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

Judgment pronounced on 8th November, 2017

+ W.P.(C) 5140/2017

M/S BRANDAVAN FOOD PRODUCTS Petitioner

Through Mr. Manish K. Bishnoi and
Mr. Devansh Srivastava, Advs.

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD (IRCTC) AND ANR Respondents

Through Mr. Nikhil Majithia, Adv.

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT

A. K. CHAWLA, J. (ORAL)

By the petition, the petitioner, who was awarded catering license for fast food unit at Hazrat Nizamuddin Railway Station, seeks issuance of a Writ of Certiorari for quashing of the letter of termination of license dated 10.2.2017 and following communication dated 1.5.2017, disposing and declining the representation made by the petitioner, there-against.

2. In sum and the substance, the case of the petitioner is that he had participated in the tender for grant of catering license for fast food unit at Hazrat Nizamuddin Railway Station and being the successful

bidder, was awarded the contract. On being awarded the contract, he deposited the security deposit, as well. Dispute however, arose on account of the use of logo 'Comesum', inasmuch as, according to the petitioner, the petitioner was within its rights to use the logo 'Comesum', whereas, the respondent asserted, it cannot be used, but, for the name of the petitioner. On this, the petitioner withdrew and sought refund of the security deposit. It resulted into exchange of some communications inter se the parties and passing of the impugned orders.

3. During the course of hearing, it is conceded to by Id. Counsel for the petitioner that contract provided for an arbitral clause, and, thereby, the dispute as regards the security deposit etc. would be within the domain of the arbitration proceedings and to that effect, the writ petition would not be maintainable. Only question thus, pressed in the instant proceedings, is as regards the petitioner being blacklisted vide the impugned communication dated 10.2.2017, which is, as under:

“..... However, vide your referred letters at SN-2, you have shown your inability to set up and operate the above Food Plaza without the Brand Name of Comesum.

In view of the above, Competent Authority has decided to terminate the agreement of license of Fast Food Unit at Hazrat Nizamuddin Railway station under Clause 9.1-(Breach of any terms and conditions of the license under Events of Default) of the terms and conditions of the contract with forfeiture of security deposit and debarment from participating in future projects of IRCTC for a period of one year from the date of issue of this letter.”

A bare perusal of the impugned communication would show that the petitioner has come to be blacklisted without having been afforded an opportunity of hearing by way of a show cause. In the submissions of the Id. Counsel for the petitioner, this was blatant violation of the principles of law and natural justice, which are well elaborated in (2014) 9 SCC 105 Gorkha Security Services Vs. Government (NCT of Delhi) and others. In Gorkha's case (supra), it has come to be held, as under :

“21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

i) The material/ grounds to be stated on which according to the Department necessitates an action;

ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

The ratio of the judgment supra would show that not only the show cause is pre-requisite to take decision for blacklisting, it also requires to state the material/grounds for the contemplated action. On these aspects, Id. Counsel for the respondents is at pains to point out for such requirements having been met with for the passing of the blacklisting impugned order dated 10.2.2017. In view thereof, in the absence of a show cause notice much less a proper show cause notice having been issued for blacklisting, the impugned communication dated 10.2.2017 and the consequential communication dated 1.5.2017 cannot be sustained.

4. In view of the foregoing, the petition is allowed to the above-said limited extent and the impugned communications are quashed. Liberty is however, reserved to the respondent to issue a show cause notice for blacklisting, if, so required. It is made clear that any show cause notice required to be issued for blacklisting of the petitioner, shall be issued within four weeks from today, and, in such eventuality, the instant petition shall be treated as representation thereagainst, to be disposed off within four week of the date of receipt thereof. Should the petitioner however, require a personal hearing, it shall be granted. The petitioner would also be entitled to file any

other plea(s) or document(s), as the petitioner may deem fit and proper. It is also made clear that in the event of a fresh blacklisting order coming to be passed, the period, for which the petitioner has suffered under the impugned orders, shall be taken into account. It is also made clear that any observation made in the instant proceedings shall have no bearing on the merits of any of the pleas, claims or counter claims amongst the parties, as may have arisen or arise in the arbitral proceedings. Petition and the pending applications, if any, stand disposed off accordingly.

Dasti under the signatures of the Court Master.

A. K. CHAWLA, J

NOVEMBER 08, 2017

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