

Advocate : Shri Shekhar Sharma, Learned Counsel, for the Petitioner; Shri Umesh Gajankush, Learned Dy. A.G, for the Respondents/ State

Final Decision : Allowed

Judgement

Vivek Rusia, J.—Petitioner has filed the present petition being aggrieved by the order dated 17.06.2016 by which the appeal filed by the petitioner has been dismissed and the order of blacklisting dated 23.04.2015 for indefinite period has been affirmed.

2. Facts of the case are as under. Petitioner is a proprietor firm called M/s Deep Enterprises which is registered under the provisions of the Societies Registration Act, 1973. Petitioner was awarded a work of construction of road Sihasa-Vishnabada Concrete Marg and the length of the road is 1600 mtr. Because of the slow progress of the work the contract was terminated under Clause 3(c) of the Contract agreement. The petitioner was also awarded another work by the Public Works Department in the name of Laxmibai Nagar-Chhota Bagadada, Bada Bagadada-Budaniya Nimbodagiri Marg Sonagiri Marg of length 19.35 Kms. The said work was also terminated under Clause 3(c) of the contract agreement because of the slow progress of the work. Petitioner has already invoked the arbitration clause 29 of the contract agreement and thereafter matter was referred to the M.P Arbitration Tribunal and the same is pending.

3. That vide order dated 23.04.2015 without issuing any show cause notice to

the petitioner the petitioner firm has been blacklisted for indefinite period. Being aggrieved by the aforesaid order, petitioner preferred appeal before the Chief Engineer/respondent No.2 on 20.07.2015 on various grounds. When the appeal was not decided and the petitioner was not in a position to participate in the tender process, he approached this Court by way of writ petition No.195/2016. Vide order dated 16.02.2016 the writ petition was disposed of with direction to the respondent to decide the appeal within a period of six weeks from the date of receipt of certified copy of the order. Petitioner also filed an application on 28.3.2016 for revocation of the order of blacklisting. Again petitioner approached this Court by way of writ petition No.2465/2016 but the same was dismissed vide order dated 4.4.2016. After expiry of six weeks again petitioner filed writ petition No.3776/16 before this Court in which the order of blacklisting was stayed vide order dated 21.6.2016 and before that vide order dated 17.6.2016 the appeal filed by the petitioner has been rejected and the order of blacklisting has been affirmed, hence the present petition before this Court. Later on vide order dated 26.9.2016 writ petition No.3776/16 was dismissed as withdrawn.

4. That after notice respondents filed return. In the return it is submitted that petitioner is a registered firm under the Public Works Department having registration certificate dated 11.6.2012. Petitioner was awarded the work of construction of road on 26.9.2013 which was required to be completed within four months. Petitioner has failed to execute the said work within the stipulated period, therefore, vide order dated 10.02.2014 the same was terminated on the ground of slow progress of the work. Petitioner was allotted another work on 15.02.2012 in which he was required to complete the work within 16 months. Because of the slow progress of work the said work was also terminated on 07.02.2014. Since the petitioner failed to execute the work allotted to him, Department initiated the process of blacklisting the petitioner under Clause 4 of Appendix 4 of the order No.7651- 52/9679/90 dated 19.11.1999. Petitioner was issued show cause notice dated 11.2.2015 which was duly served to him and the petitioner submitted the reply on 9.3.2015. The Chief Engineer who is the competent authority after considering the reply of the petitioner passed the order of blacklisting. Petitioner preferred statutory appeal to the Engineer-in-Chief which was also decided against the petitioner. Respondent has contended that action of blacklisting was done in accordance with the provisions of Order dated 19.11.1999 which does not call for any interference.

5. I have heard learned counsel for the petitioner as well as respondent.

6. Since the order of blacklisting was passed against the petitioner on 23.04.2015 which is in operation till today, petitioner has not been participating in the tender process of the PWD Department for the last one and half years, therefore, counsel for the petitioner confined his argument to the extent that the order of blacklisting cannot be passed against the petitioner for indefinite period. He has specifically raised the ground No.F in this petition that the order of blacklisting for indefinite period is in contravention of the law laid down by the

Apex Court in the case of *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. and others* reported in (2014) 14 SCC 731. Respondents in their return has failed to justify their action by blacklisting the petitioner for indefinite period. The contract of the petitioner has already been terminated by the respondents which is the subject matter in reference before the Arbitration Tribunal. A similar issue came up for consideration before this Court in W.P.No.6958/2015 in the case of *M/s V.P. Singh v. The State of M.P and others* in which this Court has held that the State Government has suffered adversely because of the delay, therefore, State Government is free to impose damages and penalty as per the agreement but blacklisting, suspension or cancellation of registration can be ordered if the grounds as stipulated in the policy dated 11.11.1999 are available and until and unless the grounds for suspension of the registration are not made out, the State Government is not empowered to take action contrary to the said circular dated 11.11.1999, hence the order of suspension of registration for a period of 2 years was set aside. The relevant part of the order is reproduced below:

"That being so we find much force in the contention advanced by Shri V.R.Rao, learned Senior Counsel to say that suspension in the present case and the order is without due consideration and in the absence of their being available a ground for suspension as contemplated in the policy, the action impugned is unsustainable. If the State Government had to suffer adversely because of the delay, the State Government is free to impose damages and penalty as per the agreement, but black listing, suspension or cancellation of registration can be ordered on if the grounds as stipulated in the policy dated 11/11/1999 are available and until and unless the grounds for suspension of the registration are not made out, the State Government is not empowered to take action contrary to the said circular dated 11/11/1999. Accordingly, as the suspension has been done in contravening to the circular and on grounds not available to the State Government, we allow this petition and quash the orders and direct for restoration of registration. However, the State Government shall be at liberty to pursue any such remedy as may be permissible under law for the default and the delay caused by the petitioner in execution of the work in question."

7. In the case of *B.C. Biyani Projects Pvt. Ltd. v. State of Madhya Pradesh and others* passed in Civil Appeal No.6632/2016 the Apex Court considering the law laid down in the case of *Kulja Industries (supra)* held that petitioner has already suffered blacklisting for a period of 3 years and treating the period of 3 years blacklisting to be sufficient to meet the ends of justice, set aside the order of blacklisting. The relevant part of the aforesaid order is reproduced herein below:

"The appellant was blacklisted by an order dated 14th March, 2013. The order of blacklisting is for an indefinite period.

In *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others* (2014) 14 SCC 731, this Court held in paragraph 25 of the report that "debarment" cannot be permanent and the

period of "debarment" would invariably depend upon the nature of the offence committed by the erring contractor. Paragraph 25 of the report reads as follows:

"25.Suffice it to say that "debarment is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including mis-representations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

As mentioned above, the order for blacklisting the appellant is a permanent one. This is impermissible in law.

Since the appellant was blacklisted by an order dated 14th March, 2013 and since more than three years have gone by during which period the appellant has suffered blacklisting and also taking into consideration the fact that three out of six contracts have been completed by the appellant, we are of opinion that the period of blacklisting already undergone by the appellant is sufficient to meet the ends of justice.

8. Keeping in view the aforesaid law laid down by the Apex Court as well as this Court the period of blacklisting already undergone by the petitioner which is in operation for the last one and half years which cannot be for indefinite period. Accordingly, the petition is allowed and the order dated 23.04.2015 and order dated 17.06.2016 are hereby set aside with commenting on merit of this order.