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

+ W.P.(C) 2921/2015 and CM No.5232/2015

M/S S. SONI & CO

..... Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr.
Dinesh Sharma and Ms. Ritika Jhurani, Advocates

versus

NEW INDIA ASSURANCE CO. AND ANR. Respondents

Through: Mr. Pankaj Seth, Adv. for R-1
Mr. Nitya Sharma for Mr. Amit Mahajan, CGSC
for R-2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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26.05.2015

1. Mr. Datta, the learned senior counsel for the petitioner confines his challenge to the communication dated 09.03.2015, to one singular ground, which is, that failure to issue show cause notice prior to the issuance of the said communication, has rendered it unsustainable in law.

1.1 To be noted, the petitioner claims that he was empanelled by respondent no.1, in the list maintained by it, for Marine Cargo Surveyors.

1.2 It is contended that on account of a vigilance enquiry carried out by respondent no.1's own department, to which, the petitioner, was not a party, the impugned communication, got issued.

1.3 The petitioner says that the impugned communication is stigmatic and its emanation is in complete breach of the principles of natural justice.

2. In the counter affidavit, the stand taken by respondent no.1 in so far as this issue is concerned, according to Mr. Seth, the learned counsel appearing for respondent no.1, is articulated in paragraph 8. For the sake of

convenience, the said paragraph is extracted hereinbelow :-

“..That the deponent submits that it was purely an administrative decision of the competent authority of respondent No.1 based on the advice and instructions received from the Vigilance Department which was communicated to the concerned offices by email dated 09.03.2015. But the petitioner managed to obtain a copy of the said email dated 09.03.2015 and also sent a detailed representation vide email dated 13.03.2015 disputing the aforesaid decision of respondent No.1. On receipt of the representation dated 13.03.2015 from the petitioner, the same was referred to the Head Office level Committee formed by the competent authority to examine and recommend appropriate action in the matter. But the petitioner without waiting for the decision of the said Committee on the said representation of the petitioner, filed the present writ petition before the Hon’ble High Court on 19.03.2015..”

2.1 It is, therefore, the contention of Mr. Seth that it was in effect an internal communication which the petitioner has somehow got access to, and therefore, no writ can be maintained.

2.2 In order to appreciate Mr Seth’s submission, it would be useful to extract the communication itself.

“...Dear Sirs/Madams,

We have been informed by the Vigilance Dept. Head Office that their investigations have revealed serious irregularities and manipulations in the surveys and loss assessments of the marine cargo losses done by the surveyors M/s. Soni & Co., New Delhi. They have advised us to take appropriate action to de-panel the surveyors from the list of HO and all ROs.

We, therefore, request you to de-panel the surveyors M/s. Soni & Co., New Delhi from your list of the marine cargo surveyors and ensure that no marine cargo survey or any other work related to the marine cargo department is given to these surveyors. Please also arrange to advise all operating offices under your control accordingly.

Regards,
Vikas Patil,
Dy. Manager,
MCTD, H.O..”

2.3 A perusal of the aforesaid communication would show that it has emanated from the head office of respondent no.1 and has been sent to all Regional offices and branch offices. By this communication, a direction is issued by the Head Quarter to, not allocate, any work to the petitioner pertaining to Marine Cargo Survey or any other work pertaining to Marine Cargo Department. Furthermore, an explicit directive was issued to de-panel the petitioner.

2.4 Undoubtedly, such a directive of the respondent entails civil consequences for the petitioner, not only qua its dealings with respondent no.1, but it could effect its business relations, perhaps, with other organisations.

2.5 Therefore, the contention of Mr. Seth that it is an internal communication which cannot impact the petitioner, is according to me, an argument which cannot be accepted.

2.6 Both, in the counter affidavit as also, during the course of arguments, it has been conceded on behalf of respondent no.1 that neither any show cause notice nor any hearing was accorded to the petitioner prior to the issuance of the impugned communication.

3. Mr. Seth has said that since a representation as received from the petitioner, which is dated 13.03.2015, a “head office level committee” (in short the committee) has been constituted to examine the representation of the petitioner.

4. In my opinion, non-issuance of a show cause notice and failure to accord a hearing to the petitioner has rendered the impugned communication untenable in law.

4.1 It is not the case of respondent no.1 that the situation was emergent, and therefore, a pre-decisional hearing could not have been given to the petitioner. The facts of this case reveal that the petitioner is only entitled to empanelment. The empanelment, by itself, cannot give access to work. In these circumstances, the least, that respondent no.1 could have done is, to put the petitioner to notice prior to issuance of the impugned communication.

5. Having regard to the above, the impugned communication is set aside. Since, the representation of the petitioner is pending before the aforementioned committee, the said committee will consider the same and pass a reasoned order. A copy of the reasoned order will be supplied to the petitioner. The committee would also seek the presence of the petitioner, and accord, an opportunity of hearing to the petitioner.

6. Consequently, the captioned petition and the pending application are disposed of in terms of the aforementioned directions.

RAJIV SHAKDHER, J

MAY 26, 2015

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