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

\+ W.P.(C) 11006/2018 & CM Nos. 42842-42844/2018

SANTOSH ENTERPRISES ..... Petitioner

Through: Mr Pradeep K. Bakshi and Mr Kushagra Pandit, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA & ANR ..... Respondents

Through: Mr K.K. Rai, Senior Advocate with Mr Digvijay Rai, Mr Kustubh Singh, Advocate with Mr Amrit Gargi, AAI, Manager (Comm.), Ms Aakriti, Manager (Law), AAI and Mr Varun Tripathi, JR (Law), AAI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.10.2018

VIBHU BAKHRU, J

1. Issue notice. The learned counsel appearing for the respondents accepts notice. With the consent of the parties, the petition is taken up for hearing.

Introduction

2. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 06.10.2018 captioned *"Intimation of Disqualification & Show Cause Notice under Clause 4.16.3, 4.16.4 of RFE"* (hereafter 'the impugned notice') issued by respondent no.2 [Executive Director (Commercial),

Airports Authority of India (AAI)]. By the impugned notice, the petitioner was communicated the AAI's (respondent no.1) decision to disqualify the petitioner for being empanelled for rendering Vehicle Parking Management Services at airports managed by the AAI. The petitioner has also been called upon to show cause as to why he should not be debarred from participating in future tenders floated by the AAI.

3. The petitioner is engaged in the business of undertaking parking contracts and providing parking management services. It is stated that the AAI had awarded contracts to the petitioner for managing parking lots at three Airports: Bhopal Airport, Vishakhapatnam Airport and Banaras Airport. The said contracts have been terminated on the ground of fraudulent practice, allegedly adopted by the petitioner. The allegation is that the petitioner had submitted forged/fake bank guarantees to secure performance of the contracts awarded to him.

4. In regard to the termination of the contract for providing services at the Bhopal Airport, the petitioner had already approached the Madhya Pradesh High Court at Jabalpur and has secured an interim order, which permits the petitioner to manage the parking lot in question subject to certain conditions.

Factual background

5. In April 2018, the AAI invited applications for empanelment in terms of a documents captioned "Request for Empanelment (RFE) of Agencies for vehicle Parking Management Services at AAI managed Airports". This would enable the AAI to scrutinise the eligibility of the applicants interested

in providing Vehicle Parking Management Services, and such empanelment would enable the said contractors to bid for future contracts with the AAI. This is clear from Clause 1.2 of the RFE; the relevant extracts of which are set out below:

> "In order to simplify the Award/grant of Car Parking concession at AAI airports, AAI intends to scrutinize the candidature of interested car parking vendors w.r.t. Eligibility criteria laid down by AAI at CHQ level as one time exercise and empanel the qualified vendors who in turn will be allowed to participate in bid/RFP duty initiated by respective airports which would involve limited documents/information verification for award of license.
>
> The composite process of empanelment and RFP with limited information aims to standardize the technical evaluation as one time exercise and save valuable time in processing of tender resulting into time bound award/grant Car Parking License."

6. Pursuant to the aforesaid RFE, the petitioner submitted its offer. By a communication dated 26.07.2018, the petitioner was informed that he was "provisionally short listed for empanelment of Vehicle Parking Management Services at AAI Airports".

7. At the material time, the petitioner was already awarded contracts for managing parking services at three airports as stated above (Airports at Bhopal, Vishakhapatnam and Banaras).

8. On 23.08.2018, the AAI issued a show cause notice to the petitioner in respect of the contract awarded to manage the parking at the Airport at Bhopal. The petitioner was informed that the Bank of India (hereafter

'BOI') had confirmed that the bank guarantees furnished by the petitioner were not issued by the bank and the petitioner was called to provide an explanation for the same. The petitioner was also put to notice that action could be initiated in terms of the contract.

9. The petitioner was, thus, duly put to notice that BOI had denied that it had issued the bank guarantees furnished by the petitioner to the AAI.

10. The petitioner sent a letter dated 24.08.2018 to BOI in this regard. BOI responded on 24.08.2018 confirming that none of the bank guarantees referred to (that is, the ones furnished to BOI) were alive.

11. The petitioner responded to the show cause notice dated 23.08.2018 by a letter dated 27.08.2018. He submitted that bank guarantees submitted by him were genuine. He further asserted that issue charges/commission and bank guarantee processing fees was also deducted by BOI, which was also reflected in his bank accounts.

12. By a letter dated 29.08.2018, AAI terminated the contract awarded to the petitioner for providing Vehicle Parking Management Services at the Bhopal airport.

13. The petitioner has challenged the said termination before the Madhya Pradesh High Court at Jabalpur and has also secured an interim order.

14. On 24.09.2018, AAI published the Final List of empanelled service providers and the petitioner's name was not included in that list.

15. Thereafter, AAI issued the impugned order.

Submissions

16. Mr Bakshi, the learned counsel appearing for the petitioner submits that impugned notice clearly states that the petitioner has been disqualified. He contended that the petitioner has not been afforded any opportunity of being heard before any such action has been taken by the AAI and the same was violative of the principles of natural justice. He further contended that the impugned notice has been issued to overcome the orders of the Madhya Pradesh High Court.

Reasons and Conclusion

17. Insofar as the action of blacklisting is concerned, the petitioner has been duly put to notice of the same and this Court has no reason to believe that the petitioner has not been afforded a reasonable opportunity of being heard, prior to the AAI has taken any action in that regard.

18. In view of the above, the limited controversy to be addressed is with regard to the petitioner's disqualification from the list of empanelled contractors.

19. Request for Empanelment (RFE) of Agencies for Vehicle Parking Management Services at the AAI managed Airports issued by the AAI, expressly provided that empanelment of AAI contracts is at the discretion of the AAI. The relevant extracts of Paragraph 3.6 of the said RFE are set out below:-

> "3.6. **AAI's Right to Accept or Reject Proposal**
>
> 3.6.1 AAI reserves the right to accept or reject any or all of the

Proposals without assigning any reason and to take any measure as it may deem fit, including annulment of the empanelment process, at any time prior to LoE, without any liability or obligation for such acceptance, rejection or annulment.

3.6.2. AAI reserves the right to invite revised Proposals from Applicants if:

a) There is any amendment in the RFE document at any stage.

b) AAI deems the Empanelment procedure to be unsatisfactory/inefficient for the intended purpose at later stage.

3.6.3 Even if the Applicant satisfies every criteria as per the guidelines set forth in clause no. 3 & 4.7, AAI at its discretion can disqualify the Applicant, if the Applicant:

a) has been debarred by any state or central government or government agency in India and the same is subsisted at the time of empanelment;

or

b) has made misleading or false representation in the forms, statements and attachments submitted; or

c) the Applicant does not respond promptly and thoroughly to requests for supplementary information requested by AAI for the evaluation of the Proposal; or

d) the Applicant engages in a corrupt, fraudulent, coercive, undesirable or restrictive practices;"

20. It is apparent from the plain reading of the RFE that the AAI retained the discretion whether to empanel a service provider or not. It is also important to note that Clause 3.6.3 of the RFE also indicated the guidelines

for AAI to exercise its discretion.

21. The inquiries made by AAI from the concerned bank (BOI), which had furnished the bank guarantees indicated that the said bank guarantees available with AAI were not furnished by that bank. BOI has informed the AAI that although bank guarantees were issued at the instance of the petitioner, the same had been closed. And, the Bank Guarantees available with the AAI are not the ones which were issued by the Bank.

22. It has been pointed out by the learned counsel for the respondents that the petitioner was never been included in the final list of empanelled agencies and, therefore, no such empanelment had been granted. The learned counsel for the respondents has handed over certain documents, which indicate that the petitioner's name features at Serial No. 8 of the list of provisionally empanelled agencies for Vehicle Parking Management Services, published on 26.07.2018. However, the "Final list of empanelled agencies for vehicle parking management services at AAI airports- Phase 1" published on 24.09.2018, does not include the petitioner's name.

23. It is, thus, apparent from the above that AAI has exercised its discretion in not including the petitioner's name in the final list and this action cannot be faulted.

