IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13985 of 2017
Date of decision: 21.09.2018

SKP Buildcon Private Limited

… Petitioner

Versus

NHPC and another

… Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sourabh Kapoor, Advocate for the petitioner.
Mr. Lokesh Sinhal, Advocate for the respondents.
***

The petitioner herein prays for a writ in the nature of certiorari to quash the orders dated 03.06.2016 (Annexure P1) and 06.06.2016 (Annexure P2), vide which the respondent-authorities have since banned any business dealings with the petitioner i.e. M/s SKP Buildcon Private Limited, for a period of three years w.e.f. 03.06.2016.

In response to the tenders floated by the two units of National Hydro Power Corporation Limited (for short, "Corporation") i.e. NIT dated 19.11.2014, for Capital/Major/Special R&M works of 8 nos. for Tanakpur Power Station and NIT dated 20.10.2014, for refurbishment of Runners of Generating Units of Power House pertaining to Dhauliganga Power Station, the petitioner submitted its bid. But as the experience certificates furnished by the petitioner in support of its claim for both the tenders were found to be fake. Vide two separate letters dated 24.01.2015, issued by Dhauliganga

Power Station, and 02.02.2015, issued by Tanakpur Power Station, the business dealings between the parties were suspended for a period of six months. However, upon consideration of the explanation rendered by the petitioner, both the Power Stations vide office orders dated 18.03.2015 & 30.03.2015, though revoked the suspension, but the petitioner was warned to desist from indulging any such activities in future, failing which stringent action shall be initiated. However, subsequently a complaint was received by the Vigilance Division of the Corporation, wherein the petitioner was accused of having furnished forged documents and misrepresented the Corporation to undertake the work at two Power Stations referred to above. Further, the Committee constituted by the Corporation to inquire into the matter accepted a plea "**The forged documents submitted by the Company was due to the mistake of an employee of the Company and that the said employee is removed from the Rolls of the Company**", which apparently lacked conviction and was erroneous. Thus, considering the sensitivity of the issue, the Management ordered re-investigation and till completion of all procedural formalities and pending investigation again suspended all future business dealings with the petitioner-Company for a period of six months. The results of the preliminary investigation revealed that as no such work was ever assigned to the petitioner by M/s Ukai Hydro Power Station, Gujarat, the organization that purport to have issued the experience certificates appended with the tender forms, the documents submitted by the petitioner-Company were forged. Resultantly, a show cause notice dated 15.02.2016 was served upon the petitioner proposing a ban for all future business dealings with the Corporation. However, the petitioner vide its reply dated 05.03.2016 clarified that neither the petitioner-Company nor its Directors had any involvement in the alleged act and rather it was an attempt to defame the Company. Further, the said two tenders were submitted by officials of the company going beyond their authority and interest of the petitioner. But on a consideration of the matter, the Competent Authority in terms of its **Guidelines on Banning Business Dealings** banned all business dealings with the petitioner for a period of three years w.e.f. 03.06.2016. That is how, as indicated above, the petitioner is before this Court.

Learned counsel for the petitioner submits that the issue as regards submission of false certificates by the petitioner in relations to the works at two power stations: Dhauliganga and Tanakpur, had already been examined by the respondent-authorities and being convinced with the explanation furnished by the petitioner the proceedings were accordingly closed vide two separate office orders dated 18.03.2015 & 30.03.2015. Though the petitioner was issued a warning. Thus, he submits that the authorities could not suo moto reopen the matter as it virtually resulted in review of its earlier orders. Further, in the absence of any power of such review traceable in the tender documents or elsewhere, the impugned orders could not be sustained.

Per contra, learned counsel for the respondents justifies the orders passed by the authorities, whereby any business dealings with the petitioner-company have since been banned for a period of three years. He asserts that in the given facts and circumstances, the authorities were fully justified to resort to such an action, which was preceded by complete adherence to the principles of natural justice. Further, the orders being assailed in sync with the **Guidelines of the Corporation on Banning**

Business Dealings, warranted no interference. Further, it is urged that the petitioner was not entitled to any indulgence in proceedings under Article 226 of the Constitution as under the Guidelines, referred to above, the impugned orders could be assailed by way of appeal before the appellate authority under the guidelines.

Faced with this, learned counsel for the petitioner submits that the petitioner as such would have no hesitation to even approach the appellate authority by filing an appeal, but as a considerable time has already elapsed since passing of the impugned orders dated 03.06.2016 & 06.06.2016, it be assured that in the event any such appeal is filed the same is decided within a specified time.

Having heard learned counsel for the parties and perused the records, we too are of the considered view that it indeed would be expedient if the petitioner, in the first instance, exhausts the remedy of appeal in terms of Clause 10.1 of the Guidelines against the orders banning business dealings inter se the parties. Particularly, for certain pure questions of facts shall also have to be determined. Thus, we relegate the petitioner to avail the remedy of appeal against the orders passed by the competent authority dated 03.06.2016 & 06.06.2016, whereby the respondent-authorities have banned the business dealings with the petitioner for a period of three years. We may also clarify that although under Clause 10.1, appeal, if any, is required to be filed within one month from the date of receipt of the order the party is aggrieved by, but in the peculiar facts and circumstances of the matter, notwithstanding the period of 30 days prescribed for filing an appeal, it is ordered that in the event the petitioner files an appeal within two weeks from today, the same shall be entertained and adjudicated on merits after affording an opportunity of hearing to all the stakeholders.

We are also reminded to point out that ban imposed by the respondent-authorities was to remain in operation for a period of three years and was operative w.e.f. 03.06.2016. And, in the absence of any interim order granted by this Court staying the operation thereof, a period of 2 years 3 months thereafter has already gone by. Thus, it would be open to the appellate authority to factor in even this aspect while considering the appeal preferred by the petitioner-Company. We also deem it appropriate to direct the appellate authority that if indeed any appeal is preferred by the petitioner, as indicated above, the same shall be decided within a period of two weeks of its institution.

The petition stands disposed of in the above terms.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

21.09.2018
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO