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

+ W.P.(C) 3755/2016 & C.M.No.15997/2016

DELHI STATE CONSUMERS CO-OPERATIVE FEDERATION
LTD. Petitioner

Through Ms.Anju Bhattacharya with Mr.Elgin
Matt John, Advocates.

versus

UNION OF INDIA & ANR Respondents

Through Ms.Ruchi Jain with Mr.Manish
Gupta, Advocates/UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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03.05.2016

Present writ petition has been filed challenging the letter dated 12th January, 2016, whereby the petitioner-firm has been banned from participating in Army Purchase Organisation contracts for a period of two years on the ground that petitioner-firm failed to fulfil the contractual obligations.

It has been averred in the petition that petitioner has been supplying various varieties of pulses like Moong Dal, Gram and Barley Whole etc. to the respondent since 2008.

It has been further averred that during the year 2015-16 petitioner could not supply Barley and Gram Whole against five accepted tenders (ATs) dated 21st January, 2015, three ATs dated 23rd February, 2015 and three varieties of Moong Dal as per three ATs dated 17th March, 2015.

Learned counsel for petitioner states that in the present case, the show cause notice issued to the petitioner did not specify that the

petitioner would be banned/blacklisted in the event its reply was not found satisfactory. She further states that in accordance with Clause 2 of the Tender Contracts, on the failure of the petitioner to make supply, the respondent has already been saddled with damages/compensation after the respondent carried out risk purchase of the goods. In support of her submission, she relies upon the judgment of the Apex Court in ***Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors., AIR 2014 SCC 3371***.

Upon a perusal of the paper book, this Court is of the view that the admitted position is that the petitioner has failed to supply pulses under as many as eleven accepted tenders.

From the petitioner's own reply to the show cause notice, it is apparent that the petitioner has itself blacklisted its own business associates for non-performance. The aforesaid fact fairly shows that the petitioner was aware that the show cause notice issued by the respondent was also for blacklisting. Moreover, due to long business dealing with the Army, petitioner would have been well aware that on account of non-supply of pulses it could be blacklisted. It is pertinent to mention that in ***Gorkha Security Services*** (supra), the Supreme Court has held as under:-

“20. The High Court has simply stated that the purpose of show cause notice is primarily to enable the notice to meet the grounds on which the action is proposed against him. No doubt, the High court is justified to this extent. However, it is equally important to mention as to what would be the consequences if the notice does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- i) The material/grounds to be stated on which according to the Department necessitates an action;*
- ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High court has failed to omit.*

We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

(emphasis supplied)

Keeping in view the aforesaid facts and the mandate of law, this Court is of the opinion that in the present case the petitioner was aware that it could be blacklisted in the event its reply to the show cause notice was not found satisfactory.

Consequently, the present writ petition along with the application stand dismissed.

MANMOHAN, J

MAY 03, 2016

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