24. Although, the petitioner disputes that he had furnished any forged bank guarantee, it is not disputed that BOI has declined to accept the bank guarantees furnished by the petitioner to AAI as the ones issued by them. This was also confirmed by BOI in its letter dated 24.08.2018 to the petitioner. The said letter is set out below:

"Bank of India BOI

Ref: MNZ/MRRD/PVR/2018-19 Dated 24-08-2018

To,
M/s Santosh Enterprises
b-6, 301 Unique Castle,
Shanti Park, Mira Road East,
Thane-401107

Ref: Regarding issued of Bank Guarantees

We refer to you letter dated 24-08-2018 on the captioned subject.

2. This is to inform you that the below mentioned Bank Guarantees were issued and closed at the specific request of you i.e. M/s Santosh Enterprises. Respective Bank Guarantees were issued on simultaneous Bank Guarantees alongwith the specific request letter signed and furnished by you.

3. The details of guarantees are as under:-

Bank Guarantee No.	Date of Opened	Amount of Guarantee	Date of Closed
0120IPEBG16005	20-06-2016	Rs. 87,37,737/-	28-06-2016
120IPEBG16008	08-07-2016	Rs.74,62,000/-	12-07-2016
0120IPEBG16009	22-07-2016	Rs.27,10,400/-	03-08-2016

4. Further, we also confirm that none of the Guarantees is live as on date. This letter is issued at your specific request.

Bank of India

Sd/-
Authorized Signatory
Miraroad Branch"

25. Plainly, AAI is not concerned with any dispute between BOI and the petitioner. There is no ambiguity in BOI's stand that the bank guarantees issued by it were closed and the ones available with AAI were not issued by BOI. Although the petitioner disputes the same, there is no denying the fact that BOI's stand is unambiguous. Consequently, the security provided by the petitioner to AAI (the bank guarantees in question) are of little value to AAI.

26. It is also apparent from the above, that there is sufficient ground for the AAI to have exercised its discretion for not including the petitioner's name in the list of empanelled contractors. The guidelines as provided in the RFE also set out the grounds on which the AAI could exercise its discretion. And, the AAI's action cannot be faulted on the touchtone of the said guidelines, as there is sufficient reason for AAI to believe that the petitioner has indulged in a fraudulent practice.

27. This Court is also unable to accept that the AAI shall be required to issue any show cause notice to the petitioner while considering his application for being registered as an empanelled agency.

28. In view of the above, the grievance of the petitioner is that it has not been issued any show cause notice with regard to its dis-empanelment, is unsustainable for the reason that the petitioner was not included in the final list of empanelled agencies. Thus he was never empanelled by AAI.

29. Mr Bakshi, the learned counsel appearing for the petitioner had pointed out that the impugned show cause notice expressly indicates that the

petitioner has been disqualified; he contended that this indicated that the petitioner's name was removed from the list of empanelled agencies. This submission is unmerited. The reference to disqualification only refers to non-acceptance of the petitioner's application for empanelment and not his removal from the list of empanelled agencies.

30. If the petitioner had been included in the list of empanelment agencies and a punitive action had been initiated AAI for his removal, clearly, the AAI would have to afford the petitioner an opportunity of being heard and to meet the grounds on which he was being removed. However, at the stage of empanelling the petitioner, AAI was only required to consider the past record as well as other material available on record.

31. As noticed above, there is sufficient material for AAI to have taken a decision not to empanel the petitioner. It is well settled that the grounds of judicial review of the discretion vested with an administrative authority is limited. This Court can interfere only where the decision is either capricious, arbitrary, unreasonable or otherwise falls foul of Article 14 of the Constitution of India. In the present case, this Court is unable to accept that any such grounds are established.

32. The petition is, accordingly, dismissed. The pending application also stands disposed of.

33. However, it is clarified that if the petitioner prevails in the disputes with BOI and it is established that the bank guarantees furnished by the petitioner were not fake or forged, AAI shall review it decision to disqualify the petitioner from being empanelled for providing vehicle parking

management services.

34. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

OCTOBER 12, 2018
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HIGH COURT OF DELHI
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