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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2257/2016 & CM APPLs. 9735-9736/2016

INDIAN AGRO MARKETING

CO-OPERATIVE LTD. & ANR

..... Petitioners

Through: Mr. A.S. Chandhiok, Senior Advocate
with Mr. Sachin Puri, Mr. Sanjeev
Nasiar, Ms. Sweta Kakkad, Mr. Arveena
Sharma, Mr. Anukrit Gupta and
Ms. Rishika, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Sanjeev Narula, Advocate with
Ms. Sushila Narang and Mr. Abhishek,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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22.03.2016

Present writ petition has been filed challenging the show cause notice dated 23rd November, 2015 and the subsequent letter dated 12th January, 2016 whereby petitioner No.1 has been banned from participating in tenders of respondent No.2.

Mr. A.S. Chandhiok, learned senior counsel for petitioners submits that the respondents did not mention in the show cause notice that the competent authority intended to impose a penalty of ban. Consequently, he submits that the petitioners have been deprived of an adequate and

meaningful opportunity to put forward their defence.

Mr. Chandhiok further submits that due to heavy shortage of pulses and the fact that their prices had increased, the petitioner could not perform the contract dated 09th January, 2014.

However, a perusal of the paper book reveals that the show cause notice dated 24th December, 2014 explicitly mentions the penalty of banning from participation in future tenders.

This Court is also of the view that the heavy shortage of pulses and/or the fact that prices had increased are not good enough grounds for the petitioners not to have performed their obligations. But keeping in view the fact that the petitioner No.1 is a Multi State Cooperative Society comprising over 600 farmers and the long business relationship with the respondent No.2 spanning over eleven years, the period of ban is reduced till 30th April, 2016.

This Court may mention that in ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors., (2014) 14 SCC 731***, the Apex Court has held as under:-

“26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.”

A Coordinate Bench of this Court in ***M/s. Sai Consulting Engineers Pvt. Ltd. Vs. Rail Vikas Nigam Ltd. & Ors., 198 (2013) DLT 507*** has held

as under:-

"32. As far as ban of 5 years on the basis of second show-cause notice is concerned, this court is of the view that the same is imposed for larger period in view of peculiar facts of the present case and particularly earlier ban on the basis of first show-cause for only one year and the same was already spent by the petitioner. Considering the overall facts and circumstances of the present case, I reduce the period of ban from five years to two years with effect from 30th June, 2011."

After expiry of the ban period i.e. 30th April, 2016, it is clarified that the impugned order would not come in the way of the petitioners seeking further assignments with PSUs and other organisations including respondent No.2.

With the aforesaid modification of penalty, present writ petition and applications stand disposed of, but with no order as to costs.

MANMOHAN, J

MARCH 22, 2016

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