

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 27090 of 2018 (O&M)

Date of Decision: 22.10.2018

M/s Rakshak Securitas Private Limited

.....Petitioner

versus

Municipal Corporation, Chandigarh and another

....Respondents

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

Present : Mr. Jai Vir Yadav, Advocate, for the petitioner.

KRISHNA MURARI, C.J.(oral)

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order/letter dated 13.08.2018 rejecting his tender and also black listing him by debarring from participating in the tender process of Municipal Corporation, Chandigarh for the next six months. It is undisputed fact that the petitioner was the lowest bidder and under the conditions the physical EMD was to be deposited by him within a week after opening of the financial bid failing which not only the bid was liable to be rejected but it was open to the respondent-corporation to take action to debar the tenderer from tendering in the Municipal Corporation, Chandigarh for a period of six months. Equally undisputed is the fact that an obligation was cast upon the tenderer to look into the result of the opening of the financial bid on the website and to act accordingly. The fact that the petitioner failed to comply with the undertaking given by him for depositing the physical EMD within a week after opening of the financial bid in which his tender was found to be the lowest is also undisputed. The respondent-Municipal Corporation in accordance with the terms and conditions of the tender notice dated 22.06.2018 and the undertaking submitted by the petitioner took action by

rejecting the bid of the petitioner and debarring him from participating in the tender process for the next six months.

2. Learned counsel for the petitioner submits that since the black listing for a period of six months is penal in nature, hence the same could not have been done without notice or opportunity of hearing. It is not a case where black listing has been carried out as a matter of fact without any notice or opportunity. The petitioner had full notice and knowledge of the fact that in case if he fails to comply with the condition of depositing the physical EMD within a week after opening of the financial bid, in case his tender is found to be lowest, the consequences of black listing of six months would follow. Apart from the above, he also gave an undertaking to abide by the said condition before the respondents.

3. Admittedly, the petitioner not only violated the terms of the tender notice but also committed breach of his own undertaking and thus it does not lie in the mouth to say that impugned action without notice or opportunity would vitiate the proceedings. The dealing between the petitioner and the respondents was purely commercial in nature and in case the petitioner has violated any terms and breach of the undertaking, no fault can be found with the action of the respondents in proceeding to take any action already provided for such breach.

4. Thus, we do not find any illegality in the impugned action of the respondents in rejecting the bid of the petitioner and black listing him for a period of six months. The petition accordingly fails and stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

22.10.2018

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√