

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1640 OF 2016

**M/s. Spacotech Equipments and Structural
Pvt. Ltd.**

..Petitioner

Versus

M/s. Hindustan Petroleum Corporation Ltd.

..Respondent

Ms. Priyanka Pawar for the Petitioner.

**Mr. Minoo Siodia a/w Ms. Ashiya Shaikh i/by M/s. Rustamji &
Ginwala for the Respondent.**

**CORAM : R. M. SAVANT &
SMT. SADHANA S. JADHAV, JJ
DATE : 23rd JUNE, 2017**

PC.

1 The writ jurisdiction of this Court is invoked against the letter dated 22.04.2016 issued by the Respondent – Corporation intimating the Petitioner that it has been removed from the list of approved vendors/contractors for a period of two years effective from 21.12.2015. The background to the issuance to the said letter is the participation of the Petitioner in the tender issued by the Respondent-Corporation for construction of 3 X 500 MT mound at its Panagarh LPG plant. The tender conditions contemplated the bidder to submit its unpriced as well as its priced bid. In the context of the challenge raised in the present Petition, it is required to be noted that the bidder was required to give a declaration in the format which was in the bid

document. The said declaration was to the following effect :-

“This is to declare that, we have not been banned/Put on Holiday or delisted by any government or quasi government agencies or PSUs.”

2 The Petitioner submitted both its unpriced bid i.e. technical bid and its priced bid i.e. financial bid. The unpriced bid or technical bid was opened and the declaration submitted by the Petitioner was in the following terms :-

“This is to declare that, we have not been banned/Put on Holiday or delisted by any government or quasi government agencies or PSUs.”

A copy of the said declaration has been annexed as Exh.1 to the affidavit filed on behalf of the Respondent.

3 The Respondent-Corporation it seems received information that the Petitioner has been sent on a holiday of two years i.e. prevented from entering into any contracts by the Indian Oil Corporation. The Respondent after getting the said information therefore issued a show-cause notice to the Petitioner on 14.03.2016, wherein the aforesaid facts of the information received by the Respondent-Corporation and its confirmation have been stated. By the said show-cause, the Petitioner was asked to show cause why appropriate action against it should not be

taken. The Petitioner replied to the said show-cause notice vide its letter dated 17.03.2016 and the defence that was sought to be taken was that the Petitioner has been debarred from entering into any contact with IOCL for a period of two years from the said letter dated 31.01.2014. Thus, the said communication according to the Petitioner did not debar it from entering into contract with any other entities. The said reply was considered by the Respondent-Corporation and by the impugned communication dated 22.04.2016 it was communicated to the Petitioner that the reply to the show-cause notice was not found acceptable and it was mentioned that the Petitioner is removed from the list of approved vendors/contractors for a period of two years effective from 21.12.2015. As indicated above, it is the said communication dated 22.04.2016 which is sought to be taken exception to by way of the above Writ Petition.

4 The Learned Counsel appearing on behalf of the Petitioner Ms. Priyanka Pawar would question the power of the Respondent-Corporation to impose the punishment/penalty which is imposed by the impugned communication dated 22.04.2016. It was also the submission of the Learned Counsel that considering the default, if any, the punishment/penalty imposed upon the Petitioner of debarring it from participating in any tender for two years is disproportionate.

5 Per contra, the Learned Counsel appearing for the Respondent Mr. Minoo Siodia would draw our attention to the terms and conditions on the basis of which the bids were invited from the intending bidders. The Learned Counsel would submit that the declaration which was sought to be given by the intending bidder had to be true and full disclosure. However, in the instant case, the Learned Counsel would submit that the Petitioner by stating what it has stated in the declaration has not made a true and full disclosure and has therefore violated the terms and conditions on the basis of which the bids were invited.

6 Having heard the Learned Counsel for the parties, in our view, the action taken against the Petitioner which has been communicated vide the impugned communication dated 22.04.2016 cannot be faulted with. The Petitioner can be said to have fallen foul of one of the conditions which was part of the tender conditions. The declaration which the Petitioner was required to make had to be a true and full disclosure. However, the Petitioner in fact can be said to have misrepresented to the Respondent-Corporation by stating to the effect that the Petitioner has not been banned/put on holiday or delisted by any Government or quasi Government agencies or PSUS. The said condition which is part of the conditions can be said to have a rationale as the Respondent-Corporation would not like to deal with any party which can

be said to be barred or blacklisted by another Semi Government or a public sector undertaking. Having regard to the relevance of the said declaration and considering fact that under the terms and conditions under which the bid was invited, the Respondent-Corporation has the power to impose appropriate punishment/penalty for the breach of the terms and conditions. We do not find that the punishment/penalty of sending the Petitioner on a two year holiday to be disproportionate. The said period of punishment/penalty is to come to an end in December 2017. No case for exercise of our discretionary jurisdiction is therefore made out. The Writ Petition is accordingly dismissed.

[SMT. SADHANA S. JADHAV, J]

[R.M.SAVANT, J]