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

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Judgment delivered on: 10.04.2017

+ W.P.(C) 2683/2017 & CM No.11625/2017 (stay)

SHRI SASHIYONGDANG AO

..... Petitioner

versus

GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. M. Dutta, Advocate.

For the Respondent : Mr. Gurpreet Singh with Mr. Jaskaran Singh, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

10.04.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 17.03.2017, whereby, the respondent has terminated the contract for supply of sugar awarded to the petitioner.

2. The petitioner had submitted a bid consequent to e-Procurement Tender Notice dated 07.12.2016. The last date for submission of the technical bid was 29.12.2016. The petitioner was found to be L-I and, accordingly, on 12.01.2017, the petitioner was awarded the contract

for supply of 61,200 quintals of sugar spread over a period of three months.

3. The supplies were to be effected by three instalments of 20,400 quintals each. Out of the three instalments, the petitioner has already completed supply of two instalments of 20,400 quintals each totalling to 40,800 quintals.

4. On 07.03.2017, a show cause notice was issued to the petitioner contending that the petitioner had furnished false information in the affidavit dated 28.12.2016 and concealed the fact of debarment by the Himachal Pradesh State Civil Supplies Corporation Limited (HPSCSC). The petitioner was called upon to show cause as to why the petitioner be not debarred from participating in e-tender process for procurement of sugar in future and also forfeiture of the security deposit.

5. Consequent to the show cause notice, impugned order dated 17.03.2017 has been passed, thereby, terminating the contract awarded to the petitioner for supply of sugar.

6. It is contended in the show cause notice that the petitioner had not disclosed the fact that the petitioner had been debarred by the HPSCSC by letter dated 13.12.2016. Further, it is stated that the petitioner had violated Clause 3 of the e-tender eligibility condition and had submitted false information in the affidavit dated 28.12.2016.

7. The petitioner, in response thereto, contended that the debarment order by HPSCSC was limited to the State of Himachal Pradesh and that also to debarment from participation in the next three sugar tenders for supply of sugar under PDS in Himachal Pradesh alone.

8. Learned counsel for the petitioner further refers to letter dated 24.01.2017, issued by HPSCSC, clarifying that the petitioner has not been allowed to participate only in the next three tenders and the said debarment/not permitting to participate is limited to only three tenders.

9. It is further contended that the petitioner has not made any concealment or misrepresentation as the requirement of Clause 3 was for the petitioner to submit an affidavit, the format of which was prescribed in the annexure to the tender notice. It is submitted that the affidavit submitted was in terms of the format provided and the format did not entail furnishing of any such information of debarment by HPSCSC.

10. It is contended by learned counsel for the petitioner that the petitioner has not made any active concealment or misrepresentation as the petitioner was required to furnish an affidavit in the prescribed format and the petitioner furnished the affidavit in terms the said prescribed format. It is contended that the prescribed format of the affidavit itself is defective and the affidavit furnished by the petitioner

satisfies the requirements of the clause of the tender and does not amount to concealment or misrepresentation. It is further submitted that the format of the affidavit required the petitioner to state whether the firms had been debarred on the basis of an FIR. It is contended that the FIR, referred to in the impugned order dated 17.03.2017, is extraneous inasmuch as the petitioner had not been debarred on the basis of the said FIR and the FIR had not led to any debarment order. Reference is drawn to e-mail dated 16.03.2017, whereby, HPSCSC has clarified that the said FIR has not led to any debarment order.

11. Per contra, learned counsel for the respondent contends that the petitioner was not eligible to participate in terms of Clause 3 of the Eligibility Conditions. Since, the said fact was not brought to the notice of the respondent, the petitioner was technically qualified and being L-1 the contract was awarded to the petitioner. It is submitted that when the said fact came to the notice of the respondent, the petitioner was issued a show cause notice and, consequently, the order dated 17.03.2017 has been passed terminating the contract for supply of sugar awarded to the petitioner with immediate effect.

12. Clause 3 of the eligibility conditions read as under:-

“ELIGIBILITY CONDITIONS:-

- 3. The tenderer should not have been black listed or debarred for any default connected with handling of Essential Commodities / sugar from any Govt. Deptt./Organization. An affidavit as per Annexure*

-III duly attested by the Notary/Oath Commissioner is required to be submitted in support thereof.”

13. The affidavit referred to in clause 3 stipulates as under:-

*“ANNEXURE-III
Specimen of Affidavit*

Affidavit

I.....S/o.....R/o.....hereby solemnly affirm and declare as under:-

- 1. That I am the Proprietor /Partner /Director /Karta of M/s..... situated at.....and is running business of sugar,.*
- 2. That I or my firm is not blacklisted from any Govt. Deptt. /Organization and /or debarred on the basis of FIR lodged against me / my firm connected with handling of essential commodities.*
- 3. That it is my true statement and I shall be responsible for any false statement.*

DEPONENT

Verification:

Verified at New Delhi on this..... day of..... that the contents of this above affidavit true and correct to the best of my knowledge and belief.

