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

Date of Decision: 21st July, 2016

+ LPA 397/2016 & CM Nos.24697/2016 (*stay*) & 24700/2016 (*addl. docs.*)

HYUNDAI ROTEM COMPANY Appellant
Through: Mr. Parag P. Tripathi, Sr. Adv. with
Mr. Arunav Patnaik, Ms. Bhabna Das &
Mr. Shikhar Saha, Advs.

Versus

DELHI METRO RAIL CORPORATION Respondent
Through: Mr. P.P. Malhotra, Sr. Adv. with
Mr. Tarun Johri, Adv. for R-1/DMRC.
Mr. Puneet Garg, Law Officer.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MS. G. ROHINI, CHIEF JUSTICE:

1. This appeal is directed against the order of the learned Single Judge dated 08.07.2016 in W.P.(C) No.5851/2016. The unsuccessful petitioner is the appellant before us.
2. By order dated 10.08.2015, the appellant/writ petitioner was blacklisted by the respondent/Delhi Metro Rail Corporation (for short

'DMRC') for a period of five years from 15.07.2015 on the ground that the appellant/writ petitioner, at the time of submission of its bid, had not disclosed that it was debarred for a period of three years by the Airport Authority of India by order dated 14.12.2011. Challenging the order of DMRC dated 15.07.2015, the appellant herein filed W.P.(C) No.7656/2015. The said writ petition along with W.P.(C) No.7265/2015 and LPA No.547/2015 was disposed of by the Division Bench, to which one of us (Chief Justice) was a member, by judgment dated 23.11.2015 setting aside the impugned order of blacklisting.

3. Having regard to the fact that the order of blacklisting dated 10.08.2015 was set aside by this Court on the ground of absence of reasons and no proper opportunity of personal hearing was afforded, the respondent/DMRC passed a fresh order dated 06.07.2016 after giving an opportunity of hearing to the petitioner/appellant. By the said order, the petitioner/appellant has again been blacklisted for a period of five years with effect from 15.07.2015. Challenging the same, the appellant filed W.P.(C) No.5851/2016. By the order under appeal dated 08.07.2016, the learned Single Judge dismissed the writ petition so far as the issue of blacklisting is concerned. However, with regard to the period of blacklisting, notice has been issued to the respondent, returnable on 07.09.2016.

4. The said order is assailed before us in the present appeal.

5. We have heard Shri Parag P. Tripathi, the learned Senior Counsel appearing for the appellant/writ petitioner and Shri P.P. Malhotra, Senior Advocate appearing for the Delhi Metro Rail Corporation.

6. One of the grounds upon which the order of blacklisting dated 06.07.2016 was impugned before the learned Single Judge was that the Managing Director of DMRC who passed the said order is not the competent authority. It was contended that the Board of Directors of DMRC alone is the competent authority.

7. The said contention was rejected by the learned Single Judge observing that as no such ground had been raised in the earlier round of litigation, the petitioner is barred by principles of constructive *res judicata* from raising the plea of competence.

8. It is contended before us by Shri Parag P. Tripathi, the learned Senior Counsel appearing for the appellant/writ petitioner that the respondent/DMRC for the first time in its counter affidavit dated 15.09.2015 in LPA No.547/2015 had pleaded that the competent authority was the Managing Director of DMRC and till such time the appellant was not aware of the same and therefore, there was no occasion to raise the said ground when the previous blacklisting order dated 10.08.2015 was challenged.

9. Pointing out that the name of the competent authority was not stated in the order of blacklisting dated 10.08.2015 which was passed by the Executive Director, it is submitted by the learned Senior Counsel that even the Minutes of the Meeting of the Board of Directors dated 15.07.2015 was not available to the appellant when the earlier writ petitions were filed and that the appellant could obtain a copy of the Minutes only on 14.09.2015 by making an application under the Right to Information Act.

10. Thus, it is contended by the learned Senior Counsel that the

conclusion of the learned Single Judge that the petitioner/appellant is barred by principles of constructive *res judicata* from raising the plea of the competence of the Managing Director to pass the order of blacklisting is unsustainable.

