

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

Reserved on : 13.05.2013

Pronounced on : 21.05.2013

+ **LPA 281/2013 & CM 7222/2013**

PES INSTALLATIONS PVT LTD. Appellant

Through Mr.Rajiv Nayyar, Sr.Adv. with
Mr.Kamal Mehta and Mr.Sudeep
Singh, Adv.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through Mr.Rajeeve Mehra, ASG with
Ms.Zubeda Begum, Mr.Aditya
Malhotra and Ms.Sana Ansari,
Advocates

AND

+ **LPA 282/2013 & CM 7229/2013**

PES INSTALLATIONS PVT LTD. Appellant

Through Mr.Rajiv Nayyar, Sr.Adv. with
Mr.Kamal Mehta and Mr.Sudeep
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versus

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Through Mr.Rajeeve Mehra, ASG with
Ms.Zubeda Begum, Mr.Aditya
Malhotra and Ms.Sana Ansari,
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CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present two Letters Patent Appeal Nos.281/2013 and 282/2013 have been filed by the appellant challenging the impugned orders dated 04.04.2013 and 22.04.2013 respectively. By these two orders, the learned

Single Judge declined to grant interim relief to the appellant.

2. It is the case of the appellant that they had installed the modular gas pipeline system at Sushruta Trauma Centre in 1996 and that since then the appellant has been looking after the operation and maintenance of the plant and manifold system. It is further stated that the contract for maintenance ran from year to year and the last maintenance contract expired on 31.10.2011. It is further claimed that on 18.10.2012 a communication was written to the respondent that the appellant would discontinue the manpower supply from 1st November, 2012. It is also claimed that the appellant had complained to the respondent that the medical gas manifold system had become obsolete and the oxygen flometer, oxygen probe and oxygen control panel had turned faulty and required changes.

3. On 04.12.2012 early morning an unfortunate incident of stoppage of oxygen supply took place which resulted in causing death of four patients in the ICU. It is pointed out that a Show Cause Notice dated 04.12.2012 was served late in the evening whereby the appellant was required to show cause by 10.00 AM next day morning. Subsequently, an order was passed on 04.02.2013 by Mr.S.C.L.Das, Secretary, (Health and Family Welfare) whereby respondent communicated a decision to blacklist the appellant and further debarred it from participating in any tender process/contract agreement with any of the government hospital/health institutions of GNCTD in respect of medical oxygen supply, for a period of two years from the date of the order.

4. The appellant thereafter filed the above-stated Writ Petition No.940/2013 seeking a Writ of Certiorari for quashing of the abovesaid

order dated 04.02.2013.

5. The Writ Petition came up for hearing on 04.04.2013 and in the application for stay no interim orders were passed and the matter was directed to be renotified on 30.07.2013. The appellant filed LPA No.281/2013 challenging the said Order dated 04.04.2013 whereby no relief was granted to the appellant. Thereafter the appellants filed another stay application in W.P.(C)940/2013, which was listed on 22.04.2013. On the said date also no interim orders were passed in favour of the appellants and hence second LPA bearing No.282/2013 challenging the said Order dated 22.04.2013 was filed by the appellant. It is the contention of learned senior counsel for the appellant that the impugned order dated 04.02.2013 issued by respondent suffers from material illegalities and is liable to be quashed. It is contended that the Show Cause Notice dated 4.12.2012 has been served on the appellants in the evening of 05.12.2012 and they have been directed to show cause by 04.12.2012. Clearly, the whole proceedings had been conducted with undue haste causing grave prejudice to the appellant. It is further contended that the Show Cause Notice dated 04.12.2012 is not a show cause notice for blacklisting of the appellant firm and merely states that administrative legal action will be initiated against the appellant company if show cause is not shown. Hence, respondent could not issue impugned order blacklisting the respondent. It is further contended that the person who signed the order dated 04.02.2013, namely, Shri S.C.L.Das is not the person who was involved in considering the response of the appellant to the show cause notice and hence the person passing the order is nowhere connected with the opportunity given to the appellant to show

cause. Further, it is stated that the Show Cause Notice dated 04.12.2012 refers to some opinion of the Enquiry Committee. However, it is submitted that copy of the Report of the enquiry committee has not been forwarded to the appellant causing grave injustice to the appellant in filing its reply/argument in response to the said Show Cause Notice. On those salient grounds, it is contended by the learned senior counsel for the appellant that the said order passed by the respondent dated 4.2.2013 is liable to be quashed and hence the learned Single Judge ought to have granted stay of the order in question.

6. The learned senior counsel for the appellant also relied upon ***Well Protect Manpower Service Pvt.Ltd. –vs- Delhi Development Authority & Ors.***, 117 (2005) DLT 293 (DB) to submit that any order or decision in matters involving civil consequences has to be made consistently with the rules of natural justice. He also relies upon ***Oryx Fisheries Private Limited –vs- Union of India and others***, (2010) 13 SCC 427 to argue that by sending a show cause notice the person who is subject to it should get an impression that he will get an opportunity to rebut the allegations made in the Show Cause Notice.

7. On the other hand, learned ASG appearing for the respondent, has contended that the blacklisting order dated 04.02.2013 has been passed on account of serious lapse on the part of the appellant which resulted in the death of four patients. Reliance is placed on the Report of the Enquiry Committee, where learned ASG pointed out that as per the said Report the appellant company apart from various other lapses had engaged services of a person by the name of Amit Singh Katoch who was only VIIth class pass.

Hence, unqualified persons had been engaged to look after the maintenance of life saving equipments. EPF and ESI have also not been paid to the employees. Manpower had also been reduced from nine persons per day to six persons per day for no rhyme or reason.

8. In our opinion, the impugned order is a interim order and an LPA would normally not lie against an interim order. The various rival contentions which have been raised by learned senior counsel for the appellant and the learned Additional Solicitor General are yet to be adjudicated upon by the learned Single Judge. It is appropriate that these submissions are made when the Writ is taken up for disposal. In view thereof we do not see any reason to interfere with the orders of the learned Single Judge. The appeal is hence dismissed. Pending application also stands dismissed accordingly.

JAYANT NATH, J

CHIEF JUSTICE

MAY 21, 2013/nt