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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7973 OF 2018

M/s. Joshi Freight Carriers.

... Petitioner.

V/s.

The Maharashtra State Warehousing
Corporation.

... Respondent.

Mr. Akshay Naik a/w. Mr. Rahul Kalangiwale i/b. Mr. Anish Khandekar for the Petitioner.

Mr. Kamlesh Ghumre a/w. Ms. Sonali Sabale a/w. Mr. Aditya Parulekar for the Respondent.

Mr. S.C. Mohanty, Senior Manager, Mumbai Region (MSWC), present.

Mr. R.E. Pawar, Deputy Manager, (BD), H.O. Pune (MSWC), present.

***CORAM : R.M. Borde and
Prithviraj K. Chavan, JJ.***

DATE : 13th August, 2018.

P.C. :-

Heard. Rule. By consent of parties the Petition is taken up for final disposal at the admission stage.

2. The Counsel appearing for the Respondent – Corporation places on record a communication issued by the Corporation on 10.08.2018. Same is marked 'X' for identification.

3. The Petitioner is aggrieved by the part of the order passed by the Chairman and Managing Director of Maharashtra State Warehousing Corporation, directing that the Petitioner shall not be eligible to participate in the tender process which would be initiated by the Respondent and his name be included in the black list. The Petitioner contends that the orders have been issued in breach of principles of natural justice since the Petitioner was not directed to show cause in respect of the aforesaid inclusion of his name in the black list.

4. Our attention is invited to the notice dated 18.06.2018 directing the Petitioner to show cause as to why the agreement entered into with him in respect of transportation of food grains shall not be terminated. The Petitioner has tendered his reply to the show cause notice and on consideration of the contentions raised by the Petitioner, the agreement entered into by the Respondent – Corporation with the Petitioner has been terminated. While directing the termination of the contract, the Respondent has also prohibited the Petitioner for a period of one year from participating in the tender process initiated by the Respondent – Corporation.

The Counsel appearing for the Respondent – Corporation has invited our attention to sub-Clause (II) of Clause 15 which refers to Disqualification Conditions. It is provided “ Any tenderer whose contract with the Food Corporation of India, or any department of Central or State Government or any other Public Sector undertaking has been terminated before the expiry of the contract period at any point of time during last five years, may be considered as ineligible or disqualify at the sole discretion of Chairman and Managing Director who shall make a written order in such case.” It is contended by the Counsel appearing for the Respondent – Corporation that clause included in agreement permits the Corporation to held the Petitioner ineligible to participate in the tender process. It is also contended that the case of the Petitioner is squarely covered by the aforesaid Clause 15.

5. It must be noted that the Petitioner has been specifically prohibited from participating in the tender process for a period of one year from the date of issuance of the order. The Petitioner has no notice of the proposed penalty that have been imposed by the Respondent – Corporation under the order dated 30.06.2018. So far as the tender process which is on going, the Corporation may rely upon the appropriate disqualification conditions and may take appropriate decision in that regard. However, in our opinion so far as order prohibiting the Petitioner from participating in a tender

process for a period of one year has been issued without observing the principles of natural justice and therefore, the aforesaid restrictions contains in the order deserves to be quashed and set aside. At the same time it would be open for the Respondent – Corporation to observe the principles of natural justice and after extending opportunity of hearing to the Petitioner, to pass appropriate order. So far as the interpretation of Clause 15(II) of the Disqualification Conditions is concerned, the issue raised by the Respondent – Corporation and the reliance placed on the aforesaid condition can be considered as and when cause of action accrues.

6. In view of above, the Rule is made absolute to the extent as specified above. There shall be no order as to costs.

(Prithviraj K. Chavan, J.)

(R. M. Borde, J.)

Jyoti
Prakash
Pawar

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by Jyoti
Prakash Pawar
Date:
2018.08.16
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