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

+ W.P.(C) 6568/2018 & CM 28476

DHIRAJ GUPTA

..... Petitioner

Through: Mr B.L. Wali, Advocate.

versus

DELHI TRANSPORT INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED
& ANR

..... Respondents

Through: Mr Gautam Narayan, ASC for
GNCTD with Ms Shivani Vij, Mr
Abhinav Goyal, Advocates with Mr
Prem Sharma, LA, DTIDC and Mr
B.S. Negi, LDC, DTIDC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.07.2018

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 25.05.2018 (hereafter 'the impugned order') passed by the Delhi Transport Infrastructure Development Corporation Limited (hereafter 'DTIDCL'). The petitioner had participated in the tender floated by DTIDCL for the award of contract for operating specified parking lots. The petitioner was successful and was issued a Letter of Acceptance (LoA) on 17.08.2017. It was subsequently found that the petitioner was ineligible to participate in the said tender as he had been blacklisted by South Delhi Municipal Corporation (SDMC) by an order dated 28.03.2015.

2. By the impugned order, the earnest money (EMD) and the

performance security furnished by the petitioner was forfeited and further he has been debarred from participating in any contract with DTIDCL for this financial year as well as for subsequent four financial years.

3. Mr Gautam Narayan, learned counsel appearing for DTIDCL referred to the tender conditions and submitted that the action taken by DTIDCL is in conformity with the tender conditions which specifically provided that a person who had been blacklisted by any other organisation was ineligible to participate in the tender. Further, any person making an incorrect declaration would be debarred from participating in any contract with DTDCL during the current financial year as well as four subsequent financial years.

4. The undisputed facts are that the petitioner was blacklisted by SDMC by an order dated 28.03.2015 along with other similarly placed parking contractors. One of the parking contractors challenged the blacklisting order passed in its case by filing a writ petition – ***W.P.(C) 4825/2015*** captioned “***M/s L.R. Sharma and Co. v. The Commissioner (SDMC) and Anr.***”. The said petition was disposed of by this Court by an order dated 18.05.2015, whereby the blacklisting order dated 28.03.2015 (impugned in the said petition) was set aside and SDMC was directed to consider the averments made in that petition and pass a speaking order after affording the petitioner therein an opportunity to be heard.

5. The petitioner claims that his case is also *pari materia* with the case of ***M/s L.R. Sharma and Co.*** (*supra*).

6. The petitioner also filed a writ petition – ***W.P.(C) 10662/2015*** – assailing an order dated 28.03.2015 passed by SDMC. The said writ petition

was disposed of by a Coordinate Bench of this Court by an order dated 05.02.2016 that reads as under:-

“Present writ petition is disposed of with the directions to respondent no.1 to treat this writ petition along with the documents annexed therewith as a representation of the petitioner and decide the same by passing a speaking order within one month after affording opportunity of personal hearing to the petitioner. Respondent no.1 shall communicate the speaking order to the petitioner. Miscellaneous application is disposed of as infructuous.

Dasti.”

7. It is apparent from the above order that although the petitioner was granted an opportunity to present his case before SDMC, the blacklisting order dated 28.03.2018 issued against him was not set aside or stayed. Thus, the petitioner continued to suffer the same.

8. In terms of the aforesaid order dated 05.02.2016 passed in W.P.(C) 10662/2015, SDMC passed a speaking order dated 30.03.2016. A perusal of the said order indicates that some of the contentions advanced by the petitioner were accepted by SDMC. But the blacklisting order was not lifted and continued to be operative.

9. DTIDCL floated a tender in June 2017 and as is noticed above the blacklisting order was operative at the material time. The Notice Inviting Tenders (NIT) included the following clauses:-

“(c) Tenderer giving wrong details, paper/information will be debarred from participating in the tender/RFP of DTIDC for this financial year and 4 subsequent financial years. EMD shall also be forfeited by DTIDC in such cases.

- (d) Parking agencies which have been blacklisted/debarred in any other Central/State Govt. Deptt/PSU's organizations and municipal authorities shall not be eligible to participate in this tender & if submitted, their offer shall be out rightly rejected and such contractor/agencies shall have no claim. The tenderer shall have to furnish an undertaking on non judicial stamp paper of Rs.100/- and in case of false declaration, the contract shall be stand terminated and the contractor shall be debarred for participating in the tender/RFP for this financial year and 04 subsequent financial years of DTIDC. The performance security shall also be forfeited in such circumstances. The affidavit is to be submitted as per Annexure–C of this NIT.”

10. As is apparent from the above tender conditions, a person who was blacklisted and was also ineligible to bid in the contract. It obviously follows that the petitioner too was ineligible for participating in the aforesaid tender. Notwithstanding the same, the petitioner submitted its bid without disclosing that he had been blacklisted by SDMC.

11. Since an allegation was made that the petitioner had been blacklisted and therefore ineligible for being awarded the contract, DTIDCL sent a letter dated 04.09.2017 to SDMC seeking confirmation of the same. SDMC responded to the aforesaid query by a letter dated 11.09.2017 unequivocally confirming that the petitioner had been blacklisted by an order dated 28.03.2015 and continues to be blacklisted by SDMC.

12. Thereafter, the petitioner filed another writ petition being *W.P.(C) 6605/2018* captioned “*Dhiraj Gupta v. SDMC and Anr.*” before this Court

which is pending consideration. The said petition was taken up on 05.07.2018 and on that date, this Court passed an interim order staying the operation of the blacklisting order dated 28.03.2015 passed by SDMC during the pendency of that petition.

13. In view of the said order, the blacklisting order dated 28.03.2015 issued by the SDMC against the petitioner is temporarily non-operative.

14. In view of the aforesaid facts, the action by DTIDCL in blacklisting the petitioner and forfeiting the security furnished by him cannot be faulted as there is no doubt that the petitioner was suffering the blacklisting order at the time when he had submitted its bid. It is also important to note that action taken by DTIDCL against the petitioner is not on account of defaults that he may have committed in performance of his contract with SDMC but on account of concealing that he had been blacklisted and participating in bid despite being ineligible to do so.

15. Having stated the above, this Court is also of the view that it would be highly unfair if the petitioner continues to suffer on account of the blacklisting order dated 28.03.2015 for a further period of five years even if he prevails in the writ petition (W.P.(C) 6605/2015). This is also considering that the speaking order dated 30.03.2016 passed by SDMC in compliance of the order dated 05.02.2016 passed in W.P.(C) 10662/2015, is ambiguous with respect to the decision regarding blacklisting the petitioner. This is so because although some of the contentions of the petitioner have been accepted but there is no mention of the punishment imposed on the petitioner.

16. Mr Gautam Narayan, fairly states that in the event the petitioner prevails in the said writ petition and the blacklisting order dated 28.03.2015 issued by SDMC is set aside, DTIDCL shall also revoke the impugned order to the extent of blacklisting him for a period of five years. He further states that the petitioner would also be at liberty to make a request for refund of the security and the same would be sympathetically considered.

17. This Court is also of the view that Mr Gautam Narayan's suggestions serve the ends of justice and DTIDCL is bound by the same. It is clarified that as far as the current contract is concerned (NIT No.DTIDC/2017-18/848), the petitioner was clearly debarred from participating in the same. The impugned order passed against the petitioner stands subject to the review by DTIDCL pursuant to any order that may be passed by this Court in W.P.(C) 6605/2018.

18. Mr Wali, learned counsel appearing for the petitioner also consents to the aforesaid directions.

19. The petition is disposed of in the above terms. The pending application is also disposed of.

VIBHU BAKHRU, J

JULY 20, 2018
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