

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.08.2017

+ **W.P.(C) 7756/2016 & CM No. 32668/2016**

MANTEC CONSULTANTS PVT. LTD.

..... Petitioner

Versus

**MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE (I.A. DIVISION) AND ANR.** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Suneet Bhardwaj.

For the Respondents : Mr Manish Mohan, CGSC with Mr
Saksham Tyagi and Ms Manisha Saroha
for R-1.
Ms Raveena Rai, Mr Abhiram Naik and
Ms Pavitra Singh for R-2.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. Mantec Consultants Pvt. Ltd. (hereafter 'Mantec') has filed the present petition under Article 226 of the Constitution of India for setting aside an order dated 23.08.2016 (hereafter 'the impugned order') passed by the Ministry of Environment, Forest and Climate Change (hereafter 'MoEF') rejecting Mantec's representation, thereby reaffirming its earlier decision dated 09.02.2016, debarring Mantec from preparing any Environmental Impact Assessment ('EIA' in short) / Environment Management Plan ('EMP' in short) Reports and appearing before the Expert Appraisal Committee / State Expert Appraisal Committees / State

Coastal Zone Management Authorities across the country for a period of one year. The order dated 09.02.2016 was issued on the ground that the EIA report prepared by Mantec was for clearance of 13 activities / projects at Kandla Port, whereas the Terms of Reference ('ToR' in short) issued by MoEF was only for 3 activities.

2. Mantec contests the allegation that it had expanded the ToR, essentially, on three grounds. First, it is stated that the notice inviting tender issued by Kandla Port Trust, respondent no.2 was in respect of 18 activities (subsequently reduced to 13) and, therefore, Mantec always believed that it was required to make report in respect of 13 activities. Second, that Mantec's report was considered by the Expert Appraisal Committee of MoEF in its 136th meeting wherein it was decided that the proposal shall be considered further and no objections were raised as to the activities covered by Mantec in its report. And third, that the ToR issued by MoEF specifically required Mantec to carry out Comprehensive Impact Assessment of the existing and future planned activities, which indisputably included the activities for which the notice inviting tender had been issued. It is Mantec's case that the above clearly establish that there were sufficient reasons for Mantec to proceed to make its report regarding the 13 activities as covered under the ToR. However, notwithstanding the same, even if it is assumed that Mantec had misread the ToR, the same was *bonafide* and thus, there would be no ground to blacklist / debar Mantec from preparing EIA / EMP Reports and appearing before the concerned authorities.

3. The relevant facts to address the controversy in the present petition are briefly set hereafter.

4. Mantec is a company engaged in providing a complete range of environmental and social impact assessment services. It is accredited by the Quality Council of India (QCI) / National Accreditation Board for Education and Training (NABET) for carrying out the aforesaid activities.

5. Kandla Port Trust (hereafter 'KPT'), issued a notice inviting tender (NIT) for appointment of advisor for "*preparation of integrated environmental impact assessment study report for all future proposals of Kandla Port Trust at Kandla*". Mantec submitted its bid in response to the said NIT.

6. On 17. / 19.02.2011, Mantec's bid was accepted and the contract for preparation of integrated EIA study reports was awarded to Mantec.

7. On 05.03.2012, Mantec made a presentation regarding the proposed projects before the Expert Appraisal Committee of MoEF, wherein, Mantec had covered 3 main water front projects and 5 additional projects. Based on the presentation, MoEF, by letter dated 22.05.2012, issued ToR to KPT for preparation of EIA / EMP report for development of integrated facilities within the existing Kandla Port at Kandla in Gujarat covering (i) setting-up of Barge Jetty at Tuna; (ii) development of Barge handling Jetty at Khori creek and; (iii) development of Oil Jetty to handle liquid cargo and ship bunkering at Old Kandla. Clause (viii) of the ToR required KPT to submit a *Comprehensive impact Assessment for the existing and future planned activities*.