11. On the other hand, the learned Senior Counsel appearing for DMRC, while placing before this court a copy of the minutes of 13th Board Meeting held on 12.01.1998, submitted that the powers of the Board of Directors had been delegated to the Managing Director. A copy of the minutes of the 105th Board Meeting held on 21.01.2016 has also been produced in which the Board having taken note that fresh process for taking suitable action against the appellant has been initiated and a personal hearing has been given by the Managing Director on 19.01.2016 resolved that on receipt of the written submission the competent authority i.e. Managing Director will take appropriate view and inform the Board.

12. The extract of the Minutes of the Meeting of the Board of Directors dated 12.01.1998 with regard to delegation of powers to Managing Director may be reproduced hereunder:

"Resolved that in terms of clause 21 of Article 162 of the Articles of Association of the Company, the Managing Director be and is hereby delegated all powers as are exercisable by the Board of Directors, subject to the restrictions under Article 161 and proviso to Section 292 and 293 of the Companies Act, 1956 with further restriction that such delegation shall be subject to the approval of the Board in the following circumstances:-

- a. For any substantive change in the scope of work of the Delhi MRTS Project from the D.P.R.
- b. For any item of expenditure where more than Rs.10 crores is involved which is not contemplated in the D.P.R."

13. Thus, it is clear that by virtue of the delegation of powers by the Board of Directors in its meeting dated 12.01.1998, the Managing Director is competent to pass the order of blacklisting. Therefore, the contention of the appellant that the Managing Director is not competent and the Board alone is competent is without any substance.

14. However, it is vehemently contended by the learned Senior Counsel for the appellant that in the facts and circumstances of the case, the personal hearing should have been granted before the Board of Directors which alone had the authority to reiterate, modify or withdraw its previous decision to blacklist the appellant in its meeting dated 15.07.2015. It is also contended that the Managing Director, in the absence of any specific delegation of powers by the Board to take a fresh decision in the matter after hearing the appellant, could not be expected to overrule or act contrary to the decision of the Board. The further contention is that the Managing Director being a party to the decision of the Board of Directors dated 15.07.2015 cannot be expected to give an impartial hearing to the appellant.

15. We do not find substance even in the above contentions.

16. The earlier decision of the Board of Directors which culminated in the

order dated 10.08.2015 was already set aside by this Court. Thereafter, a fresh order has been passed following due process of law which cannot be held to be in continuation of the earlier proceedings. Hence, the contention that the Managing Director cannot take a fresh decision modifying or withdrawing the decision of the Board of Directors is without any substance.

17. The further contention that the Managing Director cannot be expected to give an impartial hearing to the appellant since he was a party to the earlier decision of the Board of Directors is also untenable. The mere fact that the Managing Director was a party to the earlier decision of the Board of Directors dated 15.07.2015 is not sufficient to accept the allegation of bias. In fact, the same situation would have arisen even if the opportunity of hearing was given before the Board of Directors since the earlier decision was taken by the Board. At any rate, the law is well settled that bias cannot be presumed in the absence of any material to suggest that there is any real likelihood of bias.

18. In *State of Punjab v. V.K. Khanna*, (2001) 2 SCC 330, it was explained by the Supreme Court:

“8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias, administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.”

19. The same principle has been reiterated in *N.K. Bajpai v. Union of India*, (2012) 4 SCC 653 observing:

“48. Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories i.e. suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial chastisement but if it falls in the latter, it would hardly affect the decision, much less adversely.”

20. We are, therefore, unable to accept the allegation of bias.

21. Regarding the other contention of the appellant that the allegation of "fraudulent practice" has not been established in the facts and circumstances of the case, we agree with the reasoning of the learned Single Judge and we do not find any justifiable reason to interfere with the conclusion of the learned Single Judge on the said issue.

22. So far as the period of blacklisting is concerned, the same is yet to be decided by the learned Single Judge.

23. Hence, the appeal is devoid of any merit and the same is accordingly dismissed.

24. Order dasti under the signatures of the Court Master.

CHIEF JUSTICE

JULY 21, 2016/kks

SANGITA DHINGRA SEHGAL, J

