

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

Date of decision: 28th July, 2011.

+ **W.P.(C) 5223/2011**

ALLIED ENGINEERING WORKS Petitioner

Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Mr. Sudheer Pandey, Adv.

Versus

**DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS &
ORS.** Respondents

Through: Mr. Jatan Singh, Adv. with Mr. Kunal
Kahol, Adv. along with Mr. Onkar
Nath, Section Officer, DGS&D, New
Delhi.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported
in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

% **C.M. No.10600/2011(exemptions)**

Allowed, subject to all just exceptions.

W.P.(C)5223/2011

1. The petitioner, a manufacturer/supplier registered with the respondent DGS&D, is aggrieved from the communications dated 24th June, 2011 and 27th June, 2011. The respondent DGS&D vide communication dated 24th June, 2011 informed the petitioner that owing to a *prima facie* case of the petitioner being guilty of offence involving moral turpitude in relation to business dealings having been made out, it had decided to short close the rate contract with the petitioner after 8th August, 2011.

2. The respondent DGS&D vide notice dated 27th June, 2011 informed the petitioner that it has been reported that the petitioner has been involved in financial embezzlement, fraud and had been raising bills and claiming payments from Chief Controller of Accounts fraudulently; the petitioner was, thus, asked to show cause as to why its registration certificate should not be cancelled for the reason of failure to abide by the conditions of registration.

3. The grievance of the petitioner is that though the petitioner within the period of 14 days prescribed therefor had submitted a reply to the show

cause notice but without passing any order and without holding the petitioner guilty of charge of which it has been asked to show cause, the respondent DGS&D has published the name of the petitioner on its website as a person who had obtained payments fraudulently. The senior counsel for the petitioner has contended that no hearing even has been granted to the petitioner till now. It is urged that the short closing of the rate contract w.e.f. 8th August, 2011 as threatened amounts to blacklisting the petitioner; that the same cannot be done without hearing the petitioner and passing a reasoned order thereon. It is further contended that the show cause notice as given does not disclose the requisite particulars and as such the petitioner does not even know the case which the petitioner has to meet.

4. The counsel for the respondents, appearing on advance notice, has at the outset contended that this Court ought not to interfere at the show cause notice stage. Reliance in this regard is placed on ***The Special Director & Anr. Vs. Mohd. Ghulam Ghouse*** AIR 2004 SC 1467. It is further contended that another communication dated 29th June, 2011 has been issued to the petitioner giving all the particulars. The counsel for the respondents

also informs that the name of the petitioner has since been removed from the website. Qua the suspension of the Rate Contract w.e.f. 8th August, 2011, it was initially argued that the order in pursuance to the show cause notice would be made before 8th August, 2011 and thus it is not a case of blacklisting without opportunity and passing order thereon. However, subsequently, on instructions, it is stated that since the investigation is still going on, it may not be possible to pass order in pursuance to the show cause notice by 8th August, 2011 and the same may take upto a month's time from now. It is further contended that the respondent DGS&D under the terms and conditions of the contract is always entitled to short close the rate contract. Reference, in this regard, is made to Clause 20.1 of the General Terms and Conditions as contained in the DGS&D Manual and which is as under:-

“20. PURCHASER’S RIGHT TO SHORTCLOSE THE RATE CONTRACT.

20.1 Since the rate contract is a standing offer and is merely a document embodying various terms of the standing offer made by the Contractor, the purchaser i.e. DGS&D can legally cancel the Rate Contract at any time during the currency of the contract giving a reasonable opportunity to the contract to represent

against such cancellation. The revocation/cancellation of the Rate Contract shall take effect immediately, thereafter. Any order placed by Direct Demanding Officer after the date of cancellation of the Rate Contract should not be taken up by the contractor for execution. The purchaser i.e. DGS&D may, at its option negotiate with for execution. The purchaser i.e. DGS&D may, at its option negotiate with the Contractor so as to bring the R/C prices in line with the Market Prices, whenever market fluctuation affects prices abnormally. If the negotiation fails, then the Rate Contract will be foreclosed and fresh Rate Contract will be concluded separately.”

5. In the aforesaid state of controversy, need is not felt to issue formal notice or to call for the counter affidavit and the counsels have been heard finally on the writ petition.