8. Mantec prepared the EIA report for 13 activities (including the 3 activities specifically mentioned in the ToR) for clearance by MoEF. The report submitted by Mantec was considered by the Expert Appraisal Committee in its 136th meeting held between 30.07.2014 - 01.08.2014 wherein, *inter alia*, the proposal for environmental clearance for

development of integrated facilities at KPT was discussed and it was indicated that the said development would involve the 13 projects on which Mantec had submitted its EIA report. The minutes of the said meeting further recorded that ToR granted by MoEF on 22.05.2012 was for integrated EIA for 13 activities. It was also decided that the proposal shall be further considered following the submission of certain additional documents as listed therein.

9. Thereafter, on 09.02.2016, MoEF issued an order to Mantec stating therein that MoEF had issued ToR for 3 activities, however, Mantec had submitted EIA/EMP report for 13 projects and thus, the EIA/EMP report was not in terms of the ToR. Therefore, Mantec was debarred from carrying out any preparation of EIA/ EMP Reports and appearing before the Expert Appraisal Committee/ State Expert Appraisal Committees/ State Coastal Zone Management Authorities across the country for a period of one year.

10. The relevant extracts of the order dated 09.02.2016 are as follows:-

“3.0 The matter has been examined in detail in the Ministry, and it is noted that the Consultants are required to prepare the EIA/ EMP report as per the ToR issued by the Ministry. In this case the Ministry issued ToR for three activities, and the Consultant organization has prepared EIA/ EMP for 13 activities. It was the duty and responsibility of the Consultant to advise the Project Proponent to obtain the requisite modification in the ToR at suitable time. The Consultant instead of advising so to the Project Proponent went ahead and prepared the EIA/ EMP for 13 activities for which no ToR has been granted. Final EIA/ EMP report including SCZMA recommendations was submitted to the Ministry on 28.08.2015. This has led to wastage of considerable time and resources at various levels.

4.0 It has been decided to debar the Consultant Organisation (M/s. Mantec Consultants Pvt. Ltd., D-36, Sector - 6, Noida, Uttar Pradesh - 201301) from carrying out any preparation of EIA/ EMP report and appearing before the Expert Appraisal Committee/ State Expert Appraisal Committees/ State Coastal Zone Management Authorities across the country for a period of one year effective from the date of issuance of this order.”

11. Immediately thereafter, Mantec filed representations before MoEF, wherein it was submitted that the order dated 09.02.2016 was issued without affording an opportunity to Mantec to show cause against its debarment. It took a stand that it was advised by KPT to undertake EIA study for 13 projects in terms of clause (viii) of the ToR, allowing the making of a comprehensive EIA report to cover existing and future activities. Further, ToR for the 3 projects included within its ambit, the additional 10 planned activities as the location and the land area for the activities is the same.

12. As no action was taken in respect of the representations filed, Mantec approached this Court by filing W.P.(C) 1396/2016 captioned as “***Mantec Consultants Pvt. Ltd. v. Ministry of Environment, Forest and Climate Change (I.A. Division) & Anr.***”. This Court noted that the order dated 09.02.2016 was passed without issuing any show cause notice and consequently, by order dated 02.03.2016, MoEF was directed to dispose of the representations filed by Mantec within eight weeks, after affording Mantec an opportunity to be heard. And, the order dated 09.02.2016 was kept in abeyance till the disposal of such representations.

13. Simultaneously, MoEF referred Mantec’s representations to QCI/NABET to seek their comments in regard to the issue. In response, NABET stated that ToR was issued for 3 activities comprised of water

front projects and the balance 10 activities covered in Mantec's EIA report were of a different nature, thus, considerably expanding the scope of the EIA. Therefore, a fresh ToR should have been obtained to address all issues to be covered for the varied kind of projects before preparing the EIA report with the expanded scope.

14. In compliance with the order dated 02.03.2016 passed by this Court, MoEF issued a show cause notice dated 19.04.2016 to Mantec to explain within a period of 7 days as to why action against Mantec should not be initiated for not guiding KPT to obtain fresh ToR for 13 projects. Accordingly, a reply was submitted by Mantec to the show cause notice. As no decision was taken on Mantec's representation, Mantec filed an application (CM No. 16961/2016 in W.P. (C) 1396/2016) in this Court. This Court, by an order dated 09.05.2016, recorded that Mantec would be given a hearing by the Joint Director, Infra - 2, I.A. III Division, MoEF on 13.05.2016.

