

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A.NO. 21702 of 2023

**Kamladityya Construction Private Limited and Another
Vs.
The Central Public Works Department and others**

For the petitioners	:	Mr. Abhrajit Mitra, Mr. Sakya Sen, Mr. Satadeep Bhattacharya, Ms. Sonia Sharma
For the Union of India	:	Mr. Indrajeet Dasgupta, Mr. Subit Majumdar
Hearing concluded on	:	10.10.2023
Judgment on	:	17.10.2023

Sabyasachi Bhattacharyya, J:-

1. The Central Public Works Department (CPWD), respondent no.1, held a tender for construction of a new campus of the Indian Institute of Information Technology (IIIT) at Kalyani.
2. The petitioner no.1 participated and came out the successful bidder. The work was entrusted to the petitioner no.1.
3. Subsequently, the petitioners could not complete the work within the stipulated time. A termination notice was issued to the petitioners. Challenging the same, the petitioners filed an application under Article 226 of the Constitution, giving rise to WPA No. 16962 of 2022. The petitioners were continued to be protected by an undertaking given by the CPWD on July 29, 2022 that no steps would be taken

against the petitioners. Ultimately the writ petition was disposed of on December 22, 2022. The court observed that the petitioners should be directed to complete the remaining part of the project. It was recorded that the admitted position was that the petitioners had completed about seventy per cent of the project and only thirty per cent remained to be completed. The apparent financial distress of the petitioners, it was observed, may be addressed by a direction on the CPWD to process the bill of Rs. 5 Cr., which was submitted by the petitioners. It was also observed that the petitioners shall make every effort to complete the remaining part of the work within a reasonable time without further delay. The parties were directed to cooperate with each other regarding the completion of the rest of the work.

4. Thereafter, on September 30, 2022, a Show-Cause Notice was issued as to why the petitioners should not be debarred under Rule 13.6 of the Rules of Enlistment of Contractors in CPWD, 2022.
5. The petitioners gave a written reply on October 14, 2022. Ultimately, by the impugned Office Order dated August 28, 2023, the petitioner no.1 was debarred for a period of two years from participating in CPWD works.
6. The present challenge has been preferred against such debarment order.
7. Learned senior counsel for the petitioners argues that in view of the order of the coordinate Bench to continue the unfinished work and in view of the extensions granted to that effect by the respondent-Authorities, it is to be deemed that the grounds of proposed

termination were absolved.

8. It is argued that after having extended the time and conceded to the order of the coordinate Bench and the termination having itself been obliterated, the underlying breach which was the trigger for the blacklisting/debarment lost force. The termination itself having been effaced, the debarment based on the allegations for termination has to go.
9. Placing reliance on Rule 13.6 of the Rules for Enlistment, it is argued that the grounds for debarment of contractor invoked by the respondents is that the petitioners failed to execute the contract or violated any condition of the contract.
10. Under Clause 13.1 of the Rules, where the contractor has made himself liable for disciplinary action, the enlisting authority shall have the right to debar the defaulting contractor. Clause 13.2 says that the enlisting authority shall initiate disciplinary case against an enlisted contractor. Clause 13.4 provides that the disciplinary action against an enlisted contractor may lead to penalties mentioned in Rule 13.6 and 13.7. Clause 13.7 speaks about debarment of contractor upon service of a suitable show-cause notice. Clause 13.6 stipulates the grounds for debarment.
11. In terms of Clause 13.4, it is argued that a disciplinary action had to precede the debarment. The same having not been done, the debarment itself is vitiated, being *de hors* the Rules which are binding on the respondents.
12. Learned counsel for the respondents argues that the termination had

no nexus with the debarment and the two are independent processes. By placing reliance on the last paragraph of the impugned debarment order, it is pointed out that sub-clause (iii) stipulates that running contracts would remain unaffected by the debarment.

- 13.** Thus, even if extension of time was granted for completion of the contract pursuant to the order of the coordinate Bench, the said proceeding entirely related to the termination of the existing contract, which was waived. However, the same does not have any bearing on the debarment of the petitioners to participate in future contracts for two years.
- 14.** Learned counsel argues that the petitioner no.1 was repeatedly given opportunities and extensions to complete the work. However, the petitioners long exceeded the time and despite several extensions could not complete the work in time which necessitated the debarment order.
- 15.** It is argued that the original work commenced from March 23, 2019 and was to be completed by February 22, 2021. The planning period was five months and the next eighteen months were for execution of the work. However, even recently, the petitioners could not complete the work. The nature of the work was a public project relating to education and the project got hampered severely due to the incompetence of the petitioners, for which the debarment order had to be made.
- 16.** Heard learned counsel for the parties.
- 17.** A salient feature of the present case is that the Show-Cause Notice

dated September 30, 2022 which preceded the impugned debarment was based on Clause 13.6 of the Rules. The said Clause provides that the contractor may be debarred if he fails to execute the contract or executes it unsatisfactorily or violates any conditions of the contract. The pre-condition is that the said grounds have to be established by enquiry.

