

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

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Date of Decision: 22.04.2013

+ W.P.(C) 2546/2013

SARVESH SECURITY SERVICES PVT. LTD Petitioner
Through: Mr Arvind Kr. Nigam, Sr. Adv with
Mr Manmeet Arora, Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ANR Respondent
Through: Ms Shobhana Takair, Adv for DDA

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. On 13.12.2012, respondent-DDA floated a tender for providing security services at its Rohini Sports Complex. The petitioner also submitted online tender to Department pursuant to the tender notice issued to it. One of the conditions stipulated in the tender document was that in case the rates quoted are less than the minimum wages as notified by the GNCTD, the agency would be debarred for tendering etc. in Sports Wings, DDA. Vide letter dated 19.04.2013, respondent No. 2, acting on behalf of respondent No. 1-DDA, debarred the petitioner from further tendering in the Sports Wing of DDA. The copies of the aforesaid letters

were marked to a number of other authorities, including Government of NCT, CPWD and Sports Authority of India for information.

2. The contention of the learned senior counsel for the petitioner is that even if the petitioner had submitted tender below the minimum wages fixed by the Government of NCT of Delhi, the respondents could, at best, have rejected the tender and could not have debarred it from further tendering with the Sports Wing of DDA. The second contention is that even if the right of the respondents to debar the petitioner from further tendering in the Sports Wing of DDA is upheld, no such order could have been passed, without giving opportunity of hearing to the petitioner. In support of its contention, the petitioner has placed reliance upon the decision of this Court in **Well Protect Manpower Service Pvt. Ltd. v. Delhi Development Authority & Ors.** 117(2005) DLT 293 (DB).

3. A perusal of the above-referred decision would show that in that case also an identical order was passed by Director (Sports), Delhi, debarring the petitioner before this Court from tendering in future in the Sports Wing of DDA on the ground that the offer of the petitioner did not abide by the Minimum Wages Act, as notified by Government of NCT of Delhi. The writ petition filed by him was opposed by DDA on the ground that the purpose of the above-referred stipulation in the tender document was to ensure that the agency pays at least the prescribed minimum wages to the watchmen employed by them. During the course of

arguments, the learned counsel for DDA admitted that no notice was issued to the petitioner requesting him to show cause against the proposed action of debarment, though, according to him, adequate opportunity was given to the petitioners in this regard when they are asked vide letter 23.04.2004 to clarify as to how the quoted rates had been worked out by them. Rejecting the contention of DDA, the Court, *inter alia*, held as under:-

“14. There is no gainsaying that any order or decision in matters involving civil consequences has to be made consistently with rules of natural justice. A "civil consequence" is an infraction of not merely property or personal rights but also of material deprivations and non-pecuniary damages. [See: Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors. [1978]2SCR272]. It is true that the rules of natural justice can neither be cast in a rigid mould nor put in a legal strait jacket. They "are not cut and dried. They vary indefinitely" said Lord Denning M.R. in Regina v. Home Secretary, Ex. P. Santillo, (1981) Q.B. 778. Thus, the principles of natural justice are flexible and have to be adopted to the circumstances prevailing in any particular case. Nonetheless, it is an elementary principle of natural justice that parties affected by any order should have the right of being heard and making representations against the order. It is an equally implied principle of rule of law that any order having civil consequence should be passed only after following the principles of natural justice [SEE: Raghunath Thakur v. State of Bihar: AIR1989SC620]. Undoubtedly black listing of any person in respect of business ventures entails serious civil consequences for his future business and Therefore, any authority taking such a decision must act in accordance with the principles of natural justice. While dealing with a similar issue in Erusian Equipment and Chemicals v. State of West

Bengal and Anr. [1975]2SCR674 , their Lordships of the Supreme Court observed thus:

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.

If the respondents were not convinced with the Explanation furnished, the tender evaluation committee was competent to reject the bid in terms of the afore-extracted Clause 3(b) of the general terms and conditions, which enabled the respondents to outrightly reject an offer, which did not abide by the Minimum Wages Act, as notified by the Government of NCT of Delhi, on the date of submitting the tender. ever the less, in our view, recourse to the said Clause could not be had for the purpose of blacklisting a tenderer.

17. We are, therefore of the view that the respondents may be justified in rejecting the bid of the petitioner under the said Clause 3(b), on the ground that the rate quoted by the petitioner was less than what has been prescribed under the Minimum Wages Act but their action to debar the petitioner from tendering in future, being in the nature of a punishment, fundamentals of "fair play" required that the petitioner was given an opportunity of being heard by the competent authority before the impugned order of blacklisting was passed. That having not been done, we have no hesitation in holding that the impugned action of the respondents in debarring the petitioner from tendering in future was palpably arbitrary and therefore, cannot be sustained. It is asked accordingly.”

4. In the case before this Court, admittedly, neither any show-cause notice nor any opportunity of hearing has been given to the petitioners before passing an order debarring it from tendering further in the Sports Wing of DDA. Moreover, the copy of the letter debarring the petitioner from further tendering in the Sports Wing of DDA has been endorsed to a number of outside agencies. There is no valid explanation at this stage from endorsing the aforesaid copy to other agencies when the clause relied upon by the respondents pertained to debarring only with Sports Wing to DDA and not even in the whole of the organization.

5. However, one distinction between the facts of this case and the facts in the case of **Well Protect Manpower Service Pvt. Ltd.** (supra) needs to be noted. In the case before the Division Bench of this Court, there was no term in the tender document entitling DDA to debar the tenderer from further tendering in the event of the tender being below the minimum wages notified by Government of NCT of Delhi. Therefore, though the respondents could have debarred the petitioner from further tendering in its Sports Wing, that could be done only after issuing show-cause notice and an opportunity of hearing to the petitioner. That having not been done, the order impugned in the writ petition is not in accordance with law.

6. For the reasons stated hereinabove, the impugned letter/order dated 09.04.2013 is set aside. The respondents would, however, be at liberty to pass an appropriate order, if so deemed appropriate, in terms of the relevant clause of the

tender document, after giving show cause notice and an opportunity of hearing to the petitioner.

The writ petition stands disposed of.

Dasti.

V.K. JAIN, J

APRIL 22, 2013

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