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

CWP No.27041 of 2016

Date of decision: January 16, 2017

NYSA Communication (P) Ltd.

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Tanuj Khurana, Advocate and
Mr. Ashish Batra, Advocate for the petitioner.

Mr. Alok Jain, Addl. AG Punjab.

Mr. A.P.S. Tung, Advocate for respondent No.2.

S.J. VAZIFDAR, CHIEF JUSTICE (Oral)

The petitioner has challenged an order dated 04.11.2016 blacklisting and debarring it for three years under Section-II, Clauses 24.3, 24.4. and 24.5 of the Notice Inviting Tenders ('NIT' for short).

Respondent No.2 had invited bids through e-tenders for Examination Data Processing for the Academic years 2015-2016. Clauses 5.6 and 5.7 of Section-II of the NIT dated 21.10.2015 require the bidders to have atleast three years experience in the examination processing continuously of any Board/University and proof of satisfactory performance/execution of similar works as specified in the eligibility criteria. Further, the bidders require to have one year experience for online registration and data processing of minimum 3 lac candidates.

Respondent No.2 issued notice dated 20.07.2016 calling upon the petitioner to show cause why it should not be debarred for three years

from participating in the e-tenders invited by respondent No.2. The notice stated that the certificates submitted by the petitioner were sent for verification from the issuing authorities. The authorities concerned informed respondent No.2 that they had not issued the certificates in favour of the petitioner. The bids were opened on 02.12.2015 and the petitioner was informed of the same and called upon to produce the original documents. The petitioner, however, failed to produce the same. Respondent No.2 states that the documents submitted by the petitioner may not be genuine. Hence, the show-cause notice.

The petitioner vide letter dated 02.08.2016, i.e. after about two weeks from the receipt of the show-cause notice, merely stated that it was unable to furnish the original documents as the time to do so was insufficient. The petitioner requested three days to obtain the documents and submit the same to respondent No.2. The letter states that the petitioner's request was denied and that it was unable to arrange the documents on the same day as the original documents had been managed at its Noida office. The petitioner requested to respondent No.2 to permit it to participate in future e-tenders.

It is significant to note that the petitioner, however, even at this stage, did not produce the original documents, but merely requested respondent No.2 to permit it to participate in future e-tenders. Further, the petitioner did not, vide the said letter dated 02.08.2016, seek a personal hearing. Respondent No.2, accordingly, passed the impugned order dated 04.11.2016 blacklisting the petitioner.

It is significant that even after the petitioner addressed the letter dated 02.08.2016 it did not even offer to produce the original

documents till the impugned order dated 04.11.2016 was passed, almost three months later. There is no explanation in this regard either.

However, as any order of blacklisting has serious civil consequences upon a party, the interest of justice would be met by directing respondent No.2 to grant the petitioner a hearing and to pass a fresh order. This is in view of the statement made by Mr. Chhibbar, learned Senior counsel appearing on behalf of the petitioner that the original documents are, in fact, available and would be produced before the authority. Learned counsel appearing on behalf of respondent No.2 reiterate that the documents are not genuine. It is not for us, at this stage, to express any view upon the issue which would be decided in the first instance, by respondent No.2.

Mr. Chhibbar states that the impugned order would have adverse consequences upon the petitioner's existing contracts and upon its eligibility to bid for future contracts as most of these contracts render a party that has been blacklisted ineligible from bidding for the contract and also result in the termination of a contract upon a party being blacklisted.

The petition, is therefore, disposed of by directing respondent No.2 to pass a fresh order in the event of the petitioner's submitting a reply to the show-cause notice dated 20.07.2016 alongwith necessary documents on or before 25.01.2017 at 11:00 A.M. In that event, respondent No.2 shall grant the petitioner a personal hearing. Learned counsel appearing on behalf of respondent No.2 states that the Secretary of respondent No.2-Board shall grant the hearing. The petitioner shall, without further notice, appear before the Secretary to respondent No.2 to the petition, at the address mentioned in the show-cause notice dated 20.07.2016 (Annexure

P-5), on 25.01.2017 at 11:00 A.M. and thereafter, as directed by the Secretary concerned. The petitioner agrees and undertakes not to seek any adjournment before the Secretary to respondent No.2. The operation of the impugned order dated 04.11.2016 shall remain stayed till the fresh order is passed and if the same is adverse to the petitioner for a period of two weeks after the service thereof upon the petitioner or its present Advocate. However, this shall be subject to the petitioner's furnishing a copy of this order to the parties who had issued ongoing contracts and to the parties who invite tenders. The parties shall be at liberty to take action in the event of the fresh decision being adverse to the petitioner. The petitioner shall inform such parties of the result of the fresh decision as well, immediately upon the receipt thereof by the petitioner. Needless to add that the same would be subject to any further orders that may be passed by any Court.

A copy of this order be given to the learned Senior counsel for the petitioner under the signatures of the Bench Secretary.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(A.B. CHAUDHARI)
JUDGE

January 16, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No