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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1372/2017

M/S L.R. SHARMA & CO.

..... Petitioner

Through Mr. J. K. Mittal and Mr. Rajveer
Singh, Advocates

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through Mr. Nikhil Goel and Mr. Ashutosh
Ghade, Advocates

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.02.2017

C.M.No. 6298/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application disposed of.

W.P.(C) 1372/2017 and CM No. 6297/2017 (stay)

Petitioner is aggrieved by the order dated 02.02.2017 passed by the respondent / SDMC wherein a demand (in terms of the earlier communication dated 28.03.2015) of a sum of Rs. 2,52,58,318/- has been made upon the petitioner. Apart from the afore noted demand the petitioner also stood black listed in the panel of the registered parking contractors of the SDMC.

Counsel for the petitioner points out that the demand of the afore noted sum is the subject matter of a civil suit pending interse the

parties which had been filed by the SDMC and is pending on the original side of this Court. This fact is not in dispute. The competent Court is dealing with the recovery of the aforementioned sum which is sought by the respondent Corporation from the petitioner. Learned counsel for the petitioner submits that since this demand is the subject matter of that suit in which evidence has to be led by the respective parties the order dated 02.02.2017 which is premised on the same demand be set aside.

This submission of learned counsel for the petitioner is correct. The demand of the afore noted sum being the subject matter of the civil proceedings no such demand could have been raised by the respondent upon the petitioner as the respondent has filed a suit for the afore noted amount.

The petitioner is also rightly aggrieved by the order black listing him. This black listing which was communicated to the petitioner vide communication dated 28.03.2015 was premised on afore noted demand. This is clear from the communication dated 28.03.2015. Admittedly no show cause notice had been issued to the petitioner asking him to show cause as to why he be not black listed. Counsel for the petitioner has placed reliance upon the judgment of the Apex Court reported as **(2014) 9 SCC 105 titled Gorkha Security Services v. Govt. (NCT of Delhi)** to substantiate his proposition that in absence of a show cause notice asking the party to show cause as to why the party be not black listed such an order of black listing could not have been passed. The relevant extract from afore noted judgment reads herein as under:

“27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that notice could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.”

Petitioner is thus right that without a show cause notice black listing could not have been ordered.

At this stage, counsel for the respondent submits that this judgment had in fact given a chance to the Department to issue a fresh notice before taking action of black listing against the party and such a permission be accordingly accorded to the respondent as well.

This Court is of the view that the facts in the said judgment were different. The respondent/Department had been granted a liberty to issue a fresh show cause notice before black listing the firm as the Court had noted that the showcause notice had been premised on the failure on the part of the party to commence and execute the works which had been awarded to that party. In the instant case the order of black listing (dated 28.03.2015) is premised on the demand made by the respondent qua the sum of Rs. 26258318; the petitioner having failed to pay this amount he had been blacklisted. Since this Court

had already held that question of the demand is the subject matter of the civil proceedings which are pending before this Court and the order of blacklisting the petitioner is premised on this demand alone the act of the respondent in black listing the petitioner is not in accordance with law. The respondent is accordingly advised to await the outcome of the suit before taking any further action.

This court also notes that this is the fourth round of litigation interse the parties.

Petition disposed of in above terms.

INDERMEET KAUR, J

FEBRUARY 21, 2017

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