

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.6604 of 2014

ORDER:

Heard Mr.S.Ravi-learned senior counsel and Mr.P.Bhaskar standing counsel.

Petitioner/Efftronic Systems Pvt.Ltd., invokes the jurisdiction of this Court under Article 226 of the Constitution of India assailing communication No.STS/E/Digital/SSBPAC/Efftronics Vol.79 dated 17.07.2013 of the respondent as illegal and quash the same.

The respondent through the impugned communication has temporarily withdrawn approval of Solid State Block Proving with Axic Counter (Digital) for Railway S&T and further stopped purchase inspection/inquiry of M/s. Efftronics Systems (P) Ltd., Vijayawada. The withdrawal is brief in expression and for appreciating the limited grievance of petitioner, the same is excerpted hereunder:

No.STS/E/Digital /SSBPA/Efftronics Date: 17.07.2013

Sub: Temporary withdrawal of approval & stoppage of
Purchase inspection of M/s. Efftronics Systems (P)
Ltd., Vijayawada for RDSO approve item under
RDSO/SPN/175/2005.

Competent authority has approved that the following should be implemented with immediate effect:

1. Inspection of approved products (Solid State Block Proving with Axic Counter (Digital) under RDSO/SPN/175/2005 of M/s. Efftronics Systems (P) Ltd., 40-15-9, Brundavan Colony, Vijayawada-520010, to be stopped with immediate effect.
2. The name of M/s. Efftronics System (P) Ltd., Vijaywada to be temporarily withdrawn from RDSO's approved vendor list under RDSO/SPN/175/2005.

This is for your information and necessary action please.

Receipt of the letter may be acknowledged.

(P.K.Verma)

Director/Signal

The circumstances relevant for disposal of the writ petition are as under:

The respondent through communication No.RDSO/SPN/175/2005 approved supply of twenty numbers (20 numbers) SSBPAC(D) in Indian Railways manufactured by the petitioner-company. It is admitted by the parties that the approval has been extended from time to time and at the time of withdrawal through impugned communication, the petitioner had valid approval for the product. Before advertizing to the submissions of the learned counsel appearing for the parties on the impugned communication, it is relevant to refer to an incident which has bearing on the issuance of withdrawal letter.

The Central Bureau of Investigation filed charge sheet in what is popularly known as Railway Board Scam case. One M.V.Murali Krishna S/o M.V.Koteswara Rao, is one of the accused in the said Railway Board Scam case. One of the accused i.e. M.V.Murali Krishna, was one of the Directors of petitioner-company. It is stated at Bar by learned standing counsel that the Railway Board Scam case has several manifestations and far reaching implications on transparency. As a fall out of scam, the organizations/Departments in Railways connected with the grant of approvals, award tenders etc., have withdrawn letters of supplies or approvals as the case may be to companies or Directors charge-sheeted by CBI. The instant communication refers to withdrawal of approval granted in favour of petitioner-company as its Director is charge sheeted in Railway Board Scam case.

The power to withdraw approval is covered by clause 5.7.8 of Work Instructions for Vendor Approval, vendor registration operated by the respondent.

5.7.8 reads as follows:

Temporary delisting

Temporary delisting of vendors can be resorted to under the following conditions:

- a. Vendors have not applied in time for renewal of approval.
- b. Sample(s) have been picked from the consignee and the first sample fails in tests. (See instructions for testing of sample as per para 5.6.9)
- c. Cases where epidemic failures are noticed in the items supplied
- d. Direction from law enforcing agencies

e. Any other serious reason.

The firm to be temporarily delisted shall normally be served with a show cause notice bringing out the reason(s) for the temporary delisting. The notice shall allow at least 10 days for the firm to reply. However, under exceptional circumstances, issue of the show cause notice shall be dispensed with. The directorate head shall record the reasons for dispensing with the show cause notice.

Process for final delisting shall be initiated at the earliest after temporary delisting.”

The petitioner assails the withdrawal, *inter alia*, on factual as well as several legal objections.

Though the learned counsel appearing for both the parties have tried to persuade this Court with their respective versions on merits of facts in issue, this Court is not proposing to consider these facts in issue for the disposal of the writ petition.

Learned counsel appearing for the petitioner contends that one of the accused in Railway Board Scam case is one of the Directors of petitioner-company. The petitioner-company has been supplying approved units by participating in the tender process and on being successful, contracts are entered into with different railway divisions. The petitioner is not involved in the Railway Board Scam case or for the alleged involvement of one of the Directors, withdrawal of approval is arbitrary and unconstitutional. The failure to issue notice before withdrawal has vitiated the communication on all fours and secondly, that the case on hand does not have exceptional circumstances to dispense with the issue of show cause notice to petitioner. Alternatively dispensing with show cause notice from the nature by expression used in the relevant clause cannot be mechanical and should be satisfied with contemporaneous reasons recorded for dispensing with show cause notice. On the aspect of prejudice, it is submitted that the denial of opportunity firstly has resulted in deprivation of business opportunities to petitioner and further the withdrawal of approval, even though is a temporary measure and as long as the temporary measure is continuing, it amounts to presuming the participating or complacency of petitioner-company in the larger Railway Board Scam case. The withdrawal for all purposes holds the petitioner guilty of offence, even without affording an opportunity. The learned counsel prays for setting aside the impugned communication and prays for grant of an opportunity before the 1st respondent under

clause 5.7.8.

