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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Pronounced on: 11.04.2017

+ LPA 267/2016 & CM. Nos.15643/2016, 15645/2016 & 20406/2016

UNION OF INDIA & ANR. Appellants

Through Mr.Sanjeev Narula, CGSC with
Ms.Ruchi Gaur Narula & Mr.Ajay Kalra,
Advocates.

Versus

INDIAN AGRO MARKETING
CO-OPERATIVE LTD. & ANR. Respondents

Through Mr.A.S.Chandhiok, Sr.Advocate with
Ms.Sweta Kakkad, Ms.Arveena Sharma,
Mr.Anukrit Gupta & Mr.Sanjeev Nasiar,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present Letters Patent Appeal is filed seeking to impugn the order dated 22.03.2016 passed by the learned Single Judge whereby the penalty of imposition of a ban on respondent No.1 for a period of two years as passed vide order dated 12.01.2016 was reduced to be applicable up to 30.04.2016.

2. The respondents filed the writ petition seeking a writ of certiorari for quashing of the show cause notice dated 23.11.2015 and the impugned order

dated 12.01.2016 by which a ban of two years from participating in APO contracts was imposed on respondent No.1. The brief facts which led to filing of the writ petition were that the respondent applied for registration as a supplier with the appellants in 2005. The respondent was registered and enlisted as one of the suppliers on 18.08.2005 for supply of pulses and animal ration. The respondent claims to have been participating in various tenders regarding supply of pulses and animal ration and also claims to have successfully performed obligations and supplied material worth Rs1,000 crore.

3. The controversy centers around the contention of the appellants about failure on the part of the respondent to fulfill various contracts in the years 2013-14, 2014-15 and 2015-16. It is urged by the appellants that for the year 2013-14, three contracts for procurement of 2350 MT of Barley Whole were awarded on 08.01.2014. As per the agreed terms, the respondent was to deposit security @ 10% of the value of the contract within 10 days of receipt of acceptance of tenders in the form of a bank guarantee. The respondent is said to have failed to submit the said bank guarantees. Due to failure on the part of the respondent to furnish the bank guarantee, the contract for supply of Barley Whole was cancelled on 06.06.2014.

4. Similarly as per the appellants for the year 2014-2015, on 18.06.2014 five contracts for supply of 7000 MT of Barley Whole were awarded in favour of the respondent. Out of these five contracts, four contracts for supply 5500 MT of Barley Whole were cancelled on 03.12.2014 again due to failure of the respondent to furnish the bank guarantee despite sufficient time.

5. It was in these factual backgrounds that the appellants are said to have issued a show cause notice on the respondent on 24.12.2014. The show cause notice points out the above defaults regarding the years 2013-14 and 2014-15. It states that before taking further action, an opportunity is being given to the respondent to explain as to why, it should not be banned from participating in forthcoming tenders for Barley Whole. A reply was sought within 15 days.

6. The respondent in response to the said show cause notice on 14.01.2015 sent an interim reply through counsel stating that the six contracts referred to by the appellants contain an arbitration clause. It was also requested that the respondent is ready to supply provided the delivery schedule is re-fixed, Form 31 for supply at Lucknow is delivered and the contract is amended whereby the appellants shall pay the actual freight charges for delivering at Lucknow. It was also claimed that the appellants did not make any risk purchase after cancellation of the contract showing that no loss was caused to the appellants.

7. The appellants on 23.11.2015 issued another show cause notice to the respondent pointing out that for the period 2014-15 and 2015-2016, 29 contracts were awarded to the respondent for a total quantity of Rs. 13,600MT for which the respondent has not supplied any stock. A reply was sought from the respondent. The respondent on 22.12.2015 sent a response stating that the rates of all variety of pulses had gone up speedily in this year which is apparent from the various publications in the media. It was stated that there was a heavy shortage of all variety of pulses in the market. It was further stated that the new crop of Arhar is now available and they are ready to supply Arhar Dal if an opportunity is granted.

8. Based on the above, the appellants passed the impugned order dated 12.01.2016 holding that the reply submitted by the respondent was not satisfactory and that the respondent has failed to fulfill its contractual obligations. Accordingly, the respondent was banned from participating in the concerned contract for a period of two years with immediate effect.

9. Learned Single judge vide impugned order dated 22.03.2016 noted that the respondent is a Multi State Cooperative Society comprising over 600 farmers and has a long business relationship with the appellants spanning over 11 years and accordingly, reduced the ban up till 30.04.2016 starting from 12.01.2016.

10. We have heard learned counsel for the parties.

11. Learned counsel appearing for the appellants has vehemently argued that the decision to ban the respondent from participating in the contracts for a period of two years is a reasoned and well founded decision. The same has been passed after issuing show cause notice and after considering the entire past performance of the respondent. Principles of natural justice had been adhered to and hence, there was no occasion for the learned Single Judge to reduce the ban.

