

05.

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

+ W.P.(C) 676/2010

% Judgment dated 08.03.2010

HAPPY HIMALAYA CONSTRUCTION COMPANY Petitioner
Through : Mr. B.M. Sehgal, Adv.

versus

DDA AND ORS Respondents
Through : Mr. Rajiv Bansal, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Counsel for the parties submit that the present petition be disposed of at this stage itself.
2. By the present petition filed under Articles 226 and 227 of the Constitution of India, petitioner firm seeks quashing of the Order dated 6.11.2009, by virtue of which, the petitioner firm was debarred for further tendering in DDA for a period of one year. The petitioner firm also seeks quashing of the Order dated 21.05.2007, by virtue of which, the earnest money deposited by the petitioner firm stands forfeited.
3. Brief facts of the case, as set out in the present petition, are that the petitioner firm is a Registered Contractor in Class III category with the respondent DDA. The DDA floated a tender with respect to Protection of Land at Rohini Phase V. Sub Head Providing and Fixing G.I. Barbed

Wire around DDA newly acquired land at Village Mohammadpur, Majari Kalara at Nithari. The petitioner firm offered its rates on 26.3.2007. The petitioner firm was declared to be the lowest tenderer for the work of 'Protection of Land at Rohini Phase V Sub Head providing and fixing G.I. Barbet wire fencing around DDA newly acquired land at Village Mohd. Pur, Majiri Karala and Nithali". According to the terms of tender, the petitioner firm was to furnish a performance guarantee within 15 days from the issue of letter of intent dated 11.04.2007. Performance guarantee was to be irrevocable @ 5% of the tender amount in accordance with Clause 1 (a) of the conditions of the contracts issued by the DDA. As the petitioner firm did not furnish the performance guarantee within the time allowed the earnest money deposited by the petitioner firm was forfeited vide order dated 21.5.2007.

4. It is the case of the petitioner firm that the order of forfeiture of the earnest money amounting to Rs.59,064/- was passed even prior to the lapse of fifteen days period.
5. Standing counsel for the DDA had entered appearance on an advance copy and has filed a compilation of relevant documents. According to the DDA, petitioner firm was called upon to furnish various documents including performance guarantee vide letters dated 10.05.2007, 11.05.2007, 19.05.2008 and 21.05.2007 and it is only when the petitioner firm failed to submit the performance guarantee was the tender revoked and the earnest money forfeited.
6. Learned counsel for the petitioner firm submits that the petitioner firm does press the prayer with regard to order dated 21.05.2007, by virtue

of which, the earnest money deposited by the petitioner firm was forfeited but petitioner firm is aggrieved by the Order dated 6.11.2007, by virtue of which, the petitioner firm has been debarred for further tendering for a period of one year. Counsel for the petitioner firm further submits that before passing the order of debarring, the DDA has failed to follow the principles of natural justice as the petitioner was not granted an opportunity of hearing to explain his stand.

7. Learned counsel for the DDA submits that the case of the petitioner firm was considered by the Contractor's Registration Board (CRB) in its meeting held on 30.09.2009 and after due deliberations it was decided to debar the petitioner firm for a period of one year. The Order of Contractor's Registration Board was communicated to the petitioner firm on 6.11.2009. A copy of the minutes of the meeting has been placed on record.
8. Learned counsel for the petitioner firm submits that the show cause notice was issued to the petitioner firm as far back as on 7.11.2009 and the final order was passed after a lapse of almost two years. Counsel further submits that even otherwise the show cause notice is vague and it has not been specifically stated in the show cause notice as to why the petitioner should not be black listed. Counsel also submits that the order of black listing / debarring the petitioner for a period of one year is not commensurate to the lapse of not depositing 5% of the performance guarantee, especially, when the DDA has already forfeited the earnest money.

9. Counsel for the petitioner relies upon a decision of the Supreme Court in the case of ***M/s Erusian Equipment and Chemicals etc. Ltd. Vs. State of West Bengal***, reported at AIR 1975 SC 266 and submits that the respondents did not follow any fair procedure and intimate the petitioner about the possible blacklisting. Counsel further submits that even otherwise debarring the petitioner for a period of one year is too drastic a consequence and amounts to an utter arbitrary act. Counsel further submits that the judgment of ***M/s Erusian Equipment and Chemicals etc. Ltd.*** (supra) was followed by the Supreme Court in ***Raghunath Thakur Vs. State of Bihar and others***, reported at AIR 1989 SC 620; as well as judgments of this Court including ***M/s. National Building Construction Corporation Limited Vs. New Delhi Municipal Council***, reported at 2007 (2) R.A.J. 162 (Del).
10. I have heard learned counsel for the parties. The show cause notice dated 7.11.2007 issued by the Contractor's Registration Board pertains to disciplinary action against the petitioner firm and it is nowhere specifically stated in the show cause notice that as to why the petitioner firm should not be black listed for a period of one year, which could entail serious and stigmatic consequence on the rights of the petitioner. In the case of ***Raghunath Thakur*** (supra) the Apex Court had considered a case where no notice had been given before the proposed action of blacklisting. In para 4 of ***Raghunath Thakur*** (supra), it was held as under:
4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement

in the rule of giving any prior notice before blacklisting any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representation against the order. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is entitled to do so in accordance with law, i.e. giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."

11. Further in the case of ***M/s Erusian Equipment and Chemicals etc.***

Ltd. (supra), it has been held as under:

"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 on the blacklist."

12. Applying the aforesaid principles to the facts of this case, I find that before passing the order of blacklisting, no specific notice was issued to the petitioner to show cause as to why the petitioner firm should not

be black listed for a period of one year. Accordingly, the order dated 6.11.2009 with regard to black listing of the petitioner is quashed, however, it would be open to the DDA to issue a fresh notice to show cause to the petitioner firm, if so advised. Petitioner firm will also be granted time to file reply to the show cause notice and thereafter one personal hearing.

13. Petition stands disposed of in view of above.

CM NO.1425/2010 (STAY)

14. Dismissed, in view of the orders passed in the writ petition.

G.S. SISTANI, J.

March 08, 2010
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