



Serial No. 66
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 61 of 2025

Date of Decision: 05.05.2025

Tandhan Polyplast Limited,
a company incorporated under the
Companies Act, 1956 and having
registered office at JL No. 15, Kulgachia,
Mouza Kashyabpur, Howrah, West Bengal
711303 represented by its constituted attorney
Shri. Tarun Kataruka

:::Petitioner

-Vs-

1.Union of India through the Secretary,
Ministry of Consumer Affairs, Food and
Public Distribution, New Delhi 110001

2.Food Corporation of India, a statutory
body constituted under the Food Corporation
Act, 1964, 16-20 Barakhamba Lane, New Delhi
110001

3.The General Manager (R)
Food Corporation of India,
Regional Office, Mawlai Mawroh,
Shillong 793008

4.The Asstt. General Manager (QC),
Food Corporation of India,
Regional Office, Mawlai Mawroh,
Shillong 793008

:::Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Sen, Adv. with
Ms. T. Sutnga, Adv.

For the Respondent(s) : Mr. B.K. Singh, Adv.

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| i) Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) Whether approved for publication
in press: | Yes/No |
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Oral:

1. The petitioner Company being aggrieved with the impugned order dated 26.02.2025, issued by the respondent (Food Corporation of India), whereby besides terminating the contract, the respondents have also debarred/blacklisted the petitioner Company from participating in any future tender with FCI for a period of 3(three) years, is before this Court by way of this instant writ petition.

2. The brief facts are that the petitioner Company had participated in the tender process, for supply of Cross Laminated Thermoplastic Fumigation (CLTF) covers, which had been issued on the GEM portal dated 24.07.2024, with the last date of submission of bids and opening fixed on



07.08.2024. The bid validity period was 90(ninety) days from the last date, which expired on 07.11.2024. Though the tender process was not completed by the respondents by 07.11.2024, on 25.12.2024, the respondents awarded the contract to the petitioner Company and issued the contract through the GEM portal for supply of the materials, CLTF, with the total contract value being Rs.7,16,162/- (Rupees Seven Lakhs Sixteen Thousand One Hundred and Sixty-Two) only.

3. On 26.12.2024, the respondents then emailed the petitioner Company to arrange for pre-dispatch inspection and it was also informed that the petitioner Company was required to furnish a security deposit of Rs.35,808/- (Rupees Thirty-Five Thousand Eight Hundred and Eight) only, being 5% of the contract value within 7(seven) days. The Company to this information, had by an email dated 15.01.2025, requested for extension of time due to the long vacation and also informed the FCI that the pre-delivery inspection could be carried out on 18.01.2025. The said request however was declined vide communication dated 04.02.2025, citing a clause in the bid document, which provided that if a bidder failed to deposit the security deposit by the cessation of extended period also, it shall be lawful for the FCI to terminate the contract treating it as a breach of contract, and accordingly the contract was terminated. Thereafter, the GEM contract dated 25.12.2024, was terminated on 04.02.2025, and subsequently



by the impugned order apart from termination, the petitioner Company was debarred from participating in future tenders of the FCI for a period of 3(three) years.

4. Mr. S. Sen, learned counsel for the petitioner Company has at the outset submitted that the impugned order was issued without any notice and without affording an opportunity of hearing. In fact, he contends there has been no infraction of the terms and conditions or any action, to warrant the termination of the contract and the debarment or blacklisting of the petitioner Company. The non-submission of the security deposit amounting to only Rs.35,808/- (Rupees Thirty-Five Thousand Eight Hundred and Eight) only, within time he submits was actuated by the actions of the respondents themselves. It is contended that the bid validity period of 90(ninety) days from the date of opening of bids that is 07.08.2024, had expired on 07.11.2024, and as such, on receiving no information and under the bonafide belief that the petitioner might not have been the L1 bidder, and that the contract may have been awarded to some other bidder, the petitioner did not follow up on the said bid in the GEM portal. It is further submitted that the respondents had already by an email dated 04.02.2025, communicated that the contract had been terminated, and as such, the further termination of the same contract vide order dated 26.02.2025, and



further debaring the petitioner Company from participating in any future tender is arbitrary and illegal exercise of power.

