

Neutral Citation No. - 2023:AHC-LKO:69968-DB

Court No. - 2

Case :- WRIT - C No. - 6254 of 2023

Petitioner :- M/S Rishi Enter. Corpo. Thru. Its Prop. Shri Rishi Arora Mahanagar Lko.

Respondent :- State Of U.P Thru. Prin. Secy. Addil. Chief Secy. Deptt. Medical Educ. Secr. Lko. And 4 Others

Counsel for Petitioner :- Anshuman Singh, Dhananjay Kumar Maurya, Pradeep Kumar

Counsel for Respondent :- C.S.C., Abhinav Trivedi

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Manish Kumar, J.

(Per Hon'ble Manish Kumar, J.)

1. Present writ petition has been preferred for quashing of the impugned orders dated 04.07.2023 whereby the petitioner's firm namely M/s Rishi Enterprises has been debarred to participate in the auction proceedings of the Department of Medical Education and Training, Lucknow, Uttar Pradesh for 2 years and forfeiture of the earnest money paid for different tenders. The petitioner although has not challenged the order of cancellation of tender.

2. Petitioner is a proprietorship firm providing service to the hospitals since 1996 in the field of maintenance of Heating' Ventilation and Air Condition (HAVC) System (Q3). The scope of working of the petitioner is Manufacturing and Supply of Scientific, Laboratory and Research Equipments used in the field of Medical, Agriculture and Research, Surgical Instruments, Critical Care Equipments, Cardiology Equipments, Pediatric Equipments, Gynecology Equipments, Anatomy Equipments, Physiology Equipments, Ophthalmology Equipments, Neurology Equipments, Diagnostic Equipments, Pathology Equipments, Blood Bank Equipments, Educational Equipments, Medicine Equipments, ENT Equipments, Tuberculosis Equipments, Psychiatry Equipments, Orthopedics Equipments, Anesthesiology Equipments and Biochemistry

Equipments, Office and Hospital Furniture, Hospitals Hollowware and O.T. Light.

3. The details of works for which, the petitioner was given contracts are indicated hereinunder:-

a) Tender dated 12.05.2022 was issued through Government e-marketplace (Gem) portal for cumulative Annual Maintenance Contract of operations and maintenance of HVAC System at Government Medical College, Jhansi.

b) Tender dated 10.02.2023 was issued through GeM portal for operation and maintenance of HVAC and Split AC, operation and maintenance of Central Medical Gas Pile Line system at Government Medical College, Jalaon (Orai).

c) Tender dated 06.02.2023 was issued through GeM Portal for cumulative maintenance contract of AC system and AC Plant, Tower AC, Split AC, Package AC and Central AC Plant at Government Medical College, Kannauj.

d) By means of Government Order dated 28.09.2022 sanction was granted for Annual Maintenance Contract/Comprehensive Annual Maintenance Contract for non Medical Equipment at Government Medical College, Kannauj.

4. After the award of abovementioned contracts, petitioner had started the work to the utmost satisfaction of the authority concerned. A false complaint was made by M/S. Voltas India and M/S Daikin against the petitioner with respect to Original Equipment Manufacturer certificate submitted by the petitioner relating to the Contract awarded by the Government Medical College, Orai, on which the respondent no. 2 i.e. Director General, Medical Education and Training, U.P., Lucknow took cognizance and issued a show cause notice dated 26.05.2023. Against the said show cause notice, petitioner had submitted its reply on 29.05.2023 stating therein that the complaint is totally false and misleading.

5. On 07.06.2023, after the submission of reply by the petitioner, respondent no. 2 again issued a show cause notice referring therein the Government Order dated 28.09.2022, which provides that work should be facilitated by original manufacturer or authorized seller. It has been alleged in the show cause notice that the petitioner has not submitted the certificate of authorized seller whereas, petitioner had submitted the authorization letter dated 01.01.2023 issued by the manufacturer M/S. Agni Devices Pvt. Ltd. which is related to the supply of equipments by the petitioner for which contract was given to the petitioner.

6. Similarly, respondent no. 2 issued a show cause notice of the same date with respect to the tender dated 12.05.2023 floated by the Government Medical College, Jhansi with the same allegation, which was replied by the petitioner on 08.06.2023.

7. The authorities without considering the reply of the petitioner had passed the orders dated 14.06.2023, whereby the contracts of the petitioner were cancelled.