15. In its written submissions, Mantec stated that the EIA report was made in line with clause (viii) of the ToR which was added on account of the presentation submitted on 05.03.2012 wherein the need for additional integrated facilities was made out, to make the 3 water front activities workable. It was also argued that the Expert Appraisal Committee of MoEF in its 136th meeting had accepted that the EIA report for 13 activities was made as per the ToR dated 22.05.2012.

16. Since MoEF, did not dispose of Mantec's representation, Mantec moved this Court once again by way of a writ petition (W.P.(C) 6944/2016 captioned as "***Mantec Consultants Pvt. Ltd. v. Ministry of Environment, Forest and Climate Change & Anr.***"). The petition was disposed of by an

order dated 09.08.2016, granting MoEF two weeks time to pass an order on Mantec's representation and to communicate the same.

17. Thereafter, MoEF passed the impugned order dated 23.08.2016 observing therein that ToR was granted only for 3 projects, however, the scope of the EIA report was considerably expanded by including 13 activities therein. MoEF held that conducting EIA for 13 projects, without getting the ToR amended to address all the projects covered in the EIA report, was not found to be acceptable. This led to substantial loss of time and resources for KPT and delayed the process of environmental clearance for the 3 projects for which ToR was issued. In view of the above, the order dated 09.02.2016 was upheld and Mantec was debarred from preparing EIA/EMP Reports and appearing before the Expert Appraisal Committee / State Expert Appraisal Committees / State Coastal Zone Management Authorities for a period of one year from the said date. The relevant extracts of the impugned order are reproduced as under:-

“13. The above reasons and explanations given by the Consultant while being examined carefully in the Ministry, it has been observed that since the scope of the EIA for the project was considerably expanded, a fresh ToR should have been obtained to address all the issues to be covered. Also, when the ToR was given only for three activities, conducting EIA for 13 activities without getting the ToR amended, was not found acceptable. It is also seen that the Environment Impact Assessment report for 13 activities presented by the M/s. Kandla Port Trust for environment Clearance was not accepted in the Ministry as it was against the ToR issued for only three activities. This has led to substantial loss in time and resources for the M/s. Kandla Port Trust and delayed the process of environmental clearance for above three important projects. The arguments

in this regard given by the Consultant justifying the same due to above reasons was not considered to be convincing. It was the responsibility and duty of Consultant to advise the Client M/s. Kaudla (sic) Port Trust to obtain fresh ToR for additional 10 activities, rather than going ahead with preparations of EIA for 13 activities.

14. In view of the above, the Ministry, after examining all the facts and circumstances, and submissions thereto made by M/s. Mantec Consultants Pvt. Ltd., found no adequate justification for reviewing the earlier order dated 9th February, 2016, debarring the Consultant from preparing EIA/EMP reports and appearing before EACs/SEIAAs/SEACs for a period of one year. As the Hon'ble High Court of Delhi vide order dated 2nd March, 2016 in Writ Petition No. 1396/2016 has directed that the earlier debarment order or the impugned order dated 9th February, 2016 shall not be given effect to till representations of the Consultant are disposed of, this period of one year of debarment will be counted from the date of this order.”

18. Before proceeding further, it is relevant to note that the impugned order is in the nature of a punitive measure imposed on Mantec. The impugned order amounts to blacklisting Mantec and has serious adverse consequences for its business.

19. In *Erusian Equipment & Chemicals Ltd v. State of West Bengal & Anr: AIR 1975 SC 266*, the Supreme Court observed that:-

“The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

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Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction.”

20. In ***Gorkha Security Services v. Govt. (NCT of Delhi) and Others:*** (2014) 9 SCC 105, the Supreme Court had observed as under:-

“With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

21. Given the serious nature of the consequences of the impugned order, it was necessary for MoEF to establish with a certain level of certainty before passing the order that (a) the report submitted by Mantec was incomplete and contrary to the express terms of the ToR; (ii) Mantec had deliberately expanded the ToR despite being conscious of the correct import of the ToR and submitting of the comprehensive report by including future activities was not on account of any confusion or *bonafide* error; and (iii) the act of Mantec was so reprehensible as to warrant a punishment of being debarred for a period of one year. In other words, the punishment meted out was commensurate and proportionate to Mantec's offending act. The impugned order must be tested on the anvil of the aforesaid considerations.