5. The learned counsel submits that the conditions for infliction of debarment in the instant case are nonexistent, inasmuch as, the case at the most is but of an ordinary breach of contract and it is not a case where there is any element of fraud or criminal offence in obtaining the transaction. It is also submitted that the debarment without notice, has resulted in the violation of the principles of natural justice. In support of his arguments, the learned counsel has placed reliance on the judgment of this Court rendered in the case of *RMSI Private Limited vs. State of Meghalaya represented by the Chief Secretary to the Government of Meghalaya & Ors.* reported in *2024 SCC OnLine Megh 746*.

It is lastly submitted that even the respondents in the counter have not denied the above stated facts. He therefore prays that the impugned order as far as it concerns debarment be set aside and quashed.

6. Mr. B.K. Singh, learned counsel for the respondents has submitted that as per the terms and conditions of the contract, the successful bidder has to deposit 5% of the contract value, as security deposit within 7(seven) working days of the issuance of the acceptance letter/GEM contract/supply order and in case a bidder fails to deposit the security deposit within 7(seven) working days, further extension of 7(seven) working days can be



given. However, he submits if the bidder fails to deposit the security deposit by end of the extended period also, it shall be lawful for the FCI to terminate the contract treating it as a breach of the same, and to award the contract to another bidder at the risk and cost of the existing bidder. Besides this he submits, the bidder will also be debarred from participating in any future bids of the FCI for a period of 3(three) years. The petitioner he submits was therefore debarred, as per the contract clauses contained in Clause II(ii), for failing to abide by the terms and conditions of the bid document. He therefore contends that the action of the respondents being as per the terms of the contract, no interference is called for.

7. Heard learned counsel for the parties. On a query from the Court, the counsel for the petitioner has submitted that the main grievance of the petitioner Company at this stage is only with the order of debarment or blacklisting. This being the situation, this Court therefore will examine and deal only with the justifiability and legality of the impugned order with regard to the debarment.

8. It is noted from the submissions and the facts of the case that the entire dispute which resulted in the termination of the contract and consequent debarment of the petitioner Company has arisen from a simple breach of contract. This observation is made in view of the fact that from the part of the respondents itself, they took about 5(five) months to



complete the tender process, which had commenced on 24.07.2024, and the work order was issued on 25.12.2024, which was beyond the 90(ninety) days period of submissions of the bids that is 07.08.2024. The petitioner Company instead of depositing the security deposit, being under the impression that the respondents would further extend the time limit after the extension as allowed by the contract, had also failed in this regard, and thus, had subjected themselves to the termination as communicated by the email dated 04.02.2025. This being the case therefore, what has occurred is but an ordinary breach of contract, which is not visited with any elements of wrong doing on the part of the petitioner Company such as commission of fraud, violation of any statutes, collusion, bid rigging, or there being a history of failure to perform, or willful failure to perform in accordance with the terms of the contract, by the petitioner Company. As such, the penalty of debarment of the petitioner Company meted out by the FCI, in participating in future tenders for 3(three) years is clearly disproportionate and unjustifiable.

9. A more clinching factor which invalidates the impugned decision, is the fact that in arriving at the decision, the respondents FCI did not deem it fit to even issue a show cause notice, nor make any attempt to hear the petitioner and the same has resulted in a serious breach of the principles of natural justice.



10. Accordingly, in view of the facts and circumstances of the case, and as per the discussions made hereinabove, the debarment order apart from being illegal for the violation of the principles of natural justice is clearly disproportionate and unreasonable. The impugned order dated 26.02.2025, being unsustainable to the extent of debarment therefore is set aside and quashed.

11. As ordered above, the writ petition stands allowed to the extent indicated above and is disposed of, leaving the parties to bear their own costs.

Judge

Meghalaya
05.05.2025
"D.Thabab-PS"