DEPONENT”

14. The petitioner in support of its bid submitted the following affidavit:-

“Affidavit

I, Sashiyongdang Ao s/o Lt. Mr. Tsekjem Temjen aged about 33 years R/o Dimapur, Nagaland hereby solemnly affirm and declare as under: at present at Delhi

- 1. That I am the Proprietor of M/s NE Enterprises situated at H.No.107; Nepali Kashiram Basti, Dimapur - 797112, Nagaland and is running business of sugar amongst other agricultural commodities and essential commodities.*
- 2. That I or my firm is not blacklisted from any Govt. Deptt./ Organization and/or debarred on the basis of FIR lodged against me/ my firm connected with handling of essential commodities.*
- 3. That it is my true statement and I shall be responsible for any false statement.*

*For N E Enterprises
Proprietor
DEPONENT*

Verification: 28 DEC 2016

Verification at New Delhi on this ____ day of December 2016 that the contents of this above affidavit are true and correct the best of my knowledge and belief.

*For N E Enterprises
Proprietor
DEPONENT"*

15. Perusal of the format of the affidavit prescribed shows that the bidder was required to state that the bidder is not blacklisted from any Govt. Deptt. /Organization and /or debarred on the basis of FIR lodged against the bidder connected with handling of essential commodities.

16. The affidavit submitted by the petitioner is in consonance with the format prescribed. The stand of the petitioner is that the petitioner was neither blacklisted nor debarred on the basis of any FIR lodged and as such there is no misrepresentation or concealment. There is no clause in the format of the affidavit whereby any further information could be furnished.

17. Coming to Clause 3 of the eligibility conditions of the tender notice, it is seen that one of the conditions is that the bidder should not have been blacklisted or debarred for any default connected with handling of essential commodities/sugar from any Govt. department/organisation.

18. The order of HPSCSC dated 13.12.2016 interalia reads as under:-

“*****

In view of aforesaid term & condition, the matter was placed before the State Sugar Purchase Committee meeting held on 13.12.2016, wherein the Committee decided to debar your firm i.e. M/s. NE Enterprises, Global Tower, D-53, Greater Kailash, Enclave-II, New Delhi-110048 from participating in next three tender for supply of sugar of HPSCSC.

Hence, in compliance of aforesaid decision of the State Sugar Purchase Committee your firm is debarred to participate in the next three sugar tenders for supply of sugar under PDS in H.P. with immediate effect.”

19. Clearly, the order dated 13.12.2016 of HPSCSC is an order of

debarment of the petitioner from participating in the next three tenders for supply of sugar of HPSCSC, though would not, *ipso facto*, apply to the other organisations or States.

20. However, in the present case, the tender condition stipulated in the notice inviting tenders issued by the respondent prescribed an eligibility condition that the bidder person should not have been debarred/blacklisted by any Govt. department/organisation.

21. Even though, the order dated 13.12.2016 of HPSCSC, would not be automatically applicable to tenders issued by third parties but, as, the e-tender issued by the respondent, stipulated an eligibility condition that the bidder should not have been debarred, the debarment order dated 13.12.2016 of HPSCSC would be applicable to the bid submitted by the petitioner.

22. In view of the plain reading of Clause 3 of the eligibility condition, the petitioner would have been ousted and ineligible from participating in the subject tender. Thus, the impugned order dated 17.03.2017, insofar as it terminates the contract for supply of sugar on account of the petitioner not satisfying the Clause 3 of the eligibility conditions, cannot be faulted.

23. In so far as the contentions of the learned counsel for the petitioner that the petitioner has not made any active concealment or misrepresentation as the petitioner was required to furnish an affidavit in the prescribed format and the petitioner furnished the affidavit in

terms the said prescribed format and further that the prescribed format of the affidavit itself is defective and the FIR, referred to in the impugned order dated 17.03.2017, is extraneous, are concerned, in my view do not need any further examination, as the respondents have only terminated the contract (for which the petitioner is any event was ineligible in terms of clause 3) and have not taken any further action against the petitioner. These issues are left open for being determined in case any such issue arises in future.

24. It is clarified that the petitioner has been non-suited solely on the ground that the petitioner had been debarred by HPSCSC and was not eligible in terms of Clause 3 of the eligibility conditions to participate in the tender and the award of the contract to the petitioner was erroneous and the order terminating the contract on the said ground alone does not warrant any interference.

25. The writ petition is disposed of in the above terms. No costs.

SANJEEV SACHDEVA, J

APRIL 10, 2017
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