22. At this stage, it would be relevant to refer to the NIT issued by KPT. The relevant extract which covered the following activities reads as under:-

“The list of proposals for which common EIA study is to be carried out is mentioned below.

- Mechanization of cargo berths.
- Setting up of berthing facility at Tuna (stage -II, 8 MMTPA, Coal Berth)
- Setting up of Ship repair facility near Bunder Baisn.
- Modification & Strengthening of 1 to 6 cargo berth at Kandla Port.
- Providing Railway lines from NH 8A to Tuna Port.
- Development of Barge Handling Facilities at Bunder Basin on BOT Basis.
- Setting up of Barge Jetties at Tuna.
- ROB in the junction of NH 8A and road leading to Tuna, ROB near Kutch salt Junction and ROB near junction of NH 8A & K.K.Road.
- Setting up of Solar based 5 MW approx. Power Station.
- Multi-modal Logistic Park.
- Captive Use projects like Power Plants.
- Container terminal at Tuna-Tekra.
- Development of Sathsaida Bet.
- Development of barge handling jetties at Khorī creek.

In addition to above, followings are the general proposals for which EIA Studies is to be carried out

+Up gradation of Transport facilities including roads/railways and provision of air connectivity.

+Upgradation and mechanization of terminals/cargo jetties/barge handling jetties and storage infrastructure including godowns and tank farms, development of back up area for all cargo berths, oil jetties/Barge handling facilities etc.

+Development of supporting marine infrastructure including ship building and repair facilities, dredging in the approach channel and in front of the berths/jetties.
+Development of other industrial, commercial and residential activities in KPT area as per CRZ regulations.”

23. Admittedly, the number of activities was restricted to 13; thus, there is no dispute that Mantec had quoted for providing report in respect of 13 activities.

24. The ToR issued by MoEF expressly required Mantec to carry out Comprehensive Impact Assessment for the existing and future planned activities. The relevant extract of the ToR dated 22.05.2012 is as under:-

“Kindly refer to your above proposal submitted to this Ministry. The proposal is for developing the Integrated facilities within the existing Kandla Port at Kandla covering the Setting-up of Barge Jetty at Tuna, Development of Barge handling Jetty at Khori Creek, Development at oil Jetty to handle liquid cargo and ship bunkering at Old Kandla, Kandla Port is located at Latitude 23°01'N, Longitude 17°13'E on shores of Kandla creek. The traffic handled at Kandla Port in the past years has been in excess of the existing handling capacity of the port. In this context, therefore it is envisaged to develop barge jetty for handling multipurpose dry cargo at Tuna & Khori creek and liquid cargo & ship bunkering at Old Kandla. The capacity of the proposed jetties is 17.45 MMTPA and involves construction of wharf of 1000 m x 12m on pile foundation and associated activities for barge handling jetty at Khori creek, construction of 500m x 12 m for development of barge handling jetty at Tuna and construction of wharf of 300m x 15m for development of oil jetty to handle liquid cargo and ship bunkering at Old Kandla. Total land requirement will be 57.5 ha and belong

to Kandla Port Trust. Total capital cost of the project is Rs. 793.61 crores.

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The details as presented by the project proponents and after discussions, the following "Terms of Reference" were finalized to be suitably added to those furnished by the project proponent.

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viii) Comprehensive Impact Assessment for the existing and future planned activities.”

25. Although, Mantec had repeatedly submitted that in terms of clause (viii) of the ToR, it understood that an EIA report for 13 activities was required to be submitted as the same was included in the NIT and was undisputedly a part of the future planned activities of KPT, however, this contention has, apparently, not been addressed by MoEF and the impugned order is silent as to the meaning to be ascribed to clause (viii) of the ToR. During the course of arguments, the learned counsel appearing on behalf of MoEF was pointedly asked as to what was the meaning ascribed to clause (viii) and he responded by stating that that was only a general observation and did not imply that Mantec was required to provide a comprehensive EIA report on future planned activities.

