

(2024) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4318 of 2022

Devendra Kumar Patel

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-10-2024

Acts Referred:

Constitution of India 1950 — Article 226

Citation : (2024) 10 MP CK 0006

Hon'ble Judges : Vivek Rusia, J, Binod Kumar Dwivedi, J

Bench : Division Bench

Advocate : Siddhartha Kumar Jain, Vishwajit Joshi

Final Decision : Allowed

Judgement

Vivek Rusia, J

With the consent of parties, heard finally.

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order dated 03.02.2022 (Annexure-P/19), whereby registration No.EB00415 with M.P. Public Works Department has been suspended for a period of two years.

2. The petitioner is a registered Contractor having registration No.EB00415 issued by the MPPWD. The petitioner was awarded a contract for construction of Archery Ground at Girls Krida Parisar, Jhabua. An agreement between the parties bearing No.06/2019 - 20 was executed on 26.06.2019. Rates quoted by the petitioner were found 20.20% below the schedule rate and the total cost of construction came out to be Rs.16,30,400/-for entire awarded work. The petitioner was given 12 months' time to complete the work excluding rainy season i.e. up to 25.06.2020. According to the petitioner, working drawings were approved by the respondents only on 30.12.2019 and the lay out was provided to him on 23.09.2020 which is the main reason for the delay in execution of the work. The petitioner was directed to re-execute the work of column after

dismantling the same that is also the reason of delay.

3. The petitioner was served with a show-cause notice dated 16.09.2021 in order to terminate the contract under Clause - 27 of the agreement. The petitioner submitted a reply on 22.09.2021. The respondents were not satisfied with the reply and directed the petitioner to execute the work at site. The petitioner again submitted a reply explaining the difficulties in completing the work, however, vide letter dated 12.10.2021, the respondents terminated the contract in question. The petitioner invoked Clause - 12 of the agreement by submitting a claim before the Additional Project Director. An appeal was also preferred by the petitioner which is still pending for consideration.

4. After termination of the contract, now vide impugned order dated 03.02.2022, the Additional Project Director has suspended the registration of the petitioner for a period of two years only because of non-completion of the work in question within a period of 12 months. Hence, the present writ petition is before this Court. The petitioner has assailed the impugned order inter alia on the ground that before passing the impugned order, no opportunity of hearing was given to the petitioner, hence, the order is bad in law.

5. The respondents have filed a reply by submitting that reasons for termination of contract and suspension of registration are the same. The petitioner was given a show-cause notice and reply was obtained. Since the reply was not found satisfactory, therefore, the contract was terminated as well as registration has been suspended for two years. Hence, it cannot be said that no opportunity of hearing was given to the petitioner. It is further submitted that order No.F-17-1.2010/B/19/357 of the M.P. Public Work Department dated 24.03.2015 specifically lays down the conditions for blacklisting or suspension of registration. The case of the petitioner falls under point No.6 which stipulates that the contractor is found to be non-serious in executing the agreement work or leaves the agreement work incomplete, irrespective of the expiry of the full contract period. Admittedly, the petitioner did not complete the work within the stipulated period. Whatever may be the reasons for non-completion of the work within 12 months shall be decided in the matter to be referred to the M.P. Arbitration Tribunal, Bhopal. All these disputed question cannot be decided in a writ petition, hence, the petition is liable to be dismissed.

6. Learned counsel appearing for the petitioner submits that neither in the NIT nor in the agreement, there is any provision for suspension of the registration with PWD. There is only provision for termination of the contract which has already been invoked by the respondents, therefore, the petitioner cannot be double jeopardized for the same default. In support of aforesaid contention, learned counsel has placed reliance upon a judgment delivered by the Apex Court in the case of *Tulsi Narayan Garg v/s M.P. Road Development Authority, Bhopal & Others* reported in 2019 SCC OnLine SC 1158.

7. Learned Additional Advocate General for the respondents / State submits that

the aforesaid judgment passed in the case of Tulsi Narayan Garg (supra) says that once the dispute is pending adjudication before the Arbitral Tribunal, the respondent was not justified to raise demand of termination of contract claiming liquidated damages and respondent cannot become an arbiter in its own cause and unless is settled by the Tribunal, the respondent would not be justified in initiating recover proceedings. In the present case, the registration of the contract with the PWD is covered under Circular dated 24.03.2015, therefore, no interference is called for and the petition is liable to be dismissed.

8. We have heard learned counsel for the parties at length and perused the record.

9. In this case, so far as validity of termination of contract is concerned, the matter is already sub judice before the competent authority, thereafter, the petitioner shall have a remedy to approach M.P. Arbitration Tribunal by way of reference. It is also correct that reasons for termination and suspension of registration are same. The petitioner was served with a show-cause notice before issuing the order of termination of contract which he duly replied, but the petitioner was not given any opportunity of hearing. The petitioner was given a show-cause notice under Clause - 27 of the agreement which only mandates termination of contract, not suspension of registration. Paragraph - 3 of the Circular dated 24.03.2015 says that competent authority shall take a decision for suspension of registration or placing the name in the blacklist of contractor considering the seriousness of the conduct. Therefore, whether the contractor falls under any of the conditions from 1 to 9 for blacklisting or suspension and the same is serious in nature, an opportunity of hearing ought to have been given by issuing a show-cause notice to him in order to submit explanation or suitable reply.

10. We are not satisfied with the contention raised by Shri Jain, learned counsel for the petitioner that before blacklisting or suspending the registration, authority should wait for final outcome of the arbitration proceedings to be conducted by the Arbitration Tribunal. The suspension or blacklisting for a limited period of a contractor is liable to be done in contemplation of any enquiry or adjudication on allegation against the contractor. These are the temporary measures to be taken till the conclusion of the enquiry or for limited period. For the purpose of recovery of the amount, the Apex Court in the case of Tulsi Narayan Garg (supra) has held that the quantified claim cannot be recovered unless the reference is decided by the Tribunal. But so far as the action of suspension / blacklisting is concerned, these measures are to be taken immediately against the contractor, for which the Department is not required to wait till the final adjudication by the Tribunal becomes that may take years together. Normally the Tribunal decides the matter in 5 to 10 years, therefore, action of the suspension or blacklisting may not be warranted in a given case. Therefore, blacklisting or suspension can be done simultaneously along with the order of termination but for which separate show-cause notice is liable to be issued or opportunity of hearing ought

to have been granted as held by the Apex Court in catena of judgments.

11. While dealing with the similar kind of controversy, the Apex Court in the case of The Blue Dreamz Advertising Pvt. Ltd. & Another v/s Kolkata Municipal Corporation & Others reported in 2024 SCC OnLine SC 1896 has held thus:

"25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person's conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto."

12. Taking note of the law laid down by the Apex Court in the aforesaid case, the impugned order dated 03.02.2022 (Annexure-P/19) suspending the registration of the petitioner is unsustainable and the same is hereby quashed.

13. Writ Petition stands allowed. No order as to costs.