

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 25527 of 2015

Date of Decision: 27.7.2016

Super Publicity Pvt. Ltd., Chandigarh

....Petitioner.

Versus

Chandigarh Housing Board, Chandigarh and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Aditya Grover, Advocate for the petitioner.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Deepak Sharma, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the order dated 30.10.2015 (Annexure P-1) passed by respondent No.2 debarring the petitioner from participating in any future tenders of Chandigarh Housing Board and forfeiting the earnest money deposited by it.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is engaged in the business of outdoor advertising. In the year, 2015, the respondents issued a Detailed Notice Inviting Tenders (DNIT) (Annexure P-2) for running and maintenance of five number of public toilets (three in City Sub-Centre, Sector 34, Chandigarh and one each in Sector-38 West and Sector 48, Chandigarh) for a period of five years. The last date and time of submission

of tender was 23.3.2015 upto 5.00 PM. Further, the participant was required to submit an affidavit (Annexure P-3) that no criminal proceedings are pending, the documents submitted are genuine and correct and confirmation that eligible similar works have not been executed through another contractor on back to back basis. The petitioner participated in the tender by furnishing its bid along with earnest money of ₹ 2 lacs. Along with the bid, the petitioner had also submitted experience certificate dated 14.9.2010 (Annexure P-4) and affidavit dated 21.3.2015 (Annexure P-5). Besides the petitioner, M/s Selvel Media Services Pvt. Ltd. had also submitted its bid. The said company had furnished a false affidavit that there were no criminal proceedings pending/ongoing in any court of law regarding any construction project executed. On coming to know the said fact on 26.3.2015 during the opening of the technical bids, the petitioner submitted its objections vide communication dated 26.3.2015 (Annexure P-6). In counter blast to the objections of the petitioner, M/s Selvel Media Services Pvt. Ltd. raised an objection that on opening of technical bid, it had gathered knowledge that the experience certificate submitted by the petitioner for qualifying the tender had been actually executed by M/s Selvel Media Services Pvt. Ltd. on back to back basis. The respondents vide communication dated 17.4.2015 (Annexure P-7) sought explanation of the petitioner. In pursuance thereto, the petitioner filed reply vide letter dated 18.4.2015 (Annexure P-8). Further, the respondents sought confirmation from the Executive Engineer, MCPH, Division No.4, Chandigarh qua the experience certificate submitted who vide communication dated 4.5.2015 (Annexure P-9) clarified that the work regarding the construction of toilet block on BOT basis in Sector 37,

Chandigarh was allotted to the petitioner vide letter dated 9.12.2004 for a period of five years excluding the construction period. It was further stated that as per the agreement the agency could not assign or sublet the work without prior approval of the principal employer and as per record no such permission was sought by the petitioner to sublet work to M/s Selvel Media Services Pvt. Ltd. Since the issue of technical bids was not decided by the Chandigarh Housing Board, the petitioner met the Secretary of Chandigarh Housing Board, Chandigarh in July, 2015 who informed that the tender had been scrapped. The petitioner vide communication dated 13.7.2015 (Annexure P-10) asked the respondents for release of the earnest money deposited by it. Instead of refunding the earnest money deposited by the petitioner, respondent No.2 vide order dated 30.10.2015 (Annexure P-1) blacklisted the petitioner permanently from participating in future tender of Chandigarh Housing Board and forfeited its earnest money. Hence, the present writ petition. Upon notice having been issued, the respondents filed written statement controverting the averments made in the writ petition. It was pleaded therein that the petitioner had misrepresented not only to the respondents by furnishing a false affidavit but had also suppressed the material facts from the Municipal Corporation, Chandigarh while executing the work given by the Municipal Corporation, Chandigarh as it sublet to another company and the experience certificate was obtained from the concerned authority by concealing the material facts from that authority.

3. Learned counsel for the petitioner submitted that vide order, Annexure P-1, whereby the security amount had been forfeited and the petitioner had been blacklisted was passed without following the principles of natural justice inasmuch as no opportunity of hearing was provided to the

petitioner before doing so.

4. Controverting the aforesaid submission, learned counsel for the respondents submitted that the petitioner had violated Clauses 3(i) and 3(ii) of the DNIT by submitting a false affidavit that the eligible similar work had not been got executed through another contractor on back to back basis. It was further submitted that the forfeiture of the security amount and blacklisting the petitioner was in terms of the tender notice.

5. We have heard learned counsel for the parties.

6. It may be noticed that serious civil consequences flow from blacklisting of a contractor which affects his reputation. In such a situation, the State is required to proceed with care and responsibility before blacklisting any contractor and adopting such a drastic step against a person. The principles of natural justice embody opportunity of personal hearing before such right is taken away from the petitioner by blacklisting it. The Hon'ble Supreme Court in *Grosons Pharmaceuticals (P) Limited and another v. State of UP and others, (2001) 8 SCC 604* observed as under:-

“2.....It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice...”

7. Further, the forfeiture of the security amount for non-performance of the contract would also require providing of an opportunity of hearing before forfeiture is made.

8. Similar issue came up before this Court in **Supra Enterprises**

v. Punjab State Electricity Board and another, CWP No. 15707 of 2005

decided on 20.2.2006, wherein it was held as under:-

“The blacklisting of a commercial firm has serious civil consequences and at the same time it affects the reputation of the firm. The State is expected to proceed with care and responsibility before blacklisting any firm as it is a drastic step to be taken against a person.

At the negotiation stage, it shall be too harsh to debar a firm on the ground that it has quoted too high rates for its products. In a commercial transaction if the price or the quality of a product does not suit a person, he may chose not to enter into an agreement but that shall not be a cause or ground for blacklisting a firm. The object of blacklisting is to debar a firm for unbusiness like dealing. Normally it should be carried out after the contract has been executed between the parties. The action of the State at the same time should not be arbitrary, unfair and discriminatory.

In the facts and circumstances of the case, the action of the respondent-State in blacklisting the petitioner firm at the negotiation stage on the ground that it had quoted a high rate for its product does not stand the test of reasonableness under Article 14 of the Constitution of India and is liable to be quashed.”

9. Admittedly, no opportunity of hearing had been provided to the petitioner before taking the impugned action by the respondents.

Accordingly, the writ petition is allowed and the impugned order dated 30.10.2015 (Annexure P-1) is hereby quashed. However, liberty is granted to respondent No.2 to pass a fresh order after following the principles of natural justice and after affording an opportunity of hearing to the petitioner, in accordance with law. Needless to say anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

July 27, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes