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

\+ W.P.(C) 5146/2011, CMs No.10433/2011 & 15917/2011 (both for stay)

KULJIT SINGH AND ANR ..... Petitioners

Through: Mr. Ramesh Singh & Ms. Megha Mukerjee, Advs.

versus

POWER FINANCE CORPORATION LTD & ANR..... Respondents

Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. R.K. Joshi, Adv. for R-1.
Mr. Dev P. Bhardwaj & Mr. Anubha Bhardwaj, Advs. for R-2.
Mr. Ajay Bahl, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **18.01.2016**

1. The writ petition was filed impugning the communication dated 19th July, 2011 of the respondent No.1 Power Finance Corporation Ltd. (PFCL) (which was then the only respondent) blacklisting the petitioners for a period of three years.

2. Notice of the petition was issued and vide *ad-interim* order dated 22nd July, 2011, on the contention of the counsel for the petitioners that the blacklisting order was coming in the way of the petitioner no.2 Ernst & Young Ltd. of which petitioner no.1 is described as partner participating in tenders or getting contracts from other Public Sector Undertakings (PSUs) also, though the order dated 19th July, 2011 of blacklisting of the petitioners was stayed but with the clarification that such stay would not entitle the petitioners to deal with the respondent no.1 PFCL.

3. During the pendency of the petition, the respondent no.2 Union of India (UOI) served the petitioners with a notice dated 9th September, 2011 to show cause why the petitioners should not be debarred from any future assignment of all PSUs / Organizations under the administrative control of Ministry of Power for a period of at least three years, either directly in their own name or their subsidiary or in association with any other entity.

4. The petitioners filed an application for amendment of this petition to incorporate the challenge to the show cause notice dated 9th September, 2011 also and seeking stay of the show cause notice dated 9th September, 2011.

5. Vide order dated 21st September, 2011, while issuing notice of the said application, it was directed that no further proceedings in pursuance to the show cause notice dated 9th September, 2011 be taken.

6. The respondent no.2 UOI filed an application for vacation of the said stay and which application was dismissed vide order dated 25th November, 2014 on the statement of the counsel for the petitioners that for the past three years no assignment had been granted to the petitioner and observing that thus no prejudice whatsoever was being caused to the respondent no.2 UOI by the interim order.

7. On that date i.e. 25th November, 2014, the application for amendment was also allowed, UOI impleaded as respondent no.2 and since then pleadings have been completed.

8. The counsel for the petitioners, the senior counsel for the respondent no.1 PFCL and the counsel for the respondent no.2 UOI have been heard.

9. What emerges is i) that the order dated 19th July, 2011 of blacklisting of the petitioners by the respondent no.1 for a period of three years and of which no stay was granted qua respondent no.1 PFCL, has already expired; ii) that the period of three years for which respondent no.2 UOI intended to debar / blacklist the petitioners has also expired; iii) that even though there was a stay but the counsel for the petitioners states that the petitioners of their own did not seek any assignment with the PSUs / Organizations under the administrative control of Ministry of Power for a period of at least three years either directly in their own name or their subsidiary or in association with any other entity.

10. It has thus been enquired from the counsel for the petitioners as to whether not the petition has become infructuous.

11. The counsel for the petitioners states that though the period for which the petitioners were blacklisted has lapsed but if the blacklisting is not set aside, it would be a stigma on the petitioners while seeking further assignments from Government / PSUs. It remains the contention of the petitioners that the order dated 19th July, 2011 was without an opportunity of hearing to the petitioners and the show cause notice dated 9th September, 2011 issued by the respondent no.2 UOI for blacklisting the petitioners from other PSUs / Organization is premised entirely on the blacklisting by the respondent no.1 PFCL. It is thus contended that if the order of blacklisting by respondent no.1 PFCL goes, the show cause notice dated 9th September, 2011 by the respondent no.2 UOI would also disappear.

12. The senior counsel for the respondent no.1 PFCL of course contends that the blacklisting order is in compliance with the requisite procedures and principles of natural justice.

13. The counsel for the respondent no.2 UOI contends that there should be no interference at the show cause notice stage.

14. It has further emerged during the hearing that the petitioners have also invoked the arbitration clause in the agreement with the respondent no.1 PFCL claiming the balance dues from the respondent no.1 PFCL and in the said arbitral proceedings, the respondent no.1 PFCL is also claiming refund of the amounts already paid to the petitioners. While it is the claim of the petitioners that they have performed their part of the agreement and without any error, it is the case of the respondent no.1 PFCL in the said proceedings that the petitioners had submitted an erroneous advice and which was not with due diligence and which has led to loss being suffered by the respondent no.1 PFCL.

15. The counsels agree that the award in the arbitral proceedings would determine whether the petitioners did their work as per the agreement or not. Needless to state that if the finding is that the petitioners performed their duties as per the agreement, the petitioners would be entitled to the balance amount and in which case the order of blacklisting of the petitioners would also be axiomatically erroneous and wrong on merits and if it were to be held conversely-in favour of the respondent no.1 PFCL, the blacklisting would be justified.

16. Though the petition can be disposed of in the above terms but the counsel for the petitioners states that if the blacklisting orders, even though

have exhausted themselves, are permitted to stand, the same would come in the way of the petitioners seeking further assignments with the PSUs and other organizations under the Ministry of Power.

17. On enquiry, it is informed that while seeking such assignments blacklisting orders even though have exhausted themselves have to be mentioned.

18. On enquiry, it is informed that the arbitral proceedings are at a trial stage and would be concluded definitely in less than one year.

19. In these circumstances, this petition is disposed of i) as infructuous and there being no need to adjudicate the same on merits; ii) observing that the arbitral award would govern the finding whether the blacklisting on merits was correct or not; iii) with a direction to the parties to approach the Arbitral Tribunal for completion of the arbitral proceedings preferably within six months of today.

20. The petitioners till the publication of the arbitral award, while seeking any assignments from the respondent no.1 PFCL and/or other PSUs/Organisations under the Ministry of Power would, if required to, disclose the pendency of the arbitral proceedings but the same will not come in the way of a fair consideration of the proposal/tender of petitioners by respondent no.1 PFCL/PSU etc. on its own merits.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 18, 2016

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