26. Whilst it may be correct that MoEF may not have desired Mantec to prepare a Comprehensive EIA report on future activities but the question to be addressed is whether inclusion of clause (viii) had introduced certain ambiguity, which led Mantec to submit a comprehensive EIA report covering all 13 activities. A plain reading of clause (viii) of ToR indicates that a Comprehensive Impact Assessment of future activities was called for

and included in the ToR. Thus, notwithstanding the opening paragraph of the ToR, Mantec's action in preparing a comprehensive report cannot by any stretch be considered to be an act of wilful misconduct to warrant imposition of a punitive measure.

27. Mantec's report was also discussed by the Expert Appraisal Committee in its 136th meeting, the minutes of which have been annexed to the petition. A perusal of the said minutes indicate that there was no objection as to the scope of activities covered under the EIA report; on the contrary, the minutes reflect that the Committee had proceeded to consider the proposed development as including all the 13 activities and had examined the report submitted by Mantec in that context. This is discernable from the following extracts of the minutes, which are as under:-

“The total land requirement for all projects will be 171.85 hectares but there is no land acquisition involved as the land is owned by KPT and proposed activities are within the limits of Kandla Port Trust. Water requirement for the project is estimated 19 KLD. The capital dredging will be of 3,48,16,993 M³ with maintenance dredging of 59,90,294 M³ per year.

The ToR was granted by MoEF, New Delhi for integrated EIA of above on 22nd May, 2012. One year base line data was collected from site & surroundings. The draft EIA report was submitted to Gujarat Pollution control board for public hearing which was completed successfully on 18th December, 2013.”

28. The Expert Appraisal Committee thereafter had sought to obtain certain additional information. However, it is clear that the Expert Appraisal Committee did not find the report submitted by Mantec to be outside the scope of ToR.

29. Although by the impugned order, the punitive measure imposed on Mantec by the order dated 09.02.2016 has been upheld, however, a bare perusal of the impugned order indicates that the relevant contentions advanced by Mantec have not been considered. Firstly, there is no explanation as to the implication of clause (viii) of the ToR. Secondly, there is no denying the fact that the activities covered under the comprehensive report included the activities covered under the NIT issued by KPT and thus, it was well within the contemplation of the parties that EIA report for such activities would have to be prepared. And, thirdly, there is no explanation as to why Mantec's report was not rejected outrightly by the Expert Appraisal Committee if it was so out of sync with the ToR as to invite the punishment of blacklisting.

30. In the impugned order, MoEF has held that Mantec ought to have advised KPT to seek modification of the ToR rather than go ahead with the preparation of the EIA report for the 13 activities. Undoubtedly, this may have been an apposite approach in the event if it was felt that there was any ambiguity in the ToR. However, that does not mean that the action of Mantec in complying with the strict letter of the ToR is reprehensive and worthy of punishment.

31. In *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors: AIR 2014 SC 9*, the Supreme Court had summarised the factors which are required to be considered while imposing punitive measures such as blacklisting and/or excluding a person from participating in contracts awarded by the State. The relevant extract of the said decision is as under:-

“The guidelines also stipulate the factors that may influence the debarring official’s decision which include the following:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing.

(d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.

(f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.

(g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.

(i) Whether the wrongdoing was pervasive within the contractor’s organization.

(j) The kind of positions held by the individuals involved in the wrongdoing.

(k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing

ethics training and implementing programs to prevent recurrence.

(1) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.”

32. It is apparent that MoEF has not considered the question of blacklisting in the context of the aforesaid factors and in this Court's view, the impugned action of blacklisting would not be sustainable on the tests as laid down by the Supreme Court in *Kulja* (*supra*).

33. In view of the above, the impugned order is set aside. The petition along with the pending application is disposed of. The parties are left to bear their own costs.

AUGUST 21, 2017
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VIBHU BAKHRU, J