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

+ **W.P.(C) 10031/2017**

**JAN CHETNA JAGRITI AVOM SHAIKSHANIK
MANCH**

..... Petitioner

Through: Mr Anil Sapra, Sr. Advocate with Mr
K. B. Upadhaya, Mr Kartik Bhardwaj,
Mr Sarthak Katyal, Mr Jaideep Singh
and Ms Piyusha Singh, Advocates.

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through: Mr Santosh Kumar Tripathi, ASC
with Mr Rizwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.11.2017

1. Issue notice. Learned counsel for the respondent accepts notice.
2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 30.03.2016 (hereafter 'the impugned order'), whereby the petitioner was black listed. The principal ground urged by the petitioner in the present petition is that no show cause notice was issued to the petitioner in this regard.
3. The Learned counsel for the respondent has pointed out that a show cause notice dated 04.06.2015 (hereafter 'SCN') was issued specifically calling upon the petitioner to show cause as to why the petitioner should not be blacklisted. The petitioner also replied to the said SCN.
4. Even though the petitioner had received the SCN, the petitioner has

made the following statement in its petition:-

“That this impugned blacklisting order is arbitrary and bad in law for the simple reason that neither any show cause notice was issued nor any opportunity of hearing was granted to the Petitioner-NGO before taking such a stern action which is clearly violation of principles of natural justice.”

The above averment was also repeated in the grounds (ground D) set out in the petition.

5. It is apparent from above that the petitioner has approached this Court on the basis of incorrect averments in the petition.

6. Mr Sapra, learned senior counsel appearing for the petitioner states that a careful examination of the SCN indicates that only action in accordance with the agreement between the parties (as the language of the SCN suggests) was contemplated against the petitioner; and, there is no clause in the agreement which permits blacklisting.

7. The above contention is wholly bereft of any merits. The SCN clearly called upon the petitioner to show cause as to why it should not be blacklisted and the allegations against the petitioner were mainly regarding non performance of the obligations undertaken by the petitioner lieu of its agreement with the respondent. The relevant extract of the SCN is set out below:-

“Whereas the following observations were made during the inspections:

- Continuous Non Supply and Short supply of SNF in the ICDS projects allotted.
- Non formation and non functioning of proper SHGs as per the scheme/agreement.
- Non maintenance of records and registers of daily

ingredients used for preparation of SNF as per the menu and recipe. In fact the recipe is not being followed.

- The NPO/MNPO is found continuously not performing for over the years, which shows the causal and lack of professional approach in the functioning of MNPO/SHG Kitchens.
- No proper records of indent, stock, distribution, fumigation and functioning of SHGs/Kitchens.
- A very poor quality, loose and tasteless food is being supplied to ICDs beneficiaries.

Whereas all above shows a serious breach of terms and conditions of the agreement executed between the NPO and the department.

Now, in view of the foregoing, you are hereby directed to explain the reasons within a month from the receipt of this notice, else the department may be constrained to take appropriate action as deemed suitable in larger public interest in accordance with Agreement.

1. Why the agreement entered into with the NPO/MNPO Jan Chetna Jagriti Avom Shaikshanik Vikas Manch & its SHGs in all ICDs projects allotted are not terminated.
2. Why the Performance Guarantee furnished by NPO/MNPO Jan Chetna Jagriti Avom Shaikshanik Vikas Manch in all the ICDs projects allotted is not forfeited.
3. Why the NPO/MNPO Jan Chetna Jagriti Avom Shaikshanik Vikas Manch is not black listed.

This issued with the approval of competent authority.”

[Underlining for Emphasis]

8. The petitioner had replied to the said SCN but the same was not found satisfactory.
9. Mr Sapra, learned senior counsel also seeks to agitate other grounds. However, as stated above, this Court is not inclined to entertain this petition

for the reason that the petitioner has not approached this Court with clean hands and the principal ground urged in the petition - that is, that the petitioner was not issued any SCN regarding blacklisting - is established to be incorrect. It is well settled that remedies under Article 226 of the Constitution of India are discretionary and the court would not assist a litigant, which has been less than candid in approaching the Court. Thus, this Court is of the view that the petitioner is disentitled for any discretion to be exercised in its favour.

10. The petition is, accordingly, dismissed.

11. It is however clarified that the petitioner would be at liberty to pursue its other remedies, including arbitration, for alleged wrongful termination of the agreement and/or for any other claim. This court has neither examined the merits of the dispute, nor expressed any opinion thereon and nothing stated herein should be construed as such.

VIBHU BAKHRU, J

NOVEMBER 13, 2017
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