

Chief Justice's Court

Case :- WRIT - C No. - 31418 of 2023

Petitioner :- M/S Baba Construction Pvt.Ltd

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vibhu Rai,Abhinav Gaur,Sr. Advocate

Counsel for Respondent :- C.S.C.,Dharmendra Singh
Chauhan,Suresh C. Dwivedi

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Anoop Trivedi, learned Senior Counsel assisted by Shri Abhinav Gaur and Shri Ashok Mehta, learned Senior Counsel assisted by Shri S. C. Dwivedi, learned counsel appearing for respondent Nos. 2 to 4. Learned Standing Counsel has appeared for respondent No. 1.

2. The challenge in the writ petition is to the illegality, propriety and correctness of the order dated 26.8.2023 passed by the Chief Engineer, Agra Development Authority, Agra, respondent No. 4 whereby the petitioner has been blacklisted and debarred from participating in any future tender-contract of the Agra Development Authority.

3. At the very outset, Shri Anoop Trivedi, learned Senior Counsel for the petitioner submits that the order impugned blacklisting the petitioner and debarring him from future tender contracts is bad in law inasmuch as no prior notice of blacklisting has ever been issued to the petitioner and straightaway blacklisting order has been passed. It has been argued that a blacklisting order entails civil consequences and as such, a show cause was required to be issued calling for an explanation from the petitioner before blacklisting it. It is submitted that 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. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put in the blacklist. In the absence of a show cause notice and the order being indefinite, the order blacklisting the petitioner is bad in law and liable to be set aside.

4. Shri Ashok Mehta, learned Senior Counsel appearing for the respondents submits that the submission of the learned counsel for the petitioner that no notice/show cause was ever issued to the petitioner before blacklisting, is incorrect.

5. He had invited our attention to a communication dated 7.12.2021 filed as Annexure-15 to the writ petition addressed to the petitioner which according to him is the show cause notice. He thus submits that there is no error in the order of blacklisting and no interference is warranted by this Court.

6. We have heard the rival contentions and perused the record as also the communication dated 7.12.2021 relied upon by the learned counsel for the respondents.

7. On the perusal of the said communication, we find that it merely requires the petitioner to rectify the deficiency in the construction work carried out by the petitioner, failing which the petitioner would be recommended to be included in the blacklist. We are afraid that the said communication can under any stretch of imagination be taken to be a show cause notice to the petitioner before proceeding to blacklist it.

8. In our opinion, a notice for blacklisting is required to specify as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which the action is proposed. The notice is also required to state the grounds necessitating the action and the penalty proposed specifically and unambiguously. The show cause notice is also required to adhere to the principles of natural justice. We also find that the orders of blacklisting has been passed for an indefinite period which is not permissible under the law.

9. In view of the above, the impugned order dated 26.8.2023 passed by the respondent No. 4 (Annexure-1 to the writ petition) is set aside. The writ petition stands **allowed**. However, liberty is granted to the respondents to proceed against the petitioner by issuing fresh notice, strictly in accordance with law.

Order Date :- 20.9.2023

Ravi Prakash

(Ashutosh Srivastava, J.)

(Pritinker Diwaker, CJ.)