

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6523/2007

WHALE STATIONARY PRODUCTS

LTD & ORS

..... Petitioners

Through Mr. Jayant K. Mehta, Advocate.

versus

UOI & ANR

..... Respondents

Through Mr. Madan Gera, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

04.11.2009

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This is the second round of litigation. The three petitioners had filed the W.P.(C) No.8076-78/2003, questioning the orders dated 15th January, 2003 and 17th January, 2003 whereby they have been blacklisted for a period of 10 years. It was contended by the respondents in the said writ petition that the petitioners are a subsidiary of Delhi Paper Products Company Private Limited and being allied concerns were rightly black listed for the misconduct of Delhi Paper Products Company Private Limited. The said writ petition was disposed of with the following directions:-

“5. In my view the question as to whether the petitioners are subsidiaries of Delhi Paper Products Company Private Limited, cannot be decided merely on the basis of one of the directors being allegedly common to the said companies.

The exercise for determining as to whether the petitioner companies were subsidiaries of Delhi Paper Products Company Private Limited or not, has to be undertaken in the context of the provisions of Section 4 of the Companies Act, 1956. For that purpose, it would be necessary to obtain the submission and statements of the petitioner companies. Clearly this was not done as no notice whatsoever was issued to the petitioner companies. The question of blacklisting is a serious one and it is well settle that before any person or company is blacklisted in respect of dealings with the government, that person or company must be provided an opportunity of hearing. That can only be done if a notice is issued and the party is heard. Unfortunately this was not done in the present case. Accordingly, the impugned orders dated 15.01.2003 and 17.01.2003 are set aside for want of following the principles of natural justice. It is open to the respondents to issue a show cause notice to the petitioners. Such a show cause notice, if issued, shall be replied by the petitioner companies within two weeks and if such a reply is made, they shall granted an opportunity of personal hearing within two weeks thereafter and orders would be passed in accordance with law within four weeks thereafter. It is made clear that the issue before the authorities is as to whether the petitioner companies were subsidiaries of Delhi Paper Products Company Private Limited on 30.12.2002 and continue to be so till date. This writ petition stands disposed of.

Dasti.”

2. The petitioners again approached this Court by way of W.P.(C) No.6523/2007, as the aforesaid order was not complied with by the respondents. Court issued show cause notice and counter affidavit was filed by the respondents. In the counter affidavit, the respondents admitted that the

earlier writ petition filed by the petitioners being W.P.(C) No.8076-78/2003 was disposed of vide judgment dated 31st March, 2007. The respondents inspite of the said decision, in the court affidavit submitted as under:-

“3.7 That the averments made in para nos.3.5 to 3.7 of the Writ Petition save and except what is a matter of record are wrong and hence denied. It is submitted that the offer of the petitioners against tender enquiry for conclusion of Computer Stationery opened on 7.2.2007 was considered on merits and they were not found eligible for award of the rate contract. It is stated that in terms of para 5.18.4 of DGS&D Manual, no contract of any kind are to be placed with a banned firm including its allied firms. Copy of the said provision is annexed herewith and marked as Annexure R-1. The rate contract was not awarded to them, as petitioner companies are allied firm of M/s Delhi Paper Product Co. Ltd. who has been banned vide CVO Min, of Commerce, Deptt. Of Commerce (Supply Division) Order No.C-37011/8/2002-vig(DOC) dated 30.12.2002.”

(emphasis supplied)

3. In other words, the stand taken by the respondents was that no show cause notice is to be issued and no subsequent order of black listing is to be passed in terms of their guidelines and para 5.18.4 of DGS&D Manual,. This stand was not accepted by this Court and the writ petition was disposed of vide order dated 20th August, 2008 reiterating paragraph 5 of the earlier order passed in the W.P.(C) 8076-78/2003. By this order the Court has directed as under:-

“It is not in dispute that after passing of the order dated 31.01.2007, the respondent did not consider it necessary either to issue any show cause notice to the petitioners nor pass any subsequent order of blacklisting. In view of these

facts, in case, the petitioners have filed their rate contracts after 31.01.2007, the respondents shall consider the same in accordance with law and if the petitioners are found to be eligible, they shall be granted supply orders, as per law. With these directions, nothing further survives in this writ petition and the same stands disposed of accordingly.”

4. The petitioners have now filed an application being C.M.No.13547/2008 alleging non-compliance of the two earlier orders mentioned above. In the prayer clause of the application, the petitioners have prayed for clarification of the order dated 20th August, 2008 and for directing the respondents to treat the petitioner companies as independent entities from Delhi Paper Product Company Pvt. Ltd. The respondents in their reply to this application have again reiterated the same contention as was stated in their counter affidavit quoted above. The said stand of the respondents was not accepted by this Court in its order dated 20th August, 2008 and is accordingly rejected. The respondents are directed to comply with the order dated 20th August, 2008, within a period of four weeks from the date copy this order is received. The said order will equally apply to future and new orders. The black listing order against the petitioners will be treated as dropped and void. It is open to the respondents to issue show cause notice to the petitioners if permissible and allowed by law and thereafter pass an order after considering their reply. The petitioners are entitled to costs which are assessed at Rs. 5,000/- .

SANJIV KHANNA, J.

NOVEMBER 04, 2009

NA/P