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

+ **W.P.(C) 11696/2017**

M/S STAR FORMS

..... Petitioner

Through: Mr Durgesh Gupta, Advocate.

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr Rajat Malhotra and Mr Ilyas
Laway, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.01.2018

CM No. 47453/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 11696/2017 and CM No. 47452/2017

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Issue a writ, order or direction in the nature of a writ of certiorari, setting-aside/quashing of impugned order dated 07.12.2017 whereby the respondent no.2 had forfeited the performance security of Rs. 5,00,000/- as also blacklisted the petitioner firm for an indefinite period without any show cause notice and personal hearing and thus the order dated 07.12.2017 being illegal, unlawful arbitrary and without jurisdiction and in violation of principals of natural justice is liable to be set aside in the facts and circumstances, in the interest of justice;

b) Issue a writ, order or direction in the nature of a writ of

certiorari, setting-aside/quashing of impugned, thereby, directing the respondent no. 2 to refund the performance security of Rs. 5,00,000/- due to the petitioner, as the award of work has already been cancelled by the respondent no.2.”

4. Briefly stated, the relevant facts necessary to address the controversy are that in the year 2014, respondent no.2 had issued a notice inviting tenders for empanelment of an agency for assistance in enrolment of 6943 Home Guards. According to the petitioner, it was projected that approximately 85,000 applications would be received for the said posts of 6943 Home Guards.

5. Respondent no.2 invited offers for rendering certain services in relation to the said recruitment including for conducting selection tests/examination.

6. The petitioner claims that applications received far exceeded the earlier estimate; approximately one and a half times the number of estimated number of applications were received.

7. Admittedly, the petitioner did not have the resources for conducting the tests for the number of applicants in a single shift and, accordingly, requested that the examinations be conducted in two shifts. According to the petitioner, respondent no.2 initially accepted the said request, but subsequently, resiled from the same. In the circumstances, the petitioner was unable to complete the work in question.

8. The contract awarded to the petitioner was cancelled and the bid security of ₹5,00,000/- furnished by the petitioner, was forfeited. In addition, the petitioner was also blacklisted from participating in tenders of

respondent no.2.

9. Insofar as the petitioner's prayer for refund of bid security is concerned, the same is clearly in the realm of a contractual dispute and this Court does not consider it apposite to examine the same in this petition. Needless to mention that it would be open for the petitioner to institute appropriate proceedings for redressal of its grievances in this regard.

10. Insofar as respondent no.2's order blacklisting the petitioner is concerned, the learned counsel for respondent fairly states that no specific notice was issued to the petitioner calling upon the petitioner to show cause as to why such action not be taken against him.

11. In ***Erusian Equipment and Chemicals Ltd. v. State of West Bengal & Anr: AIR 1975 SC 266***, the Supreme Court had authoritatively held that it was necessary that the party be given a proper notice before any action of blacklisting is taken against such party. The relevant extract of the said decision is set out below:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

12. In ***Raghunath Thakur v. State of Bihar & Ors: (1989) 1 SCC 229***, the Supreme Court observed as under:

“4.It has to be realised that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.”

13. In *Gorkha Security Services v. Govt. (NCT of Delhi) and Ors.:* (2014) 9 SCC 105, the Supreme Court reiterated that a specific notice was required to be issued to a person before the said person could be blacklisted. The relevant extract of the said decision reads as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/ or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in Government Tenders which means precluding him from the award of Government contracts.

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21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement,

according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.”

14. In view of the aforesaid decisions, the law relating to blacklisting is now well settled and an order blacklisting the petitioner without due notice to the concerned party cannot be sustained.

15. It is also relevant to mention that - as held by the Supreme Court in *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors: AIR 2014 SC 9* - it is also not permissible to blacklist a person for perpetuity.

16. In view of the above, the impugned communication dated 07.12.2017 to the extent that it blacklists the petitioner, is set aside.

17. It is clarified that this would not preclude respondent no.2 from initiating appropriate proceedings for blacklisting the petitioner in accordance with law.

18. The petition and the application are disposed of.

VIBHU BAKHRU, J

JANUARY 03, 2018/RK