Sri P.Bhaskar, learned standing counsel, vehemently opposes the writ petition. The preliminary objection of learned standing counsel is that the withdrawal, in effect, assuming that the requirement of clause 5.7.8 is not followed, still it cannot be treated as conclusive and final, for after the Director comes clean in the charge sheet filed against him by the CBI, the petitioner will be empanelled and the business prospectives of petitioner are not affected. The learned counsel further contends that the writ under Article 226 of the Constitution is not maintainable on the ground that the petitioner has an effective alternative remedy before the appellate authority. The petitioner can certainly move the appellate authority with its version and the appellate authority certainly considers these objections and passes appropriate orders. On the breach of requirement of clause 5.7.8, the other submission of learned standing counsel is that the petitioner is not completely ignorant of the reasons for giving temporary withdrawal against petitioner-company for the communication or correspondence ensued between the petitioner and the respondent would certainly indicate that the petitioner has full knowledge of reasons for withdrawal. The respondent, with a view to ensuring that there is complete transparency in the transactions, considering the urgency in the matter, has issued the impugned communication to protect the credibility of respondent and no exception can be taken. The learned standing counsel places strong reliance upon the decision of the High Court of Himachal Pradesh in ***M/s. Pyramid Electornics V. Research Designs and Standards Organization and others*** dated 20.08.2014 in support of his question of availability of alternative remedy. Therefore, the learned standing counsel submits that the facts in the case on hand are similar and the petitioner can certainly move the appellate authority for appropriate relief.

The learned standing counsel justifies issuance of impugned communication without issuing notice to the petitioner firstly, under condition (e) of clause 5.7.8 and secondly, that issuance of notice is not mandatory in all the cases. This Court is not examining the applicability of condition (e) of clause 5.7.8 at this stage of the matter.

The learned senior counsel by way of reply submits that the remedy of appeal before the appellate authority cannot be treated as an effective remedy for two reasons:- (a) as against the impugned communication, the submissions made in the writ petition will have to be substantially reiterated and pray for remand to the primary authority and (b) there is hardly any reason on merits to file an appeal and

seek adjudication by the appellate authority. Therefore, he contends that having regard to the totality of circumstances, the filing of writ petition is justified.

The short and long of the issue is that the respondent accords design approval to the manufacturers of different products, which are ultimately used by the railways. The respondent has its own manual to accord approval and issue suggestions for applicants/suppliers. The respondent has power to consider temporary withdrawal of the approval granted or issue appropriate orders permanently withdrawing an approval in the interest of safety and security. Clause 5.7.8 covers four stages and ancillary stage is referred to in clause (e) "any other serious reason".

From the consideration of totality of circumstances, this Court is of the view that the manual deals with grant of approvals, withdrawal of approvals etc., for products used by Railways. Even assuming, a charge sheet is filed against one of the Directors of petitioner-company, the issuance of temporary withdrawal and stoppage of vendor enquiry to petitioner-company, certainly causes prejudice to petitioner/company and further the circumstances are not so alarming and emergent to straightaway issue the order of withdrawal of approval without hearing the petitioner. To conclude this aspect of the matter, this Court is compelled to illustrate that had it been a case where the product for which approval is granted and the approved product is used by the railways and the usage is resulting in operational difficulties and putting the life and property of passengers in peril, the respondent is certainly justified in not adhering to the requirement of issuing notice to such approval and can certainly withdraw the approval in the larger public interest.

But in the case on hand, the petitioner may have its own explanation to offer to the respondent against the alleged involvement of its Director. The petitioner is a limited company. The respondent considers the reply and passes appropriate order. The fairness in action can certainly be attained only by issuing a notice, considering the explanation of petitioner and passing a comprehensive order as the circumstances warrant. The issuance of impugned letter without notice to petitioner in the facts and circumstances of the case vitiates the impugned letter. Though the prayer is to set aside the impugned communication, having regard to the assertions and denials on both sides on merits of the case, I consider it appropriate to order the

writ petition by treating the impugned communication as a show cause notice and give two weeks time from today to petitioner to offer explanation against the proposed action under clause 5.7.8. The respondent, on receipt of such explanation, is free to consider the matter and pass appropriate orders as expeditiously as possible.

With the above direction, the writ petition is ordered. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V. BHATT, J

Date: 19.03.2015

KLP ☐