- 18.** However, there is nothing in the Rules to read into such provision any prior right of hearing before enquiry. The allegedly errant contractor already has an opportunity of replying to the show cause before debarment. There is no reason to read into the provisions of the contract a further right of hearing/reply even for the purpose of enquiry preceding a show cause. The enquiry is only for the purpose of the authorities forming a preliminary opinion to decide whether a show cause should be issued and the contractor cannot have a say even at that stage, since ample opportunity of reply/show cause is given after the show cause notice.
- 19.** A show-cause is mandatorily to precede a debarment in terms of Clause 13.7. Clause 13.7 of the Rules provides that whenever any type of complaint listed in serial no. (a) to (t) under Clause 13.6, is received from any officer of CPWD not below the rank of Executive Engineer against an enlisted contractor and is considered serious by the enlisting authority, he shall be served with suitable show-cause notice by the enlisting authority and thereafter action for debarment of contractor may be taken by the enlisting authority as deemed fit.
- 20.** Thus, the only requirement is to give a show-cause notice to the

concerned contractor. In the present case, a show-cause notice was issued and a reply thereto was given by the petitioners, which was considered while passing the final order.

- 21.** The argument of the petitioners that there was no preceding enquiry is neither here nor there, since the petitioners assert that only upon such enquiry was the step of issuing a show cause taken.
- 22.** Insofar as the enquiry is concerned, no notice of hearing is contemplated on the accused contractor. If such a provision were to be incorporated into the Rules, the same would create unnecessary paraphernalia which would paralyse the functioning of the authorities themselves. The enquiry is internal. The requirement of Clause 13.7 is only for the CPWD to consider the complaint to be “serious”.
- 23.** Although Clause 13.4 stipulates that the disciplinary action against an enlisted contractor may lead to penalties mentioned in Rules 13.6 and 13.7, it does not necessarily mean that the debarment under Clause 13.7 must necessarily await the completion of a disciplinary proceeding. A disciplinary action as comprised in the Rules is under Clause 13.0 of the Rules. Clause 13.1 provides that where the contractor “has made himself liable for disciplinary action” the enlisting authority shall have the right to debar him.
- 24.** Clause 13.2 provides that the enlisting authority shall initiate disciplinary case against an enlisting contractor either *suo-moto* or on the receipt of a written request from an officer not below the rank of Executive Engineer and forward it to the Empowered Committee for consideration.

- 25.** The Empowered Committee shall consider the disciplinary case on the basis of the documents, facts and circumstances and shall issue a show-cause notice to the contractor and allow him personal hearing if necessary and forward its recommendations to the enlisting authority. The enlisting authority shall take a decision on the basis of the recommendations of the Empowered Committee which shall be final and binding on the contractor. Thus, in terms of the language of Clause 13.2, a personal hearing will be afforded to the contractor “if necessary”. The same is not a mandate in terms of the Rules.
- 26.** Section 114 of the Evidence Act raises a presumption of official works having been duly done. Thus, in the absence of rebuttal by the petitioners, there is nothing to show that the respondents failed to comply with the prior enquiry as contemplated in Clause 13.2 of the Rules.
- 27.** In fact, the show-cause notice issued to the petitioners dated September 30, 2022 specifically cites the grounds of debarment of the petitioners.
- 28.** Numerous letters written by the authorities to the petitioners for completion of the work were cited. The grounds as mentioned in sub-clauses (a) and (b) of 13.6 of the Rules were specifically mentioned and the exact violation of conditions of contract even after repeated notice of the engineer-in-charge were cited in the show-cause notice.
- 29.** In the last sentence of the show-cause notice, it was categorically mentioned that the notice was issued with the approval of the Empowered Committee constituted as per Rule 13 of the Enlistment

Rules, 2022.

- 30.** Thus, there was sufficient compliance of the provisions of Rule 13 and its sub-rules.
- 31.** Hence, there was no error on the part of the respondents in duly complying with the provisions of the Rules, which have statutory force, in issuing the show-cause notice and passing the order of debarment.
- 32.** Sufficient opportunity of representation was given to the petitioners, which was availed by the petitioners and the representations of the respondents were considered by the petitioners. Since personal hearing was not mandatory, not giving the same does not vitiate the order of debarment.
- 33.** The impugned order of debarment, in fact, is well-reasoned and cites the relevant provisions of the Rules. The exact flaws and breaches of the petitioners were enumerated in detail in the order of debarment. The petitioners, despite repeated opportunities, failed to complete the work even after expiry of double the period than the period originally contemplated for the work.
- 34.** Insofar as the previous order of the coordinate Bench in WPA No.16962 of 2022 is concerned, the same categorically pertained to the competition of the current work by the petitioners.
- 35.** The court categorically observed that since the petitioners had admittedly completed about seventy per cent of the project and keeping in view the apparent financial distress of the petitioners, the coordinate Bench directed the work to be completed expeditiously.

However, the said directions or the extensions given to the petitioners pursuant to such order do not, in any manner, exonerate the petitioners for the inordinate delay already committed by the petitioners over a prolonged period of time.

36. The respondent, thus, cannot be compelled to permit the petitioners to participate, even after such gross incompetence, in the future contracts to be floated by the respondents.
37. In any event, the debarment order is only for a period of two years and is not a permanent impediment or slur on the petitioners.
38. Thus, there is no ground for interference with the impugned debarment order.
39. Accordingly, WPA No. 21702 of 2023 is dismissed on contest without, however, no order as to costs.
40. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)