

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

CWP-5518-2016 (O&M)

Date of decision:- 25.05.2017

A2Z Infra Engineering Ltd.

...Petitioner(s)

Versus

Punjab State Power Corporation Limited (PSPCL), Patiala
and another.

...Respondents

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

Present:- Mr. Kunal Dawar, Advocate,
for the petitioner(s).

Mr. Mukul Aggarwal, Advocate,
for the respondents.

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

The petitioners have challenged an order dated 02.02.2015 by which they have been blacklisted for a period of three years.

The order states that the business dealing with the petitioners is suspended for three years. The effect, therefore, is one of blacklisting/debarring the petitioners.

2. The parties had entered into a contract for supply, erection, testing and commissioning of new material alongwith dismantlement of the old material on a turn-key basis. According to the respondents, the petitioners had failed to carry out the work as per the terms and conditions. The respondents also contend that the petitioners had failed to complete the work inspite of repeated requests. The respondents indeed have not merely a contractual, but an inherent right to blacklist the petitioners, if the circumstances so demand. The

respondents by a letter dated 14.07.2014 complained about the petitioners' work and put the petitioners to notice that if they did not carry out the work as per the terms and conditions of the contract, the respondents would be constrained: "to start the process of cancelling of work orders/forfeiture of EMD/blacklisting etc. after following due procedures as applicable in the contract agreement".

3. This, therefore, is not a notice calling upon the petitioners to show cause to a proposed blacklisting, but a notice calling upon the petitioners to complete the work as per the terms and conditions of the contract.

4. The final notice dated 05.08.2014 was served by the respondents which refers to the earlier letter dated 14.07.2014. The notice concludes by granting the petitioners a last opportunity to cure the defects within thirty days failing which the respondents stated that they would be compelled to cancel the work order and initiate proceedings as per clause 4 of the terms and conditions of the work order. It is important to note that this notice does not propose blacklisting. Even clause 4 of the terms and conditions does not refer to blacklisting. Thus, despite the earlier notice dated 14.07.2014, this notice did not propose blacklisting the petitioners.

5. Despite the same, the respondents by the impugned order, inter alia, blacklisted the petitioners. The blacklisting is, therefore, without issuing a show cause notice and without affording the petitioners an adequate opportunity of showing cause to the proposed blacklisting.

6. The impugned order in so far as it blacklists the petitioners is, therefore, quashed and set aside. It is, however, clarified that this order does not reflect upon the

merits of the case. The forfeiture of the earnest money deposit and the cancellation of the contract are not dealt with by this order. It is further clarified that our entertaining this writ petition and passing this order does not affect the rights of the parties to adopt any other proceedings including arbitration. The respondents are always at liberty, if they are otherwise entitled, to adopt proceedings for blacklisting in accordance with law. All the contentions of the parties are kept open.

7. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

25.05.2017

Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No