6. The respondent, in the present case, has short closed the contract not for commercial reasons but for the reason of forming a *prima facie* opinion of the petitioner being guilty of offence involving moral turpitude in relation to business dealings. The short closing threatened is thus stigmatic. No notice/opportunity was given to the petitioner before forming such *prima facie* opinion. In fact, notice to show cause, on the same grounds, is given on a subsequent date. Even otherwise, the terms and conditions of short closing require the respondent to give a reasonable opportunity to the

petitioner to represent against such cancellation/short closing. Though the counsel for the respondent has sought to urge that reasonable opportunity has been given by issuance of show cause notice but admittedly no hearing has taken place till now and no order in pursuance to the cause shown has been made. Giving of a reasonable opportunity cannot be an empty exercise and has to lead to a finding giving reasons on the response/ defence of the contractor. Clause 20.1(*supra*) permits the respondents to short close only “thereafter” and not prior thereto. Admittedly, no order on the representation/reply of the petitioner has been made till now.

7. The senior counsel for the petitioner has also rightly contended that the short closing for the same reasons for which cancellation of registration is threatened would amount to a virtual blacklisting of the petitioner and which this Court has repeatedly held cannot be done without giving opportunity of hearing and without passing a reasoned order thereon. Reference in this regard may be made to ***Mekaster Trading Corporation Vs. Union of India*** 106(2003) DLT 573, ***National Building Construction Corporation Limited Vs. New Delhi Municipal Council***

MANU/DE/9790/2006 and *R.K. Machine Tools Ltd. Vs. Union of India*
MANU/DE/0428/2010.

8. The counsel for the respondents has, thereafter, invited the attention of this Court to Clause 5.17.3 and 5.18.2 also stated to be part of the DGS&D Manual and an extract whereof has been handed over in the Court to contend that suspension of dealings pending full inquiry into the allegation can also be done. Clause 5.18.2 in this regard is as under:-

“5.18.2. GROUND FOR SUSPENSION OF BUSINESS DEALINGS WITH FIRMS:- Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm should continue. Such an order may be passed:-

- (i) If the firm is suspended to be of doubtful loyalty to India.
- (ii) If the Central Bureau of Investigation or any other investigating agency recommends such a course in respect of a case under investigation and
- (iii) If a prima-facie case is made out that the firm is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.”

9. The senior counsel for the petitioner has contended that he has to take instructions about existence of such a provision.

10. However, even if the said provision is to be read, it does not entitle the respondent to so suspend the business dealings in all cases. The respondent in the present case, though in the notice dated 24th June, 2011 has stated that a *prima facie* case of the petitioner being guilty of offence involving moral turpitude in relation to business dealings was made out but the notice is otherwise bereft of any particulars whatsoever. The respondent under Clause 5.18.2 was required to at least state the details on the basis whereof such prima facie opinion had been formed. Moreover, the respondent did not suspend the business immediately. The suspension was to come into effect after nearly one and a half months of the issuance of the notice. The subsequent notice dated 27th June, 2011 to show cause also did not give any particulars/facts and gave only 14 days' time to the petitioner to respond. The scheme appears to have been that the suspension would come into effect after a decision pursuant to the show cause notice has been taken. There is still plenty of time for the respondent to so take a decision. If the respondent

for its own reasons delays taking decision, the respondent cannot be held entitled to prior thereto suspend the business particularly when it appears that even the investigation is not complete.

11. However, as far as the contention of the senior counsel for the petitioner of the notice being vague is concerned, I am of the opinion that it is open to the petitioner to take all such pleas in the reply to the show cause notice and in the hearing in pursuance thereto and it is open to the respondent to make up the deficiencies, if any felt in the show cause notice. However, this Court cannot monitor proceedings pursuant to the show cause notice and if at all the show cause notice remains ineffective for the reason of the proper opportunity being not given to the petitioner, the challenge if any thereto is maintainable along with the challenge against the order, if any against the petitioner in pursuance to the said show cause notice and not at this stage.

12. The petition is therefore allowed with the directions that till the respondent in pursuance to the show cause notice and after hearing the petitioner makes an order finding the petitioner guilty of the offences with

which it is charged with, the respondent shall not take any steps of blacklisting or steps which may have the effect of blacklisting the petitioner. Since short closing is on the same grounds as contained in the show cause notice, it is clarified that any short closing also shall not be given effect to till/after the order in pursuance to the show cause notice is made. It is further made clear that this order will not come in the way respondents stopping payments for the supply which are claimed to have not been made. On request, it is further directed that order if any made against the petitioner shall not be given effect to for a period of one week from the date of communication to the petitioner, to enable the petitioner to avail remedies thereagainst.

No orders as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 28, 2011
anb