12. Learned senior counsel appearing for the respondent has submitted as follows:-

(i) The show cause notice dated 23.11.2015 is patently erroneous as it wrongly mentions that the respondent has defaulted in 29 contracts.

(ii) There is no reference in the show cause notice to the fact that a ban is proposed to be imposed on the respondent

(iii) The appellants have failed to pass any reasoned order pursuant to the show cause notice and reply filed by the respondent. Reliance was placed on the judgment of the Supreme Court in the case of ***Gorkha Security Services vs. Govt. (NCT of Delhi) & Ors., (2014) 9 SCC 105***

(iv) It is further urged that the penalty imposed on the respondent was exceedingly harsh and hence, the learned Single Judge has rightly reduced the penalty period. Reliance was placed on the judgment of the Supreme Court in the case of ***Kulja Industries Ltd. vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. & Ors., (2014) 14 SCC 731*** and judgment of the learned Single Judge of this court in the case of ***M/s. Sai Consulting Engineers Pvt. Ltd. vs. Rail Vikas Nigam Ltd. & Ors., 198 (2013) DLT 507*** where this court had reduced the period of ban from five years to two years

13. The learned Single Judge was persuaded to reduce the ban period keeping into account certain factual background regarding the respondent society. The respondent is a cooperative society registered under the Multi State Cooperative Act, 2002 and the majority of the members are farmers. It is also an admitted fact that the respondent society is registered as a supplier with the appellants since the year 2005 i.e. nearly 11 years and has been supplying pulses and animal ration. It was in these factual backgrounds that the learned Single Judge has reduced the ban period.

14. However, we are persuaded to accept one of the submissions which has been made by the learned senior counsel appearing for the respondents, namely, that the appellants have failed to pass a reasoned order. After issue of show cause notice dated 24.12.2014, the respondent gave a detailed reply

pointing out various aspects including that the appellant is imposing unilateral change in terms of the contract relating to place of supply inasmuch as the appellants had made the consignee at RSD Lucknow where no delivery can be affected without Form 31. Various other aspects have also been stated in the reply.

15. Similarly, in response to the second show cause notice dated 23.11.2015, the respondent had pointed out that the rates of the pulses had gone up on the higher side and which is apparent from the media reports. There was heavy shortage of all varieties of pulses in the market.

16. In response to the replies sent by the respondent, the appellants have passed an order as follows:-

“I am directed to refer to your letter No.IAMCO/APO/Mktg/2015-16/432 dated 22 Dec. 2015 on the subject cited above and to say that your reply against the show cause notice has been examined and found unsatisfactory. It has been noticed that you have failed to fulfill the contractual obligations as per the terms and conditions of the contracts awarded to you in the past.

In view of the poor performance, your firm has been banned for participation in the APO's contracts for a period of two years with immediate effect.”

17. This court has taken a decision in LPA 547/2015 titled as ***Hyundai Rotem Company vs. Delhi Metro Rail Corporation*** on 23.11.2015 that it is obligatory on the part of the party proposing to impose a ban to pass a speaking order. This court relied upon the judgments of the Supreme Court in the case of ***S.N.Mukherjee vs. Union of India, AIR 1990 SC 1984, Gorkha Security Services vs. Govt. (NCT of Delhi) & Ors.(supra)*** and

judgment of this court in the case of *Mekaster Trading Corporation vs. Union of India*, 106 (2003) DLT 573, *Prakash Atlanta JV & Ors. vs. National Highway Authority of India & Ors.*, 169 (2010) DLT 664 to hold as follows:-

“21. The order in the present case dated 10.08.2015 is without any reasons. Respondent was obliged to deal with the submissions of the appellant in a broad manner before passing the order debarring the appellant. If after a hearing, a non-speaking order is passed, the person affected by adverse order would be at a loss to know the reason for the adverse order. Even if the decision is right, the person against whom it was made should be told why the decision has been made. The absence of reasons leads to denial of justice. Accordingly, in our view the impugned order dated 10.08.2015 is passed in violation of the principles of natural justice. The same is liable to be quashed.

18. In the light of the above said legal position, it is clear that the appellants have failed to give any reasons. The reasons would have made clear to the respondent the stand of the appellants on the contentions raised by the respondent in its various responses.

19. However, at present a substantial period of the ban imposed by the appellants by its order dated 12.01.2016 has already run through. Instead of quashing the impugned order of ban dated 12.01.2016 on account of being a non-speaking order and remanding the matter back to the appellants for fresh consideration, in our opinion, in the facts and circumstances of this case, it would be appropriate that the ban period which has continued till the date terminates with the judgment of this court, without any further restraint on the respondent to seek fresh assignments from the appellants/other PSUs, etc.

20. We may also note that we have been persuaded to pass the present order in the background of facts that the respondent is a cooperative society with the majority membership of farmers functioning with the appellant for the last 11 years. In view of the above, the present appeal is disposed of.

21. All pending applications also stand disposed of.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

APRIL 11, 2017
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