

CWP No. 25845 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 25845 of 2016
Date of Decision : 27.02.2017**

Som Nath

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: ***HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL***

Present: Mr. Rohit Rana, Advocate for
 Mr. Kunal Dawar, Advocate for the petitioner.

 Mr. Sandeep Moudgil, Addl. A.G., Haryana.

S.J. VAZIFDAR, C.J.(Oral)

The petitioner has sought a writ of certiorari to quash an order dated 19.09.2013 (Annexure P-11) blacklisting/debarring him from tendering for works to be carried out by respondent No. 2-Haryana Tourism Corporation Limited. The petitioner has also sought the recovery of an amount of ₹4,76,674/- due to him in respect of other contracts carried out by him on behalf of the respondents.

2. The respondents had by a notice dated 27.09.2002 invited tenders for the supply of a 125 KVA Diesel Generator Set (DG Set) for its Tourist Complex at Karnal(Haryana). The petitioner being the lowest bidder, a work order was issued by respondent No. 2 in his favour dated

12.11.2002. The work was completed by about 09.05.2003. The respondents after about a year raised certain disputes regarding the quality of the equipment. According to the respondents, the petitioner supplied an old DG Set after merely painting it. The petitioner, on the other hand, contends that the equipment was in order and was of the requisite quality and specifications. The petitioner contends that the reason that the equipment did not function as desired by respondent No. 2 is that the capacity was lower than the second respondent's requirement. In this regard, the petitioner relies upon certain correspondence/notes addressed by the respondents' officers. It is not necessary for us to consider the rival contentions in this writ petition. They are not necessary for deciding either of the reliefs claimed by the petitioner.

3. As far as the relief regarding refund of the amount is concerned, the same cannot be granted in this writ petition for more than one reason. Firstly, whether the equipment was as required under the terms and conditions of the work order or not, is a disputed question of fact. Secondly, the amounts have been retained by the respondents from the petitioner's dues in respect of other contracts, the details whereof are not sufficient to decide the issue in the petitioner's favour.

4. The second respondent's action blacklisting the petitioner, however, requires interference in exercise of our jurisdiction under Article 226 of the Constitution of India. Respondent No. 2 addressed a letter dated 19.09.2013 stating that it had been decided by the competent authority to blacklist/debar the petitioner from tendering for any work in the Haryana

Tourism Corporation, henceforth. The subject of the letter refers to a Vigilance Enquiry No. 5, dated 21.04.2009. Admittedly, the report of the Vigilance Enquiry was not put to the petitioner before addressing the letter dated 19.09.2013.

5. The petitioner was not served with a notice calling upon him to show cause why he be not blacklisted/debarred from tendering for the second respondent's works. The petitioner was never afforded an opportunity of being heard or making any other representation in respect of the proposed blacklisting. Lastly, the order indicates that the petitioner has been blacklisted/debarred permanently, which is not permissible at least in a case like this. The decision to blacklist/debar the petitioner is, therefore, unsustainable.

6. It is true that the order blacklisting the petitioner was passed on 19.09.2013. We, however, agree with Mr. Rohit Rana, the learned counsel appearing on behalf of the petitioner that mere delay ought not to be fatal to the writ petition. As he rightly pointed out, the matter pertains to year 2003. The work was completed in the year 2003. Complaints were made in the year 2004. The order of blacklisting was, however, passed almost 10 years later. Further, in the correspondence that ensued after the impugned communication dated 19.09.2013, the petitioner repeatedly called upon the respondents to follow the procedure prescribed by law before visiting him with the harsh consequences of an order of blacklisting. The respondents merely rejected the same including by another impugned communication dated 02.08.2016.

7. Mr. Rana rightly submitted that mere delay would not defeat the right to challenge an order of blacklisting as an order of permanent blacklisting operates in perpetuity. Thus, absent anything else a party who has been blacklisted and especially a party who has been blacklisted permanently ought not to be prevented from challenging the order of blacklisting for it adversely affects such a party for all time to come. Whether in a given case abnormal delays ought to prevent a party from challenging an order of blacklisting is a question on which we do not express any opinion in this matter. As far as this matter is concerned, we see no reason to refrain from interfering in the writ petition merely because there is a delay of four years especially when the order of blacklisting itself was passed after a delay of 10 years and there is nothing to indicate that the delay in challenging the order has prejudiced the respondents in any manner whatsoever.

8. In the circumstances, the impugned order dated 19.09.2013 blacklisting the petitioner permanently is liable to be quashed and set-aside.

9. We may have granted the respondents liberty to blacklist the petitioner in accordance with law. However, the petitioner has already suffered this order for over three and a half years. In the facts and circumstances of the case that is more than sufficient in any event. Moreover the delay has prejudiced the petitioner in more ways than one. Mr. Rana rightly pointed out that at this distant point of time, it would be virtually impossible for the petitioner to defend himself effectively as the evidence especially the equipment supplied would not be available at least

in the same condition. This would render it impossible to ascertain the quality of the equipment when supplied almost 15 years ago.

10. In the circumstances, the order dated 19.09.2013 is quashed and set-aside. The petitioner is at liberty, however, to adopt appropriate proceedings for recovery of the amount sought in this petition.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

27.02.2017
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Whether speaking/reasoned?	Yes
Whether reportable?	Yes