8. The petitioner had challenged the order dated 14.06.2023 by filing a Writ-C No. 5195 of 2023 and this Court vide its judgment and order dated 23.06.2023 allowed the writ petition with liberty to respondent no. 2 to pass a fresh order after considering the reply submitted by the petitioner. The Authorities thereafter without providing any opportunity of hearing passed the impugned order dated 04.07.2023 stating therein that the reply given by the petitioner was considered by the Committee and on the basis of the recommendation of the Committee, the order dated 14.06.2023 was passed debarring the petitioner for a period of two years and forfeiting the earnest money deposited by the petitioner. The petitioner has no knowledge or any information about any committee which may have been constituted nor any such committee ever gave any opportunity of hearing, one sidedly made recommendation against the petitioner on the basis of which impugned orders have been passed. In support of his contentions, learned counsel for the petitioner has relied upon various judgments of

Hon'ble Supreme Court in which the aspect of opportunity of hearing has been considered. The judgments are as follows:-

- i) Ratriyalpat Nigam and Another vs. M/S. Verma Transport Company [(2006) 7 SCC 275];
- ii) Kulja Industries vs. Western Telecom [(2014) 14 SCC 731]
- iii) Erusion Equipments and Chemicals Ltd. vs. State of West Bengal [(1975) AIR SC 266]; and
- iv) Raghunath Thakur vs. State of Bihar and Ors. [(1989) AIR (SC) 620]

9. It is further submitted that the impugned orders have been passed on presumption that the Original Equipment Manufacturer certificate dated 01.01.2023 issued by the M/S. Agni Devices Pvt. Ltd. was misrepresentation and misleading, M/S. Agni Devices Pvt. Ltd. vide letter dated 31.06.2023 has informed the respondent no. 2 that the petitioner has not been given any authorization for the said work and in the letter, M/S. Agni Devices Pvt. Ltd. has neither denied nor disputed the certificate issued on 01.01.2023 i.e. declaration of certified dealer.

10. It is further submitted that petitioner while submitting the tender documents did not misrepresent the authorities. It submitted the Original Equipment Manufacturer certificate dated 01.01.2023, which was undisputedly issued by M/S. Agni Devices Pvt. Ltd. which the petitioner had in his possession at that time.

11. On the other hand, learned counsel for the respondent no. 2 on the basis of short counter affidavit filed in the present writ petition has submitted that petitioner has mislead the authorities by submitting forged documents. It has further been submitted that petitioner did not possess the Original Equipment Manufacturer Authorization Certificate and therefore, four separate show cause notices were issued against the petitioner. It is further submitted that the M/s Agni Devices Private

Limited have themselves denied to have issued any authorization certificate in favour of the petitioner for the purpose of participation in the tender process and there is no illegality in the orders of blacklisting of the petitioner debarring it for a period of two years.

12. After hearing the learned counsel for the parties, going through the record of the case, the position which emerges out is that the subsequent letter dated 31.05.2023 written by M/S. Agni Devices Pvt. Ltd. to the respondent no. 2 does not deny the issuance of letter dated 01.01.2023 i.e. declaration of certified dealer where there is no such condition that petitioner has to take permission to participate in any particular tender process and subsequently issuing a letter dated 31.05.2023, M/S. Agni Devices Pvt. Ltd. has come with a case that the petitioner has not been given any authorization for the said work i.e. subsequent to the contract entered between the petitioner and the department.

13. M/S. Agni Devices Pvt. Ltd. has nowhere communicated to the respondent no. 2 that the document dated 01.01.2023 is not issued by M/S. Agni Devices Pvt. Ltd. in favour of the petitioner, so it cannot be said that some forged document was produced by the petitioner or the petitioner had misrepresented to the authorities. The declaration of the certified dealer issued by M/S. Agni Devices Pvt. Ltd. dated 01.01.2023 in favour of the petitioner nowhere mentions that in which tender the petitioner has to participate and in which tender the petitioner has not to participate. It was not conditional but general in nature. The provisions of Uttar Pradesh Procurement Manual, 2016 mentioned in the impugned orders are not applicable in the present case.

14. The petitioner has specifically pleaded in the writ petition that the report submitted by the Committee was never provided to the petitioner nor any opportunity of hearing was given to the petitioner by the committee and all the impugned orders show that the impugned orders have been passed also on the basis of the recommendation of the Committee against the petitioner which amounts to contravention of

principals of natural justice. The said fact has neither been disputed nor denied by the respondent no. 2 in its short counter affidavit.

15. As per the law settled in the cases of 'Daffodills Pharmaceuticals Ltd vs. State of U.P.' (2020) 18 SCC 550 and 'Vetindia Pharmaceuticals Limited vs. State of U.P. & Anr.' (2021) 1 SCC 804, the order of blacklisting cannot be passed without providing opportunity of hearing by merely issuing show cause notice. The order of blacklisting amounts to civil death of the company.

16. In view of the discussions made hereinabove, the writ petition is allowed and the impugned orders dated 04.07.2023 are held bad in the eyes of law and are hereby quashed.

17. Writ petition is *allowed*.

(Manish Kumar,J) (Manoj Kumar Gupta,J)

Order Date :- 26.10.2023

Ashish